

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>QUALITY CONTROL SYSTEMS CORP.,</b>	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 17-01266 (DLF)
	)	
<b>U.S. DEPARTMENT OF TRANSPORTATION,</b>	)	
	)	
Defendant.	)	
	)	

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**NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff Quality Control Systems Corp. respectfully submits this notice of supplemental authority to update the record in this case brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. In support of its challenge to the determination of the National Highway Transportation Safety Administration (“NHTSA”) to withhold information submitted to the agency by Tesla on the ground, *inter alia*, that disclosure would cause competitive harm to the company, plaintiff noted:

In fact, Tesla itself appears to have seen an opportunity to gain a competitive advantage by repeating and publicizing NHTSA’s conclusion claiming dramatic crash reductions associated with Autosteer. Tesla Incorporated’s CEO and Product Architect, Mr. Elon Musk, lost no time following the release of NHTSA’s Report claiming a nearly 40 percent “crash rate” reduction after the installation of Autosteer to repeat NHTSA’s claim on his Twitter account.

Declaration of Randall A. Whitfield (ECF No. 12-1), ¶ 23 (citation omitted).

In the wake of a fatal crash involving a Tesla Model X vehicle on March 23, 2018, Tesla released a statement (attached hereto as Exhibit A), asserting: “It is worth noting that an independent review completed by the U.S. Government over a year ago found that Autopilot reduces crash rates by 40%. Since then, Autopilot has improved further.” In an “update” on the crash posted several days later (attached hereto as Exhibit B), Tesla again stated that, “Over a

year ago, our first iteration of Autopilot was found by the U.S. government to reduce crash rates by as much as 40%.” Plaintiff submits this material as further support for its contention that Tesla has used the results of NHTSA’s analysis to its commercial advantage while asserting that release of the underlying data would cause it competitive harm.

Respectfully submitted,

/s/ **David L. Sobel**

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# **EXHIBIT A**

## What We Know About Last Week's Accident

The Tesla Team • March 27, 2018

We were deeply saddened to learn that the driver of a Model X vehicle involved in an accident last Friday passed away. Safety is at the core of everything we do and every decision we make, so the loss of a life in an accident involving a Tesla vehicle is difficult for all of us. Earlier this week, Tesla proactively reached out to the authorities to offer our assistance in investigating.

While we do not yet know what happened in the moments leading up to the accident, and we do not yet have any idea what caused it, here is what we do know:

- Due to the extensive damage caused by the collision, we have not yet been able to retrieve the vehicle's logs.
- We are currently working closely with the authorities to recover the logs from the computer inside the vehicle. Once that happens and the logs have been reviewed, we hope to have a better understanding of what happened.
- Our data shows that Tesla owners have driven this same stretch of highway with Autopilot engaged roughly 85,000 times since Autopilot was first rolled out in 2015 and roughly 20,000 times since just the beginning of the year, and there has never been an accident that we know of. There are over 200 successful Autopilot trips per day on this exact stretch of road.
- The reason this crash was so severe is that the crash attenuator, a highway safety barrier which is designed to reduce the impact into a concrete lane divider, had either been removed or crushed in a prior accident without being replaced. The following image shows what the barrier looked like when the crash attenuator was in proper condition, and what it looked like the day prior to the crash, based on dash cam footage from a witness of the accident who commutes daily past this location. We have never seen this level of damage to a Model X in any other crash.



Google Street View



Thursday, March 22nd, 2018  
(day prior to accident)

- Tesla battery packs are designed so that in the rare circumstance a fire occurs, it spreads slowly so that occupants have plenty of time to get out of the car. According to witnesses, that appears to be what happened here as we understand there were no occupants still in the Model X by the time the fire could have presented a risk. Serious crashes like this can result in fire regardless of the type of car, and Tesla's billions of miles of actual driving data shows that a gas car in

the United States is five times more likely to experience a fire than a Tesla vehicle.

It is worth noting that an independent review completed by the U.S. Government over a year ago found that Autopilot reduces crash rates by 40%. Since then, Autopilot has improved further. That does not mean that it perfectly prevents all accidents — such a standard would be impossible — it simply makes them less likely to occur.

Out of respect for the privacy of our customer and his family, we do not plan to share any additional details until we conclude the investigation.

We would like to extend our deepest sympathies to the family and friends of our customer.

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# **EXHIBIT B**

## An Update on Last Week's Accident

The Tesla Team • March 30, 2018

Since posting our [first update](#), we have been working as quickly as possible to establish the facts of last week's accident. Our hearts are with the family and friends who have been affected by this tragedy.

The safety of our customers is our top priority, which is why we are working closely with investigators to understand what happened, and what we can do to prevent this from happening in the future. After the logs from the computer inside the vehicle were recovered, we have more information about what may have happened.

In the moments before the collision, which occurred at 9:27 a.m. on Friday, March 23rd, Autopilot was engaged with the adaptive cruise control follow-distance set to minimum. The driver had received several visual and one audible hands-on warning earlier in the drive and the driver's hands were not detected on the wheel for six seconds prior to the collision. The driver had about five seconds and 150 meters of unobstructed view of the concrete divider with the crushed crash attenuator, but the vehicle logs show that no action was taken.

The reason this crash was so severe is because the crash attenuator, a highway safety barrier which is designed to reduce the impact into a concrete lane divider, had been crushed in a prior accident without being replaced. We have never seen this level of damage to a Model X in any other crash.

Over a year ago, our first iteration of Autopilot was found by the U.S. government to reduce crash rates by as much as 40%. Internal data confirms that recent updates to Autopilot have improved system reliability.

In the US, there is one automotive fatality every 86 million miles across all vehicles from all manufacturers. For Tesla, there is one fatality, including known pedestrian fatalities, every 320 million miles in vehicles equipped with Autopilot hardware. If you are driving a Tesla equipped with Autopilot hardware, you are 3.7 times less likely to be involved in a fatal accident.

Tesla Autopilot does not prevent all accidents – such a standard would be impossible – but it makes them much less likely to occur. It unequivocally makes the world safer for the vehicle occupants, pedestrians and cyclists.

No one knows about the accidents that didn't happen, only the ones that did. The consequences of the public not using Autopilot, because of an inaccurate belief that it is less safe, would be extremely severe. There are about 1.25 million automotive deaths worldwide. If the current safety level of a Tesla vehicle were to be applied, it would mean about 900,000 lives saved per year. We expect the safety level of autonomous cars to be 10 times safer than non-autonomous cars.

In the past, when we have brought up statistical safety points, we have been criticized for doing so, implying that we lack empathy for the tragedy that just occurred. Nothing

could be further from the truth. We care deeply for and feel indebted to those who chose to put their trust in us. However, we must also care about people now and in the future whose lives may be saved if they know that Autopilot improves safety. None of this changes how devastating an event like this is or how much we feel for our customer's family and friends. We are incredibly sorry for their loss.

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