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Attorneys for Defendant
TESLA, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HENRY YEH and G.Y., a minor by and
through his guardian Henry Yeh, on behalf of
themselves, all others similarly situated, and
the general public,

Plaintiffs,

vs.

TESLA, INC.,

Defendant.

Case No. 3:23-cv-01704-JCS

**DEFENDANT TESLA INC.'S NOTICE
OF MOTION AND MOTION TO
COMPEL ARBITRATION OF
PLAINTIFFS' CLAIMS ON AN
INDIVIDUAL BASIS AND TO
DISMISS THE ACTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

[Declarations of David L. Schrader, Jasjit
Ahluwalia, and Minu Sinha, and Proposed
Order submitted concurrently herewith]

Hearing Date: September 15, 2023
Time: 9:30 a.m.
Ctm: F, 15th Floor
Judge: Hon. Joseph C. Spero

Compl. Filed: April 7, 2023

1 **NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION OF PLAINTIFFS'**
2 **CLAIMS ON AN INDIVIDUAL BASIS AND TO DISMISS THE ACTION**

3 PLEASE TAKE NOTICE that on September 15, 2023, at 9:30 a.m. or as soon thereafter as
4 the matter may be heard before the Honorable Joseph C. Spero, Courtroom F, of the above-entitled
5 Court, located at 450 Golden Gate Avenue San Francisco, CA 94102, Tesla, Inc. ("Tesla") moves
6 this Court to compel Plaintiffs Henry Yeh and G. Y. ("Plaintiffs") to submit their claims to
7 individual, non-class arbitration per the terms of Plaintiff Yeh's agreements with Tesla and to
8 dismiss the case. Alternatively, Tesla seeks a stay of the action pending the outcome of individual,
9 non-class arbitration.

10 Tesla makes this Motion under the Federal Arbitration Act, 9 U.S.C. §§ 1-16, on the ground
11 that Plaintiff Henry Yeh entered into enforceable arbitration agreements that forego class claims
12 and require arbitration of his causes of action against Tesla in the Amended Complaint on an
13 individual, non-class basis. Plaintiff G.Y., Yeh's one-year old minor son, also must arbitrate his
14 claims under applicable state law contract principles, including principles of estoppel.

15 This Motion is based on this Notice of Motion and Motion, the accompanying
16 Memorandum of Points and Authorities, the concurrently filed declarations of Minu Sinha and
17 Jasjit Ahluwalia, and all exhibits thereto, all pleadings and files in this action, and any written or
18 oral argument presented to the Court at or prior to the hearing on this Motion.

19 Dated: July 31, 2023

MORGAN, LEWIS & BOCKIUS LLP
David L. Schrader
Brian M. Ercole
Mark A. Feller

22 By /s/ David L. Schrader
23 David L. Schrader

24 *Attorneys for Defendant Tesla, Inc.*

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

I. INTRODUCTION 1

II. SUMMARY OF ARGUMENT 2

III. RELEVANT FACTS AND ALLEGATIONS..... 4

 A. Yeh First Agreed To Arbitrate Any Disputes With Tesla When He Ordered His Model Y Vehicle And Entered Into The Order Agreement. 4

 B. Yeh Again Agreed To Arbitrate Any Disputes With Tesla When He Took Delivery Of His New Model Y Vehicle And Signed The Sale Agreement..... 7

 C. Ignoring These Agreements, Yeh Filed This Putative Class Action Lawsuit Based On An Inaccurate News Article. 8

 D. Rather Than File His Claims In Arbitration, Yeh Again Breached The Agreements And Filed An Amended Complaint Adding His Infant Son As A Named Plaintiff 9

IV. LEGAL ARGUMENT 10

 A. Yeh Must Arbitrate All Of His Claims Against Tesla On An Individual Basis. 10

 1. Yeh Entered Into Two Separate Agreements To Arbitrate His Disputes With Tesla. 13

 a. Sale Agreement 13

 b. Order Agreement..... 14

 2. Each Agreement Delegates The Arbitrability Of Yeh’s Claims To The Arbitrator To Decide..... 16

 a. Sale Agreement 16

 b. Order Agreement..... 17

 3. Yeh’s Claims Clearly Fall Within Scope Of The Arbitration Provisions In The Agreements. 18

 a. The Sale Agreement..... 18

 b. Order Agreement..... 19

 4. Arbitration Must Be Conducted On An Individual, Non-Class Basis. 20

 B. G.Y. Also Must Arbitrate His Derivative Claims. 21

 C. The Court Should Dismiss This Action, Or, In The Alternative, Stay It Pending The Outcome Of Arbitration. 23

V. CONCLUSION 24

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

Cases

Am. Exp. Co. v. Italian Colors Rest.,
570 U.S. 228 (2013)..... 4, 11, 20

Arab v. BMW of N. Am., LLC,
2019 WL 8011713 (C.D. Cal. Sept. 10, 2019)..... 17

AT&T Mobility LLC v. Concepcion,
563 U.S. 333 (2011)..... 20

Ball v. Tesla Motors, Inc.,
2022 WL 1433646 (E.D. Wis. Mar. 31, 2022), *appeal dismissed*, 2022 WL
16627493 (7th Cir. Oct. 17, 2022) 2

Brennan v. Opus Bank,
796 F.3d 1125 (9th Cir. 2015)..... 3, 18

Cap. Grp. Commc’ns Inc v. Xedar Corp.,
2013 WL 4013711 (N.D. Cal. Aug. 5, 2013)..... 12

Chan v. Charter Commc’ns Holding Co.,
2015 WL 12655701 (C.D. Cal. Aug. 6, 2015)..... 4, 21, 22

Chatman v. Jimmy Gray Chevrolet, Inc.,
2016 WL 5745697 (N.D. Miss. Sept. 30, 2016) 17

Chavez v. Bank of Am.,
2011 WL 4712204 (N.D. Cal. Oct. 7, 2011) (Spero, J.) 13

Chien v. Bumble Inc.,
2022 WL 17069842 (S.D. Cal. Nov. 17, 2022) 19

Crowley Mar. Corp. v. Bos. Old Colony Ins. Co.,
158 Cal. App. 4th 1061 (2008)..... 21

Cty. of Contra Costa v. Kaiser Found. Health Plan, Inc.,
47 Cal. App. 4th 237 (1996), *as modified* (Aug. 1, 1996) 21

Dohrmann v. Intuit, Inc.,
823 F. App’x 482 (9th Cir. 2020) 15

Doyle v. Giuliucci,
62 Cal. 2d 606, 401 P.2d 1 (1965) 21

1 *Epic Sys. Corp. v. Lewis*,
 2 138 S. Ct. 1612 (2018) 20

3 *First Options of Chicago, Inc. v. Kaplan*,
 4 514 U.S. 938 (1995) 2, 11

5 *Fish v. Tesla, Inc.*,
 6 2022 WL 1552137 (C.D. Cal. May 12, 2022) 2, 14, 20

7 *Fontana v. Chef’s Warehouse Inc.*,
 8 2017 WL 2591872 (N.D. Cal. June 15, 2017) 12

9 *Forrest v. Spizzirri*,
 10 62 F.4th 1201 (9th Cir. 2023)..... 4, 23

11 *Gabriella v. Recology Inc.*,
 12 2022 WL 6271866 (N.D. Cal. Sept. 9, 2022) 16

13 *Gala v. Tesla Motors TN, Inc.*,
 14 2020 WL 7061764 (W.D. Tenn. Dec. 2, 2020)..... 2, 15

15 *Garcia v. Dell, Inc.*,
 16 905 F. Supp. 2d 1174 (S.D. Cal. 2012) 19

17 *Harris v. Pac. Gas & Elec. Co.*,
 18 h2022 WL 16637987 (N.D. Cal. Nov. 2, 2022) (Spero, J.) *passim*

19 *Hawkins v. Ford Motor Co.*,
 20 2021 WL 9031130 (C.D. Cal. Nov. 24, 2021)..... 23

21 *Henry Schein, Inc. v. Archer & White Sales, Inc.*,
 22 139 S. Ct. 524 (2019) 3, 11, 16

23 *Hiatt v. Tesla Inc.*,
 24 2021 WL 6052266 (D. Haw. Dec. 21, 2021) 2, 14, 18

25 *Johnmohammadi v. Bloomingdale’s, Inc.*,
 26 755 F.3d 1072 (9th Cir. 2014)..... 12, 23

27 *Kamineni v. Tesla, Inc.*,
 28 2020 WL 57867 (D.N.J. Jan. 6, 2020) 3, 14, 19

Karobkoff v. Nissan Motor Acceptance Co. LLC,
 2022 WL 2124901 (C.D. Cal. Mar. 22, 2022) 16

Kim v. Tinder, Inc.,
 2018 WL 6694923 (C.D. Cal. July 12, 2018) 10

1 *Lamps Plus, Inc. v. Varela*,
 2 139 S. Ct. 1407 (2019) 3, 20

3 *Lee v. Postmates Inc.*,
 4 2018 WL 4961802 (N.D. Cal. Oct. 15, 2018) (Spero, J.) 15, 20

5 *Lee v. Tesla, Inc.*,
 6 2020 WL 10573281 (C.D. Cal. Oct. 1, 2020) 2, 15

7 *Lee v. Ticketmaster L.L.C.*,
 8 817 F. App’x. 393 (9th Cir. 2020) 15

9 *Lira v. Nat’l Distribution Centers, LLC*,
 10 2021 WL 6693934 (C.D. Cal. Dec. 22, 2021) 13

11 *Lowden v. T-Mobile USA, Inc.*,
 12 512 F.3d 1213 (9th Cir. 2008)..... 11

13 *Lyman v. Ford Motor Co.*,
 14 2023 WL 2667736 (E.D. Mich. Mar. 28, 2023) 17

15 *Marselian v. Wells Fargo & Co.*,
 16 514 F. Supp. 3d 1166 (N.D. Cal. 2021) 18

17 *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*,
 18 460 U.S. 1 (1983)..... 11

19 *Ngo v. PMGI Fin., LLC*,
 20 2018 WL 6618316 (N.D. Cal. Dec. 18, 2018) (Spero, J.) 11, 13

21 *Nguyen v. Barnes & Noble Inc.*,
 22 763 F.3d 1171 (9th Cir. 2014)..... 11

23 *Nguyen v. Tesla, Inc.*,
 24 2020 WL 2114937 (N.D. Cal. Apr. 6, 2020), *appeal dismissed*, 2020 WL
 25 6875203 (9th Cir. Nov. 20, 2020) 2, 15

26 *Perei v. Arrigo DCJ Sawgrass, Inc.*,
 27 2018 WL 1182570 (S.D. Fla. Mar. 7, 2018) 17

28 *Poublon v. C.H. Robinson Co.*,
 846 F.3d 1251 (9th Cir. 2017)..... 12

Raebel v. Tesla, Inc.,
 451 F. Supp. 3d 1183 (D. Nev. 2020) 2, 15, 20

Rent-A-Ctr., W., Inc. v. Jackson,
 561 U.S. 63 (2010) 16

1 *In re Ring LLC Priv. Litig.*,
 2 2021 WL 2621197 (C.D. Cal. June 24, 2021), *appeal dismissed*, 2022 WL
 3 3339845 (9th Cir. Aug. 3, 2022)..... 22

4 *Rizvi v. BMW of N. Am. LLC*,
 5 2020 WL 2992859 (N.D. Cal. June 4, 2020) 19

6 *S.S. by & through Stern v. Peloton Interactive, Inc.*,
 7 566 F. Supp. 3d 1019 (S.D. Cal. 2021) 22

8 *Saperstein v. Thomas P. Gohagan & Co.*,
 9 476 F. Supp. 3d 965 (N.D. Cal. 2020) (Spero, J.)..... 20

10 *Skiles v. Tesla, Inc.*,
 11 No. 17-cv-05434-WHO (N.D. Cal.) 2, 14, 16

12 *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*,
 13 559 U.S. 662 (2010) 4, 20

14 *Surkhabi v. Tesla, Inc.*,
 15 2022 WL 19569540 (C.D. Cal. Oct. 27, 2022) 2, 14

16 *Taylor Morrison of Texas, Inc. v. Ha*,
 17 660 S.W.3d 529 (Tex. 2023)..... 22

18 *Tompkins v. 23andMe, Inc.*,
 19 840 F.3d 1016 (9th Cir. 2016)..... 12

20 *U.S. v. Sutcliffe*,
 21 505 F.3d 944 (9th Cir. 2007)..... 11

22 *Wiseman v. Tesla, Inc.*,
 23 2017 WL 7058142 (C.D. Cal. Sept. 12, 2017)..... 2, 14

24 **Statutes**

25 2 U.S.C. § 9 11

26 9 U.S.C. § 2 11

27 9 U.S.C. § 3 4, 23

28 9 U.S.C. § 4 20

Cal. Civ. Code § 1550 13

Cal. Civ. Code § 1633.9(a) 13

Federal Arbitration Act *passim*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Within less than 24 hours of publication of a dubious news article about the use of camera recordings from Tesla vehicles, Plaintiff Henry Yeh (“Yeh”) hastily filed this putative class action. In both his original Complaint and Amended Complaint, he essentially copies and pastes portions of that article and not much more. Although Yeh continues to claim that Tesla allowed some unidentified employees to access certain unidentified camera recordings from unidentified Tesla vehicles, he again does not allege that any Tesla employee ever improperly accessed or shared any data from his vehicle, that he sustained any injury that would give him standing to bring this lawsuit, or any essential facts to support the core elements of his claims. Indeed, he concedes that his claims are based upon nothing more than speculation about a “potential” privacy “intrusion.” (Am. Compl. ¶ 74.) As discussed in Tesla’s alternative motion to dismiss, his claims are fundamentally deficient.

There is another reason why Yeh’s claims should never have been brought in this Court. Yeh promised—twice—to arbitrate any dispute with Tesla on an individual basis and to forego class claims. In November 2021, when he ordered his Model Y vehicle, Yeh agreed to Tesla’s Motor Vehicle Order Agreement (“Order Agreement”), which requires arbitration of any “dispute arising out of or relating to any aspect of the relationship between [him] and Tesla” and precludes him from bringing “any class or representative action.” Declaration of Jasjit Ahluwalia (“Ahluwalia Decl.”), ¶ 3, Exhibit 1 (Order Agreement) at 3. Then, when Yeh took possession of his Tesla vehicle in February 2022, he signed and agreed to a Retail Installment Sale Contract (“Sale Agreement”). *Id.* ¶ 9, Exhibit 2 (Sale Agreement). The Sale Agreement also contains a broad arbitration provision requiring arbitration “on an individual basis” of any dispute arising out of or relating to the “purchase or condition of [his] vehicle . . . or any resulting transaction or relationship” with Tesla. *Id.*, Exhibit 2 at 7. These agreements require that Yeh’s claims be resolved in arbitration.

1 In an attempt to skirt these agreements, Yeh now seeks to bring claims not only on behalf
 2 of himself but also as the guardian of his infant son. The Amended Complaint does not contain a
 3 single factual allegation that his infant son was ever recorded from any camera in Yeh's vehicle,
 4 much less that any images of him were shared with Tesla. Regardless, if any claims could be stated
 5 on behalf of Yeh's infant son (and none have been), those too would be subject to arbitration.
 6 Whatever claims that Yeh's son might have are entirely dependent upon, intertwined with, and
 7 derivative of Yeh's claims. Yeh, in fact, seeks to control his son's claims as guardian. Yeh cannot
 8 use his son as a pawn to circumvent the arbitration process.

9 Pursuant to the Federal Arbitration Act ("FAA") and controlling law, the Court should
 10 compel arbitration of Plaintiffs' claims on an individual basis and dismiss this action.

11 **II. SUMMARY OF ARGUMENT**

12 Under controlling law, the Court should compel arbitration for the following reasons:

13 *First*, two valid arbitration agreements exist. Yeh willingly entered into both the Sale
 14 Agreement and the Order Agreement (collectively, the "Agreements") with Tesla. Each Agreement
 15 contains a clear, conspicuous, and broad arbitration provision requiring the arbitration of disputes
 16 between the parties on an individual basis. As numerous courts have recognized, each Agreement
 17 is valid and enforceable under the FAA and California law. *See, e.g., Fish v. Tesla, Inc.*, 2022 WL
 18 1552137, at *4 (C.D. Cal. May 12, 2022) (California law); *Surkhabi v. Tesla, Inc.*, 2022 WL
 19 19569540, at *5 (C.D. Cal. Oct. 27, 2022) (California law); *Nguyen v. Tesla, Inc.*, 2020 WL
 20 2114937, at *3 (N.D. Cal. Apr. 6, 2020), *appeal dismissed*, 2020 WL 6875203 (9th Cir. Nov. 20,
 21 2020) (California law); *Lee v. Tesla, Inc.*, 2020 WL 10573281, at *6 (C.D. Cal. Oct. 1, 2020)
 22 (California law); May 16, 2018 Order, *Skiles v. Tesla, Inc.*, No. 17-cv-05434-WHO (N.D. Cal.), at
 23 ECF No. 76 (California law); *Wiseman v. Tesla, Inc.*, 2017 WL 7058142, at *3 (C.D. Cal. Sept. 12,
 24 2017) (California law).¹

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 28 ¹ *See also Ball v. Tesla Motors, Inc.*, 2022 WL 1433646, at *2 (E.D. Wis. Mar. 31, 2022)
 (Wisconsin law), *appeal dismissed*, 2022 WL 16627493 (7th Cir. Oct. 17, 2022); *Hiatt v. Tesla
 Inc.*, 2021 WL 6052266, at *4 (D. Haw. Dec. 21, 2021) (Hawaii law); *Raebel v. Tesla, Inc.*, 451 F.
 Supp. 3d 1183, 1189 (D. Nev. 2020) (Nevada law); *Gala v. Tesla Motors TN, Inc.*, 2020 WL

1 *Second*, each Agreement clearly and unmistakably delegates the issue of arbitrability to an
 2 arbitrator. The Sale Agreement’s arbitration provision requires that the arbitrator resolve any issues
 3 pertaining to the “interpretation and scope of this Arbitration Provision, and the arbitrability of the
 4 claim or dispute.” Ahluwalia Decl., ¶ 9, Exhibit 2 at 7; *see, e.g., Henry Schein, Inc. v. Archer &*
 5 *White Sales, Inc.*, 139 S. Ct. 524, 530 (2019) (delegation clause requires arbitrator to decide issues
 6 of arbitrability). This language cannot be clearer. Moreover, the Order Agreement incorporates
 7 the AAA’s Consumer Arbitration Rules, which give the arbitrator the power to address any
 8 questions as to the existence, scope, or validity of the arbitration agreement or the arbitrability of
 9 any claim. Ahluwalia Decl., ¶ 3, Exhibit 1 at 3; *see, e.g., Brennan v. Opus Bank*, 796 F.3d 1125,
 10 1130 (9th Cir. 2015) (“incorporation of the AAA rules constitutes clear and unmistakable evidence
 11 that contracting parties agreed to arbitrate arbitrability”).

12 Nonetheless, even if this Court were to decide whether Plaintiffs’ claims are arbitrable (and
 13 it should not), their claims clearly fall within the broad scope of the arbitration provisions in the
 14 Agreements. Each Agreement requires arbitration of any dispute arising of or relating to any aspect
 15 of the “relationship” between Yeh and Tesla. Ahluwalia Decl., ¶ 3, Exhibit 1 at 3; Ahluwalia Decl.,
 16 ¶ 9, Exhibit 2 at 7. All of Plaintiffs’ claims arise out of or relate to this relationship, including
 17 Yeh’s purchase of his Tesla vehicle (and its allegedly defective camera system), Tesla’s alleged
 18 access to and use of camera data collected from his Tesla vehicle, and alleged misstatements by
 19 Tesla about customer privacy.

20 *Third*, consistent with controlling Supreme Court law, all claims must be arbitrated on an
 21 individual basis, because each Agreement contains a class waiver. Ahluwalia Decl., ¶ 3, Exhibit 1
 22 at 3 (“In other words, you and Tesla may bring claims against the other only in your or its individual
 23 capacity and not as a plaintiff or class member in any class or representative action.”); *id.*, ¶ 9,
 24 Exhibit 2 at 7 (“Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis
 25 and not as a class action.”). *See, e.g., Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1419 (2019);

26
 27
 28 7061764, at *4 (W.D. Tenn. Dec. 2, 2020) (Tennessee law); *Kamineni v. Tesla, Inc.*, 2020 WL
 57867, at *1 (D.N.J. Jan. 6, 2020) (New Jersey law).

1 *Am. Exp. Co. v. Italian Colors Rest.*, 570 U.S. 228, 238 (2013); *Stolt-Nielsen S.A. v. AnimalFeeds*
 2 *Int'l Corp.*, 559 U.S. 662, 683 (2010).

3 *Fourth*, any claims on behalf of Yeh's son, G.Y., must be arbitrated as well. Under
 4 California law, a nonsignatory can be compelled to arbitrate where a special relationship exists
 5 because "the nonsignatory and one of the parties to the arbitration agreement," such as a parent-
 6 child relationship, "making it equitable to compel the nonsignatory to also be bound to arbitrate his
 7 or her claim." *Chan v. Charter Commc'ns Holding Co.*, 2015 WL 12655701, at *5 (C.D. Cal. Aug.
 8 6, 2015) (collecting authority). That is the precisely case here. Yeh is G.Y.'s father, and purports
 9 to serve as his son's guardian in this litigation. G.Y.'s claims are entirely derivative of and
 10 intertwined with Yeh's claims, and will be impacted by what Yeh agreed to when he purchased his
 11 Tesla vehicle. G.Y.'s claims also rest in part upon alleged violations of Tesla's Privacy Policy,
 12 which is incorporated into Yeh's Order Agreement. Under these circumstances, it would be
 13 inequitable to allow Yeh to pursue the very claims he must arbitrate merely by adding his one-year-
 14 old son as plaintiff and then serving as "guardian" to him.

15 *Lastly*, this case should be dismissed because "all claims are subject to mandatory
 16 arbitration." *Forrest v. Spizzirri*, 62 F.4th 1201, 1203, 1205 (9th Cir. 2023). Alternatively, the
 17 Court should stay this case pending the outcome of any arbitration proceeding. 9 U.S.C. § 3.²

18 **III. RELEVANT FACTS AND ALLEGATIONS**

19 **A. Yeh First Agreed To Arbitrate Any Disputes With Tesla When He Ordered His** 20 **Model Y Vehicle And Entered Into The Order Agreement.**

21 Yeh alleges that he ordered a Tesla Model Y vehicle in November 2021 and took delivery
 22 of that vehicle in February 2022. (Am. Compl. ¶ 9.) Tesla sells its vehicles on its website.
 23 Ahluwalia Decl., ¶ 5; Declaration of Minu Sinha ("Sinha Decl.") ¶ 3. Customers who want to buy
 24 or lease a vehicle from Tesla can start the process by placing an order online through either the
 25

26 ² Tesla is also filing an alternative motion to dismiss Yeh's claims under Rule 12(b) and Rule
 27 9(b). Tesla respectfully submits that the Court must first resolve this motion and address whether
 28 Yeh's claims must be compelled to individual arbitration under the FAA. If so, the Court will not
 need to resolve Tesla's alternative Rule 12(b) motion to dismiss.

1 desktop or mobile version of Tesla’s website. Ahluwalia Decl., ¶ 5; Sinha Decl. ¶¶ 3-4. At the end
2 of the online order process (on the right side), customers view the below screen:

The screenshot shows a checkout form with the following fields and elements:

- Card Number**: A text input field.
- Expiration Month**: A dropdown menu with "01" selected.
- Expiration Year**: A dropdown menu with "2022" selected.
- CVV**: A text input field.
- Billing Zip Code**: A text input field.
- Due Today**: \$250
- Non-refundable Order Fee**
- By placing this order, I agree to the [Model Y Order Agreement, Terms of Use, and Privacy Notice.](#)** (The link text is blue and positioned over the "PLACE ORDER" button).
- PLACE ORDER**: A blue button.

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16 Sinha Decl., ¶¶ 4, 8, Exhibits 1 and 2. A customer must click the “PLACE ORDER” button to
17 complete the process of ordering a Tesla vehicle. *Id.*

18 As indicated on the screen depicted above, by clicking the “PLACE ORDER” button for a
19 Model Y Tesla vehicle, Tesla purchasers “agree to the Model Y Order Agreement” (along with the
20 Terms of Use and Privacy Notice). *Id.* ¶ 4, Exhibit 1. When Yeh ordered his Model Y vehicle (and
21 at all relevant times), the blue “Model Y Order Agreement” language operated as a direct hyperlink
22 to an online copy of the Order Agreement—as shown by the colored font. *Id.* It was positioned
23 directly over the “PLACE ORDER” button.

24 On November 6, 2021, Yeh placed an online order for a Model Y vehicle for \$72,440
25 through the process described above. Ahluwalia Decl., ¶ 4, Ex. 1; Sinha Decl. ¶ 8, Ex. 1; Am.
26 Compl. ¶ 9. In doing so, he clicked “PLACE ORDER” and accepted the Order Agreement as part
27 of his purchase. *See* Sinha Decl. ¶¶ 4, 8. The first page of the Order Agreement—right under Yeh’s
28

1 customer information, his Order Number, and his Order Fee—states that his “Order [was] placed
2 with electronically accepted terms.” Ahluwalia Decl. ¶ 3, Ex. 1 at 1.³

3 The Order Agreement contains an “Agreement to Arbitrate” that is prominently displayed
4 in a standalone text box. The arbitration provision includes the following language:

5 **Agreement to Arbitrate.** Please carefully read this provision, which applies to any
6 dispute between you and Tesla, Inc. and its affiliates, (together “Tesla”).

7 ***

8 [Y]ou agree that any dispute arising out of or relating to any aspect of the
9 relationship between you and Tesla will not be decided by a judge or jury but instead
10 by a single arbitrator in an arbitration administered by the American Arbitration
11 Association (AAA) under its Consumer Arbitration Rules. This includes claims
12 arising before this Agreement, such as claims related to statements about our
13 products.

14 We will pay all AAA fees for any arbitration, which will be held in the city or county
15 of your residence.

16 ***

17 The arbitrator may only resolve disputes between you and Tesla, and may not
18 consolidate claims without the consent of all parties. The arbitrator cannot hear clear
19 or representative claims or request for relief on behalf of others purchasing or
20 leasing Tesla vehicles. In other words, you and Tesla may bring claims against the
21 other only in your or its individual capacity and not as a plaintiff or class member
22 in any class or representative action. If a court or arbitrator decides that any part of
23 this agreement to arbitrate cannot be enforced as to a particular claim or relief or
24 remedy, then that claim or remedy (and only that claim or remedy) must be brought
25 in court and any other claims must be arbitrated.

26 If you prefer, you may instead take an individual dispute to small claims court.

27 You may opt out of arbitration within 30 days after signing this Agreement by
28 sending a letter to [Tesla’s designated address].

Id. at 3.

Yeh was given the ability to “opt out of the Agreement to Arbitrate” within 30 days after
entering into the Order Agreement; however, he did not do so. Ahluwalia Decl. ¶ 8.

³ The Order Agreement incorporates Tesla’s Customer Privacy Policy under a bolded
heading and provided a link where it could be viewed. Ahluwalia Decl. ¶ 3, Ex. 1 at 3.

1 The language of the “ARBITRATION PROVISION” immediately follows the above-
2 referenced request to consumers to carefully review its language. It states:

3 Any claim or dispute, whether in contract, tort, statute or otherwise (including the
4 interpretation and scope of this Arbitration Provision, and the arbitrability of the
5 claim or dispute), between you and us or our employees, agents, successors or
6 assigns, which arises out of or relates to your credit application, purchase or
7 condition of this vehicle, this contract or any resulting transaction or relationship ...
8 shall, at your or our election, be resolved by neutral binding arbitration and not by a
9 court action.

10 ***

11 Any claim or disputed is to be arbitrated by a single arbitrator on an individual basis
12 and not as a class action. You expressly waive any right you may have to arbitrate a
13 class action. You may choose [AAA] or any other organization to conduct the
14 arbitration subject to our approval.

15 ***

16 The arbitration hearing shall be conducted in the federal district in which you reside
17 unless the Seller-Creditor is a party to the claim or dispute, in which case the hearing
18 will be held in the federal district where this contract was executed.

19 We will pay your filing, administration, service or case management fee and your
20 arbitrator or hearing fee all up to a maximum of \$5000, unless the law or the rules
21 of the chosen arbitration organization requires us to pay more...

22 *Id.*

23 By signing the Sale Agreement, Yeh (and his co-buyer) agreed that Tesla gave the Sale
24 Agreement to him and that he was free to review it. Ahluwalia Decl. ¶ 9, Ex. 2 at 6. Yeh also
25 “ACKNOWLEDGE[D] THAT [HE] HA[D] READ ALL PAGES OF THIS CONTRACT,
26 INCLUDING THE ARBITRATION PROVISION ON PAGE 7 OF THIS CONTRACT,
27 BEFORE SIGNING BELOW.” *Id.* (emphasis added). Yeh further agreed that his electronic
28 signature reflected his intent to enter the Sale Agreement, and that the contract was legally valid
and enforceable. Ahluwalia Decl. ¶ 9, Ex. 2 at 3.

**C. Ignoring These Agreements, Yeh Filed This Putative Class Action Lawsuit
Based On An Inaccurate News Article.**

On April 7, 2023, within just a day of the publication of a *Reuters* article concerning the
alleged internal sharing of camera recordings by Tesla employees, Yeh filed this putative class
action lawsuit in violation of his Agreements to arbitrate his claims against Tesla. Yeh lifted his

1 flawed allegations straight from that article. Yeh claimed that his vehicle camera system is
2 defective; that unidentified Tesla employees accessed and improperly shared images and recordings
3 captured by cameras in Tesla vehicles; and that Tesla made misrepresentations about privacy
4 protections for customers. (Am. Compl. ¶¶ 1-5, 13-15, 34-41, 45-48.) Yeh did not allege a single
5 fact to show that Tesla ever improperly accessed or shared any data from his vehicle or that he
6 sustained any injury.

7 On May 12, 2023, Tesla’s counsel informed Yeh’s counsel in writing that Yeh was
8 obligated to arbitrate his claims against Tesla on an individual basis, that Tesla was exercising its
9 right to arbitrate any such disputes, and that Yeh should withdraw his lawsuit and submit any claim
10 he believes he may have to arbitration. Declaration of David L. Schrader (“Schrader Decl.”) ¶ 3.
11 Exhibit B. Yeh refused to do so. As a result, Tesla moved to compel arbitration and, alternatively,
12 to dismiss Yeh’s original Complaint. ECF Nos. 22, 23. Rather than comply with his contractual
13 commitments, Yeh doubled down.

14 **D. Rather Than File His Claims In Arbitration, Yeh Again Breached The**
15 **Agreements And Filed An Amended Complaint Adding His Infant Son As A**
16 **Named Plaintiff.**

17 Yeh’s Amended Complaint makes no mention of his arbitration commitments.
18 Nonetheless, to try to evade individual arbitration of all claims, Yeh now names his one-year-old
19 son, G.Y., as a plaintiff—with Yeh serving as his guardian. (Am. Compl. ¶¶ 10, 61.) The Amended
20 Complaint lacks a single factual allegation about G.Y., other than that he has no “social media
21 accounts” and no online photos. (*Id.* ¶ 56.) There are no facts that Tesla has ever had access to a
22 single camera recording of G.Y.

23 As alleged, Tesla vehicles come with state-of-the-art autopilot technology that relies on a
24 supporting camera system. (Am. Compl. ¶ 13; Privacy Policy, ECF No. 32-1, at 1, 5.) The
25 individual cameras monitor areas around the vehicle, enhance driver and passenger safety, and
26 support autopilot technology. *Id.* Yeh (and now his son) again claim that the camera system for
27 Yeh’s vehicle is “defective”; that unidentified Tesla employees accessed and improperly shared
28

1 unidentified videos captured by cameras in unidentified vehicles up until 2022; and that Tesla made
 2 misrepresentations about privacy protections for customers, invaded their privacy, and made
 3 revenue from their images. (Am. Compl. ¶¶ 1-4, 34-39, 54-57.) Plaintiffs’ claims rest on the
 4 allegation that Yeh activated “Sentry Mode” on his vehicle (*id.* ¶ 52), which records certain
 5 “suspicious activity” when the vehicle is powered off (*id.* ¶ 30), even though Yeh does not and
 6 cannot allege that such data was ever transmitted to Tesla. To the contrary, the very exhibits
 7 Plaintiffs rely upon show that such data remains with the vehicle. Privacy Policy, ECF No. 32-1,
 8 at 6 (Sentry Mode).

9 Notwithstanding the entirely speculative nature of the lawsuit, Plaintiffs bring ten claims:
 10 (1) intrusion upon seclusion (Am. Compl. ¶¶ 70-74); (2) violation of California’s constitutional
 11 right to privacy (*id.* ¶¶ 75-79); (3) violation of California’s right to publicity (*id.* ¶¶ 80-83); (4)
 12 violation of the Unfair Competition Law (“UCL”) (*id.* ¶¶ 84-94); (5) violation of the Consumer
 13 Legal Remedies Act (“CLRA”) (*id.* ¶¶ 95-102), (6) negligence (*id.* ¶¶ 103-105); (7) breach of
 14 contract (*id.* ¶¶ 106-109); (8) negligent misrepresentation (*id.* ¶¶ 110-117); (9) intentional
 15 misrepresentation (*id.* ¶¶ 118-123); and (10) unjust enrichment (*id.* ¶¶ 124-128).⁴ Plaintiffs seek
 16 statutory, compensatory, and punitive damages, restitution, injunctive relief, and declaratory relief.
 17 *Id.* ¶¶ 63(h), 74, 79, 83, 94, 101, 105, 109, 123, 128, 129.

18 Ignoring the arbitration provisions and class waivers in the Agreements, Yeh and his son
 19 purport to bring their claims on behalf of a variety of classes. *Id.* ¶ 61. As set forth below, all
 20 claims brought by Yeh and G.Y. should be compelled to arbitration and dismissed, or, in the
 21 alternative, stayed pending the outcome of arbitration proceedings.

22 **IV. LEGAL ARGUMENT**

23 **A. Yeh Must Arbitrate All Of His Claims Against Tesla On An Individual Basis.**

24 The Federal Arbitration Act (“FAA”)⁵ makes the arbitration provisions in both the Sale
 25 Agreement and Order Agreement “valid, irrevocable, and enforceable, save upon such grounds as

26 ⁴ Counts V, VII, VIII, and IX are only asserted on behalf of Yeh and not his son.

27 ⁵ There can be no question that the FAA governs the Sale Agreement and the Order
 28 Agreement, because both include a “FAA choice of law” clause. *See Kim v. Tinder, Inc.*, 2018 WL
 6694923, at *2 (C.D. Cal. July 12, 2018) (citing *Brennan*, 796 F.3d at 1129-31 (9th Cir. 2015)).

1 exist at law or in equity for the revocation of any contract” 9 U.S.C. § 2. Consistent with the
 2 text of the FAA, “courts must ‘rigorously enforce’ arbitration agreements according to their terms
 3” *Am. Exp. Co.*, 570 U.S. at 228. The FAA creates a heavy presumption in favor of arbitrability,
 4 requiring that “any doubts concerning the scope of arbitrable issues should be resolved in favor of
 5 arbitration, whether the problem at hand is the construction of the contract language itself or an
 6 allegation of waiver, delay, or a like defense to arbitrability.” *Moses H. Cone Mem’l Hosp. v.*
 7 *Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983); *Ngo v. PMGI Fin., LLC*, 2018 WL 6618316, at
 8 *3 (N.D. Cal. Dec. 18, 2018) (Spero, J.)

9 Where a party attempts to litigate claims covered by a contract “containing an arbitration
 10 agreement subject to the FAA, the court must determine ‘(1) whether a valid agreement to arbitrate
 11 exists and, if it does, (2) whether the agreement encompasses the dispute at issue.’” *Lowden v. T-*
 12 *Mobile USA, Inc.*, 512 F.3d 1213, 1217 (9th Cir. 2008) (quoting *Chiron Corp. v. Ortho Diagnostic*
 13 *Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000)). However, where an arbitration clause delegates
 14 questions of arbitrability to the arbitrator by “clear and unmistakable” evidence, the Court must
 15 refer the matter to arbitration, without addressing whether the claim is, in fact, arbitrable. *See, e.g.,*
 16 *Henry Schein, Inc.*, 139 S. Ct. at 530 (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S.
 17 938, 944 (1995)). In such circumstances, the Court “may not override the contract . . . [and]
 18 **possesses no power to decide the arbitrability issue.**” *Henry Schein, Inc.*, 139 S. Ct. at 529
 19 (emphasis added); *see also Harris v. Pac. Gas & Elec. Co.*, No. 21-CV-04096-JCS, 2022 WL
 20 16637987, at *8 (N.D. Cal. Nov. 2, 2022) (Spero, J.) (applying principle in compelling arbitration
 21 and dismissing action).

22 State law governs questions of contract formation and interpretation. *See, e.g., First*
 23 *Options of Chicago, Inc.*, 514 U.S. at 944; *see also Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171,
 24 1175 (9th Cir. 2014) (quoting *First Options of Chicago, Inc.*, 514 U.S. at 944) (“In determining
 25 whether a valid arbitration agreement exists, federal courts ‘apply ordinary state-law principles that
 26

27 Further, “the Internet is an instrumentality and channel of interstate commerce” (*U.S. v. Sutcliffe*,
 28 505 F.3d 944, 952-53 (9th Cir. 2007) [citation omitted]), bringing the Agreements within the gambit
 of the FAA. 2 U.S.C. § 9.

1 govern the formation of contracts.”). California law, like federal law, “strongly favor[s]
2 enforcement of arbitration provisions.” *Cap. Grp. Commc’ns Inc v. Xedar Corp.*, 2013 WL
3 4013711, at *3 (N.D. Cal. Aug. 5, 2013). Under California law, “a heavy presumption weighs the
4 scales in favor of arbitrability; an order directing arbitration should be granted ‘unless it may be
5 said with positive assurance that the arbitration provision is not susceptible of an interpretation that
6 covers the asserted dispute.’” *Id.* (quoting *Gravillis v. Coldwell Banker Residential Brokerage Co.*,
7 143 Cal. App. 4th 761, 771 (2000)).

8 Once a party establishes the existence of an arbitration agreement and that the dispute falls
9 within its scope (or that arbitrability issues have been delegated to the arbitrator to decide), the
10 burden shifts to the party opposing arbitration to “establish[] a defense to the agreement’s
11 enforcement by a preponderance of the evidence.” *Fontana v. Chef’s Warehouse Inc.*, 2017 WL
12 2591872, at *2 (N.D. Cal. June 15, 2017); *see also Tompkins v. 23andMe, Inc.*, 840 F.3d 1016,
13 1029 (9th Cir. 2016) (“plaintiffs have not met their burden of proving” arbitration agreement was
14 unconscionable). Under California law, “the party opposing arbitration bears the burden of proving
15 any defense, such as unconscionability.” *Poublon v. C.H. Robinson Co.*, 846 F.3d 1251, 1260 (9th
16 Cir. 2017) (quoting *Pinnacle Museum Tower Ass’n v. Pinnacle Mkt. Dev. (US), LLC*, 55 Cal. 4th
17 223, 236 (2012)). If the party opposing arbitration fails to meet his or her burden, the Court may
18 dismiss the action or stay the matter pending the outcome of the arbitration. *Johnmohammadi v.*
19 *Bloomington’s, Inc.*, 755 F.3d 1072, 1073–74 (9th Cir. 2014) (“a district court may either stay the
20 action or dismiss it outright when, as here, the court determines that all of the claims raised in the
21 action are subject to arbitration.”); *Harris*, 2022 WL 16637987, at *14 (dismissing action).

22 Here, applying these principles, it is clear that: (1) Yeh and Tesla entered into two separate
23 and independent agreements to arbitrate; (2) each Agreement delegates any questions about the
24 arbitrability of Yeh’s claims to the arbitrator, and, even if they did not, Yeh’s claims clearly fall
25 within the scope of the arbitration provisions in each Agreement; and (3) any arbitration must take
26 place on an individual basis.

1 **1. Yeh Entered Into Two Separate Agreements To Arbitrate His Disputes**
 2 **With Tesla.**

3 Under California law,⁶ a valid contract exists when (1) the parties are capable of contracting,
 4 and (2) there was mutual assent, (3) a lawful object, and (4) sufficient cause or consideration. Cal.
 5 Civ. Code § 1550. Both the Sale Agreement and the Order Agreement meet these requirements.
 6 Yeh is an adult who entered into the Order Agreement with Tesla to purchase a Tesla Model Y
 7 vehicle for \$72,440. He then entered into the Sale Agreement with Tesla to finance that vehicle.
 8 There was consideration for each Agreement. Each Agreement contains a mandatory arbitration
 9 provision. And Yeh assented to each Agreement.

10 **a. Sale Agreement**

11 On February 25, 2022, Yeh entered into the Sale Agreement, acknowledged he had an
 12 opportunity to review it, and signed it with an electronic signature in no fewer than six places.
 13 Ahluwalia Decl. ¶ 9-10, Ex. 2. Electronic signatures are valid under California law. Cal. Civ. Code
 14 § 1633.9(a); *see, e.g., Ngo*, 2018 WL 6618316, at *6 (enforcing arbitration agreement which bore
 15 plaintiff’s electronic signature); *Lira v. Nat’l Distribution Centers, LLC*, 2021 WL 6693934, at *3
 16 (C.D. Cal. Dec. 22, 2021) (same). The Sale Agreement is binding. *See Chavez v. Bank of Am.*,
 17 2011 WL 4712204, at *6 (N.D. Cal. Oct. 7, 2011) (Spero, J.) (“The law is clear that a party entering
 18 a contract has responsibility for learning its terms and that each and every term need not be
 19 explained orally to a party.” (citations omitted))

20 In fact, Yeh signed a provision titled “**Agreement To Arbitrate**” and expressly agreed to
 21 the terms of the arbitration provision in the Sale Agreement: “By signing below, you agree that,
 22 pursuant to the Arbitration Provision on page 7 of this contract, you or we may elect to resolve any
 23 dispute by neutral, binding arbitration and not by a court action. See the Arbitration Provision for
 24 _____

25 ⁶ Yeh appears to have executed both Agreements in California, where he resides. (Am.
 26 Compl. ¶ 9.) In addition, the Order Agreement calls for the application of the law of the state
 27 nearest to the address on his Vehicle Configuration—that is, California law. Ahluwalia Decl., ¶ 3,
 28 Exhibit 1, at 3 (“Governing Law”). The Sale Agreement also expressly calls for the application of
 California law. *Id.* ¶ 9, Exhibit 2, at p. 5, ¶ 7 (“Federal law and California law apply to this
 contract”).

1 additional information concerning the agreement to arbitrate.” Ahluwalia Decl. ¶ 9-10, Ex. 2 at 1.
2 As other courts have recognized, the Sale Agreement is a binding contract that Tesla customers
3 assent to when they finance their purchase of a Tesla vehicle. *See, e.g., Kamineni*, 2020 WL 57867,
4 at *3 (enforcing Sale Agreement and compelling arbitration of claims that Tesla vehicle was
5 allegedly defective under New Jersey law); *Skiles v. Tesla, Inc.*, No. 17-cv-05434-WHO (N.D. Cal.),
6 at ECF No. 76 (granting motion to compel arbitration based upon Sale Agreement under California
7 law); *Wiseman*, 2017 WL 7058142, at *3 (enforcing earlier version of Sale Agreement under
8 California law). It is binding here, too.

9 **b. Order Agreement**

10 On November 6, 2021, Yeh accepted the Order Agreement electronically on Tesla’s
11 website. He did so by clicking the “PLACE ORDER” button on a screen that directly linked to the
12 Order Agreement and advised that “By placing this order [you] agree to the Model Y Order
13 Agreement, Terms Of Use, and Privacy Notice.” Sinha Decl. ¶¶ 4, 8, Ex. 1. The Order Agreement
14 expressly requires arbitration of any dispute relating to Yeh’s relationship with Tesla. Ahluwalia
15 Decl. ¶ 3, Ex. 1 at 3. Moreover, while Yeh had the opportunity to opt out of the arbitration provision
16 in the Order Agreement within 30 days, he never did. Ahluwalia Decl. ¶ 8. As a matter of
17 California law, Yeh assented to the Order Agreement and its terms.

18 Courts have routinely enforced Order Agreements between Tesla and its customers under
19 California law (and other state laws), finding that a valid contract formed when the customer
20 ordered the Tesla vehicle online by clicking the “PLACE ORDER” button. *See, e.g., Surkhabi*,
21 2022 WL 19569540, at *3, *5 (finding customer assented to Order Agreement because “before
22 clicking the ‘Place Order’ button, there is an option to click an underlined hyperlink labeled ‘Model
23 X Order Agreement’” and plaintiff “had sufficient opportunity to see and review the arbitration
24 agreement”); *Fish*, 2022 WL 1552137, at *4 (compelling arbitration of claims on an individual
25 basis brought by consumers because “the fact that they could not have completed their online orders
26 without clicking the ‘Place Order’ button is sufficient to establish their assent”); *Hiatt*, 2021 WL
27 6052266, at *4 (concluding that “all issues related to Hiatt’s individual claims, including potentially
28

1 dispositive gateway issues regarding arbitrability, must be arbitrated” under the Order Agreement);
2 *Nguyen*, 2020 WL 2114937, at *3 (reaching same result and reasoning that “[w]hether or not he
3 recalls having seen the agreement or signed it is of no moment, for Tesla presents sufficient
4 evidence that the agreement was presented to Nguyen (and the other Plaintiffs, for that matter) and
5 that he (and the other Plaintiffs) assented to it”); *Lee*, 2020 WL 10573281, at *2, 4 (finding Order
6 Agreement to be valid and enforceable); *Gala*, 2020 WL 7061764, at *4 (“Plaintiff Visanji Gala
7 had to agree to the Motor Vehicle Order Agreement, which included the arbitration agreement, to
8 select the Place Order button on the Tesla website”); *Raebel*, 451 F. Supp. 3d at 1189 (same).

9 Likewise, the Ninth Circuit and this Court consistently have found that a binding contract
10 is formed under California law where a customer has an opportunity to review the terms of an
11 agreement in the form of a hyperlink on the website screen immediately above or below a button
12 that must be clicked to affirmatively place an order or use a service. *See, e.g., Dohrmann v. Intuit,*
13 *Inc.*, 823 F. App’x 482, 484 (9th Cir. 2020) (agreement formed where user accessing a TurboTax
14 account “was required to click a ‘Sign In’ button,” where “directly under which the following
15 language appeared: ‘By clicking Sign In, you agree to the Turbo Terms of Use, TurboTax Terms
16 of Use, and have read and acknowledged our Privacy Statement,’” and where agreements “were
17 each light blue hyperlinks which, if clicked, directed the user to a new webpage” with the terms);
18 *Lee v. Ticketmaster L.L.C.*, 817 F. App’x. 393, 394-95 (9th Cir. 2020) (finding assent by customer
19 to Ticketmaster’s Terms of Use under California law where Ticketmaster provided notice of its
20 Terms of Use adjacent to the “Place Order” button, included a hyperlink to the terms in a contrasting
21 color, and informed the user that placing an order would indicate assent to the terms); *Lee v.*
22 *Postmates Inc.*, 2018 WL 4961802, at *10 (N.D. Cal. Oct. 15, 2018) (Spero, J.) (compelling
23 arbitration and finding formation of agreement because employee was presented with link to
24 agreement during the process of signing up to make deliveries for Postmates, clicked “Agree”
25 before moving to the next step, and did not opt out of the arbitration obligation within 30 days of
26 signing the agreement).

1 In short, Yeh entered into two separate, valid Agreements with Tesla in connection with the
 2 purchase and finance of his Model Y vehicle. Each Agreement contains provisions mandating
 3 arbitration on an individual basis. Accordingly, under each Agreement and the FAA, the Court
 4 must compel Yeh’s claims to where they belong – individual, non-class arbitration.

5 **2. Each Agreement Delegates The Arbitrability Of Yeh’s Claims To The**
 6 **Arbitrator To Decide.**

7 It is well-settled that the “parties can agree to arbitrate ‘gateway’ questions of ‘arbitrability,’
 8 such as whether the parties have agreed to arbitrate or whether their agreement covers a particular
 9 dispute or controversy.” *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 68-69 (2010). Where the
 10 parties’ agreement contains a provision referring questions of arbitrability to the arbitrator, “the
 11 court’s role is limited to determining whether there is clear and unmistakable evidence that the
 12 parties agreed to arbitrate arbitrability.” *Gabriella v. Recology Inc.*, 2022 WL 6271866, at *1 (N.D.
 13 Cal. Sept. 9, 2022); *see also Henry Schein, Inc.*, 139 S.Ct. at 530 (same). Both the Sale Agreement
 14 and the Order Agreement “clearly and unmistakably” delegate any questions about the arbitrability
 15 of Yeh’s claims to the arbitrator to decide, including whether his claims fall within the scope of the
 16 arbitration provisions.

17 **a. Sale Agreement**

18 The Sale Agreement includes a clear delegation clause. The arbitration provision states that
 19 “any claim or dispute . . . (*including the interpretation and scope of this Arbitration Provision,*
 20 *and the arbitrability of the claim or dispute*) . . . shall . . . be resolved by neutral, binding arbitration
 21 and not by a court action.” Ahluwalia Decl. ¶ 9-10, Ex. 2 at 7 (emphasis added). As a result, Yeh
 22 and Tesla have agreed to delegate the issue of whether the dispute falls within the scope of the
 23 arbitration provision to the arbitrator.

24 Indeed, Judge Orrick and others have held that identical delegation clauses require an
 25 arbitrator to decide the arbitrability of the claims at issue. *See, e.g., Skiles v. Tesla*, No. 17-cv-
 26 05434-WHO (N.D. Cal.), at ECF No. 76 (holding that “the controlling [Tesla] contract requires
 27 arbitration over arbitrability” and referring matter to arbitrator); *Karobkoff v. Nissan Motor*

1 *Acceptance Co. LLC*, 2022 WL 2124901, at *3 (C.D. Cal. Mar. 22, 2022) (holding that parties who
 2 entered into purchase agreement for vehicle that requires arbitration of “[a]ny claim or dispute,
 3 whether in contract, tort, statute or otherwise [including the interpretation and scope of this
 4 Arbitration Provision, and the *arbitrability* of the claim or dispute]” delegated issues of
 5 arbitrability, including whether a dispute falls within the scope of the arbitration clause, to the
 6 arbitrator); *Arab v. BMW of N. Am., LLC*, 2019 WL 8011713, at *3 (C.D. Cal. Sept. 10, 2019)
 7 (enforcing nearly identical delegation clause); *Lyman v. Ford Motor Co.*, 2023 WL 2667736, at *5
 8 (E.D. Mich. Mar. 28, 2023) (finding under nearly identical purchase agreement that plaintiffs are
 9 ”required to arbitrate their claims, and the arbitrator can determine any issues of arbitrability”);
 10 *Perei v. Arrigo DCJ Sawgrass, Inc.*, 2018 WL 1182570, at *4 (S.D. Fla. Mar. 7, 2018) (same);
 11 *Chatman v. Jimmy Gray Chevrolet, Inc.*, 2016 WL 5745697, at *4 (N.D. Miss. Sept. 30, 2016)
 12 (same); *see also Harris*, 2022 WL 16637987, at *7 (emphasis added) (finding that agreement which
 13 referred disputes “arising out of or relating to this Agreement, *including any question regarding its*
 14 *existence, validity or termination* to arbitration under the American Arbitration Rules” delegated
 15 arbitrability of gateway questions).

16 The same result follows here, too. Because Yeh and Tesla unambiguously agreed to
 17 delegate arbitrability issues to the arbitrator in the Sale Agreement, the Court must enforce that
 18 agreement and refer his claims to arbitration.

19 **b. Order Agreement**

20 The Order Agreement also delegates issues about the arbitrability of Plaintiffs’ claims to
 21 the arbitrator. It expressly incorporates AAA’s Consumer Arbitration Rules, which provide that
 22 the arbitrator “shall have the power to rule on his or her own jurisdiction, including any objections
 23 with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability
 24 of any claim or counterclaim.” *See Schrader Decl.* ¶ 2, Exhibit A (AAA Consumer Arbitration
 25 Rules at R-14(a)).

26 The Ninth Circuit and courts within this District have held that incorporation of these rules
 27 is “clear and unmistakable evidence” that the parties intended the arbitrator to decide any threshold
 28

1 issues concerning arbitrability. *See, e.g., Brennan*, 796 F.3d at 1130 (“we hold that incorporation
 2 of the AAA rules constitutes clear and unmistakable evidence that contracting parties agreed to
 3 arbitrate arbitrability”);⁷ *Harris*, 2022 WL 16637987, at *8 (compelling arbitration of employment
 4 discrimination claims and finding issues of arbitrability were delegated to the arbitrator in part
 5 because “the arbitration provision in this case incorporates the rules of the American Arbitration
 6 Association”); *Marselian v. Wells Fargo & Co.*, 514 F. Supp. 3d 1166, 1175-76 (N.D. Cal. 2021)
 7 (applying principle). Other courts have held that the specific Order Agreement at issue here
 8 delegates issues of arbitrability by incorporating the AAA Consumer Arbitration Rules. *See Hiatt*,
 9 2021 WL 6052266, at *4 (incorporation of AAA Consumer Arbitration Rules constituted “clear
 10 and unmistakable evidence” that Tesla and vehicle purchaser intended to delegate any gateway
 11 issues to the arbitrator). Accordingly, an arbitrator must decide any questions over the arbitrability
 12 of Yeh’s claims under the Order Agreement, too.

13 **3. Yeh’s Claims Clearly Fall Within Scope Of The Arbitration Provisions**
 14 **In The Agreements.**

15 Through the Agreements, the parties delegated gateway issues of arbitrability to the
 16 arbitrator. Nonetheless, if the Court were to address this issue (and it should not), Yeh’s claims fall
 17 within the broad scope of the arbitration provision in each Agreement.

18 **a. The Sale Agreement**

19 The arbitration provision of the Sale Agreement covers “any claim or dispute” between Yeh
 20 and Tesla “which arises out of or relates to your credit application, purchase or condition of this
 21 vehicle, this contract or any resulting transaction or relationship.” Ahluwalia Decl. ¶ 9, Ex. 2 at 7.
 22 This language plainly covers the claims in this case.

23 _____
 24 ⁷ The Ninth Circuit made clear that its “holding today should not be interpreted to require
 25 that the contracting parties be sophisticated or that the contract be ‘commercial’ before a court may
 26 conclude that incorporation of the AAA rules constitutes ‘clear and unmistakable’ evidence of the
 27 parties’ intent.” *Brennan*, 796 F.3d at 1130. It noted that “the vast majority of the circuits that hold
 28 that incorporation of the AAA rules constitutes clear and unmistakable evidence of the parties’
 intent do so without explicitly limiting that holding to sophisticated parties or to commercial
 contracts.” *Id.* Moreover, Yeh does not allege that he is an unsophisticated party and, in fact,
 purchased a vehicle more than \$70,000.

1 All of Yeh’s claims arise out of or relate to his relationship with Tesla. Those claims are
 2 based upon conclusory allegations that Tesla made alleged misrepresentations or omissions to
 3 customers about its vehicles (*see* Am. Compl. ¶¶ 13-14, 87-88, 110-130), that Tesla sold Yeh a
 4 vehicle with a defective camera system (*id.* ¶¶ 3, 45-46, 114, 125-126), and that Tesla violated
 5 Yeh’s privacy and breached a contract with Yeh as a result of its employees internally sharing
 6 unidentified recordings from those cameras (*id.* ¶¶ 1, 3, 34-49, 70-83). All claims, therefore, must
 7 be arbitrated. *See, e.g., Kamineni*, 2020 WL 57867, at *1, 3 (claims based upon problems with
 8 Tesla vehicle and inability to repair or address problems fall within “broad” scope of arbitration
 9 provision in Sale Agreement); *Chien v. Bumble Inc.*, 2022 WL 17069842, at *15 (S.D. Cal. Nov.
 10 17, 2022) (compelling privacy claims to arbitration where agreement to arbitrate included broad
 11 language governing user’s relationship with dating app company); *Garcia v. Dell, Inc.*, 905 F. Supp.
 12 2d 1174, 1177 (S.D. Cal. 2012) (finding that similarly broad arbitration provision covered invasion
 13 of privacy claims).

14 Yeh’s claims also arise out of or relate to the “purchase or condition” of Yeh’s Model Y
 15 vehicle, including the recording of data from an allegedly “defective” camera system in his vehicle
 16 and Tesla’s alleged use, storage, and sharing of that camera data. (Am. Compl. ¶¶ 3, 45-56.)
 17 Indeed, Yeh repeatedly alleges that “had the correct facts been known, [he and other class members]
 18 would not have purchased or leased Tesla vehicles at the prices at which they were offered.” (Am.
 19 Compl. ¶¶ 84, 91, 95.) Accordingly, his claims must be arbitrated. *See, e.g., Rizvi v. BMW of N.*
 20 *Am. LLC*, 2020 WL 2992859, at *3 (N.D. Cal. June 4, 2020) (finding that similar language was
 21 broad and encompassed suit over defective fuel pump).

22 **b. Order Agreement**

23 In the Order Agreement, Yeh expressly agreed to arbitrate “any dispute arising out of or
 24 relating to *any aspect* of the relationship between [he] and Tesla.” Ahluwalia Decl. ¶ 3, Ex. 1 at 3
 25 (emphasis added). In addition, the arbitration provision in the Order Agreement specifically covers
 26 “claims arising before this Agreement, such as claims related to statements about our products.”
 27 *Id.*

1 As detailed above, all of Yeh’s claims (as well as those by his son) relate to his “relationship”
 2 with Tesla. Accordingly, the claims at issue in this case also fall within the scope of the arbitration
 3 provision in the Order Agreement. *Fish*, 2022 WL 1552137, at *4 (Order Agreement requires
 4 individual arbitration of claims based upon alleged “defects in batteries and deficient battery
 5 performance”); *Raebel*, 451 F. Supp. 3d at 1189 (compelling acceleration defect claims to
 6 individual arbitration under Order Agreement).⁸

7 **4. Arbitration Must Be Conducted On An Individual, Non-Class Basis.**

8 The Court must “enforce arbitration agreements according to their terms—including terms
 9 providing for individualized proceedings.” *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1619 (2018).
 10 The FAA authorizes the Court to enter an order “directing that such arbitration proceed in the
 11 manner provided for in such agreement.” 9 U.S.C. § 4. Consistent with these principles, the
 12 Supreme Court has made clear that arbitration must proceed on an individual and non-class basis
 13 where the agreement is silent or otherwise prohibits class claims. *See, e.g., Lamps Plus, Inc.*, 139
 14 S. Ct. at 1419 (reversing order compelling arbitration on class basis because “[c]ourts may not infer
 15 from an ambiguous agreement that parties have consented to arbitrate on a classwide basis”); *Am.*
 16 *Exp. Co.*, 570 U.S. at 238 (upholding contractual waiver of class-wide arbitration); *AT&T Mobility*
 17 *LLC v. Concepcion*, 563 U.S. 333, 344, 352 (2011) (FAA preempts state law barring class waiver
 18 and reasoning that “[r]equiring the availability of classwide arbitration,” contrary to parties’
 19 agreement, “interferes with fundamental attributes of arbitration and thus creates a scheme
 20 inconsistent with the FAA”); *Stolt-Nielsen S.A.*, 559 U.S. at 683 (court may not compel arbitration
 21 on classwide basis when agreement is “silent” on availability of such arbitration).

22 Here, both the Sale Agreement and the Order Agreement contain class waivers and require
 23 arbitration on an individual basis. Ahluwalia Decl. ¶ 9, Ex. 2 (Sales Agreement) at 7 (“Any claim
 24 or disputed is to be arbitrated by a single arbitrator on an individual basis and not as a class action.
 25 You expressly waive any right you may have to arbitrate a class action.”); Ahluwalia Decl. ¶ 9, Ex.

26 ⁸ As this Court has recognized in prior decisions, Yeh’s request for injunctive relief is also
 27 subject to arbitration. *See, e.g., Saperstein v. Thomas P. Gohagan & Co.*, 476 F. Supp. 3d 965, 977
 28 (N.D. Cal. 2020) (Spero, J.) (compelling arbitration of claims seeking injunctive relief); *Lee*, 2018
 WL 4961802, at *10 (same).

1 1 (Order Agreement) at 3 (“The arbitrator cannot hear class or representative claims or request for
2 relief on behalf of others purchasing or leasing Tesla vehicles. In other words, you and Tesla may
3 bring claims against the other only in your or its individual capacity and not as a plaintiff or class
4 member in any class or representative action.”). Accordingly, Yeh should be compelled to arbitrate
5 his claims on an individual basis.

6 **B. G.Y. Also Must Arbitrate His Derivative Claims.**

7 Plaintiff Yeh’s son is bound by the arbitration agreement as well. *See, e.g., Arthur Andersen*
8 *LLP v. Carlisle*, 556 U.S. 624, 631 (2009) (recognizing that ““traditional principles”” of applicable
9 state contract law, such as estoppel and third-party beneficiary theories, may “allow a[n]
10 [arbitration] contract to be enforced by or against nonparties to the contract”). Under California
11 law, a nonsignatory can be compelled to arbitrate where “a preexisting relationship existed between
12 the nonsignatory and one of the parties to the arbitration agreement, making it equitable to compel
13 the nonsignatory to also be bound to arbitrate his or her claim.” *Chan*, 2015 WL 12655701, at *5
14 (collecting authority); *see also Cty. of Contra Costa v. Kaiser Found. Health Plan, Inc.*, 47 Cal.
15 App. 4th 237, 242-43 (1996), *as modified* (Aug. 1, 1996). One such relationship is the “parent-
16 child relationship.” *Crowley Mar. Corp. v. Bos. Old Colony Ins. Co.*, 158 Cal. App. 4th 1061, 1070
17 (2008). Where such equitable circumstances are present, “arbitration agreements are enforced with
18 regularity against nonsignatories.” *Cnty. Of Contra Costa*, 47 Cal. App. 4th at 242 (citing *Mormile*
19 *v. Sinclair*, 21 Cal. App. 4th 1508, 1511 (1994) and other cases); *see also Doyle v. Giuliucci*, 62
20 Cal. 2d 606, 609, 401 P.2d 1, 3 (1965).

21 *Chan* is instructive. There, a husband entered into a subscription agreement with a cable
22 company that included an arbitration clause. 2015 WL 12655701 at *2. The husband and his wife
23 alleged that the cable company’s employees improperly entered their property, installed a signal
24 blocking device, and monitored their cable usage. *Id.* The husband and wife brought, among
25 others, invasion of privacy claims against the cable company. *Id.* The Court compelled arbitration
26 of the privacy claims of the husband, since he signed the arbitration agreement and his privacy
27 claims fell within its scope. *Id.* at *5. Applying California law, the Court then rejected the wife’s
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1 attempt to avoid the arbitration clause as a non-signatory. *Id.* The Court reasoned that a special
2 relationship existed between the husband (signatory) and wife (non-signatory) and that “an
3 arbitration clause often applies to the spouse and children of the signatory.” *Id.* Given this
4 relationship and the intertwined nature of the claims, the Court compelled arbitration of the wife’s
5 claims.

6 This case presents an even stronger basis to compel arbitration. Yeh is G.Y.’s father; Yeh
7 is purporting to serve as G.Y.’s guardian in this case; and Yeh only named his infant son as a
8 plaintiff *after* Tesla moved to compel arbitration of Yeh’s claims. G.Y.’s claims also are
9 intertwined with and dependent upon Yeh’s claims. There is not a single factual allegation about
10 G.Y. in the Amended Complaint (other than his lack of social media presence in Paragraph 56).
11 Rather, G.Y.’s claims rest solely upon what conduct Yeh engaged in, including his purchase of the
12 Tesla vehicle, what camera features Yeh activated, and what data sharing, if any, Yeh agreed to for
13 his Tesla vehicle. The Amended Complaint, in fact, simply lumps G.Y. together with Yeh—
14 without distinction—for each count asserted on behalf of G.Y. (Am. Compl. ¶¶ 70-84, 89, 94,
15 103-105, 124-128 (referring to “Plaintiffs” without distinction).) As a result, G.Y. also must
16 arbitrate his claims.

17 Some courts have suggested that, with respect to children, this estoppel principle does not
18 apply to “goods beyond necessities, like education or medical care.” *In re Ring LLC Priv. Litig.*,
19 2021 WL 2621197, at *8 (C.D. Cal. June 24, 2021), *appeal dismissed*, 2022 WL 3339845 (9th Cir.
20 Aug. 3, 2022); *see also S.S. by & through Stern v. Peloton Interactive, Inc.*, 566 F. Supp. 3d 1019,
21 1039 (S.D. Cal. 2021). The logic of those cases, however, support compelling arbitration here.
22 Just as educational and medical services contracts can be entered into for a child’s direct benefit,
23 so too can agreements to purchase vehicles. *See Chan*, 2015 WL 12655701, at *5; *accord Taylor*
24 *Morrison of Texas, Inc. v. Ha*, 660 S.W.3d 529, 534–35 (Tex. 2023) (applying Texas law) (“when
25 a nonsignatory spouse and children live in a family home purchased by the signatory spouse, the
26 nonsignatory family members have accepted direct benefits from the purchase agreement such that
27 they may be compelled through direct-benefits estoppel to arbitrate when the family sues as an
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1 integrated unit for factually intertwined construction-defect claims.”). That is the case here.
 2 Plaintiffs allege that Yeh and his wife purchased their Tesla “as they were expecting their first
 3 child,” because they believed “it would be a safe and reliable vehicle” for G.Y. and would “protect[]
 4 [the] family’s privacy.” (Am. Compl. ¶¶ 50-51.) Yeh entered into his Agreements for G.Y.’s
 5 benefit.

6 Lastly, equitable estoppel principles apply for another reason—G.Y.’s claims are
 7 intertwined with Yeh’s Order Agreement, which contains the mandatory arbitration provision.
 8 G.Y. alleges that Tesla violated its Privacy Policy and that his “expectation of privacy” stems from
 9 that document. (Am. Compl. ¶ 71 (“Their expectation of privacy in their vehicle stemmed from
 10 Tesla’s clearly-stated [Privacy] [P]olicy that it would not misuse videos or images it captures”); *see*
 11 *also id.* ¶¶ 13-14, 31, 33-34 (discussing Privacy Policy and allegedly violation of it by Tesla).) That
 12 Privacy Policy is expressly incorporated into and made part of Yeh’s Order Agreement. *See*
 13 Ahluwalia Decl. ¶ 3, Ex. 1 at 3 (“Privacy Policy”). Because the Privacy Policy on which G.Y.
 14 bases his claims is linked to and incorporated into the Order Agreement, G.Y. cannot now avoid
 15 the arbitration provision in that Agreement. *See, e.g., Hawkins v. Ford Motor Co.*, 2021 WL
 16 9031130, at *4 (C.D. Cal. Nov. 24, 2021) (applying equitable estoppel principles under California
 17 law to require non-signatory to arbitrate claims against vehicle manufacturer because non-
 18 signatory’s claims and agreement with arbitration clause “are sufficiently intertwined”);
 19 *Philadelphia Indem. Ins. Co. v. SMG Holdings, Inc.*, 44 Cal. App. 5th 834, 841 (2019) (reversing
 20 order denying motion to compel arbitration and applying equitable estoppel principles to require
 21 arbitration of non-signatory seeking benefit of contract).

22 Put simply, given G.Y.’s unique relationship to Yeh and the derivative nature of his claims
 23 in this case, G.Y. also must arbitrate his claims on an individual basis.

24 **C. The Court Should Dismiss This Action, Or, In The Alternative, Stay It Pending**
 25 **The Outcome Of Arbitration.**

26 Under controlling Ninth Circuit law, this Court has the discretion to dismiss the action when
 27 all of the claims are arbitrable. *See, e.g., Forrest v. Spizzirri*, 62 F.4th 1201, 1203, 1205 (9th Cir.
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1 2023) (holding that “binding precedent establishes that district courts may dismiss suits when, as
2 here, all claims are subject to arbitration” and that the “district court's discretion to dismiss extends
3 to cases in which a stay is requested”); *Johnmohammadi*, 755 F.3d at 1073–74 (recognizing rule).
4 Indeed, it has done so in other cases. *Harris*, 2022 WL 16637987, at *14 (dismissing action because
5 all claims were subject to arbitration). Because all of Plaintiffs’ claims are arbitrable, the Court
6 should dismiss this action without prejudice.

7 In the alternative, the Court should stay this case pending the outcome of arbitration
8 proceedings involving the parties. 9 U.S.C. § 3 (allowing for stay until completion of arbitration).

9 **V. CONCLUSION**

10 The Court should order Plaintiffs to arbitrate all their claims against Tesla on an individual,
11 non-class basis and dismiss this action without prejudice. Alternatively, the Court should stay this
12 action pending the outcome of arbitration.

13
14 Dated: July 31, 2023

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16
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