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 14 *and the Putative Class*

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 16 **COUNTY OF ALAMEDA – UNLIMITED JURISDICTION**

18 **MARCUS VAUGHN, MONICA CHATMAN,**
 19 **TITUS MCCALED, and EVIE HALL,**
 20 individually and on behalf of all others
 21 similarly situated,

21 **Plaintiffs,**

22 vs.

24 **TESLA, INC. doing business in California as**
 25 **TESLA MOTORS, INC.; and DOES 1**
 26 **THROUGH 50, INCLUSIVE,**

27 **Defendants.**

FILED BY FAX

ALAMEDA COUNTY

July 07, 2021

CLERK OF
 THE SUPERIOR COURT
 By Nicole Hall, Deputy

CASE NUMBER:

RG17882082

Case No.: RG17882082

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
 DAMAGES AND INJUNCTIVE RELIEF**

1. **Race-Based Discrimination in Violation of FEHA;**
2. **Race-Based Harassment in Violation of FEHA; and**
3. **Failure to Prevent Discrimination and Harassment in Violation of FEHA.**

JURY TRIAL DEMANDED

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3 **I. NATURE OF THIS ACTION**

4 1. Plaintiffs Marcus Vaughn, Monica Chatman, Titus McCaleb, and Evie Hall bring this
5 class action pursuant to Code of Civil Procedure § 382, against Defendants Tesla, Inc. doing business
6 in California as Tesla Motors, Inc. (“Tesla”); and Does 1 through 50, inclusive (collectively,
7 “Defendants”), alleging that Defendants have created an intimidating, hostile, and offensive work
8 environment for Black and/or African-American employees that includes a routine use of the terms
9 “N****r” and “N****a” and other racially-derogatory terms, and racist treatment and images at Tesla’s
10 production facility in Fremont, California (“Tesla Factory”), by failing to take necessary steps to prevent
11 race-based harassment and failing to take appropriate corrective action once such race-based harassment
12 has occurred, in violation of the Fair Employment and Housing Act (“FEHA”), California Government
13 Code § 12940, *et seq.*

14 2. Plaintiffs Vaughn, Chatman, McCaleb, and Hall seek to represent a class and subclasses
15 comprised of Black and/or African-American workers who are current and former employees working
16 on the production floor at the Tesla Factory, at any time from November 9, 2016 to the final disposition
17 of this action (“Class Period”), for such claims as they did not agree to arbitrate privately. These
18 employees share a community of interest and are similarly situated under California Code of Civil
19 Procedure § 382.

20 3. During the Class Period, Plaintiffs and the putative Class Members suffered severe
21 and/or pervasive harassment at the Tesla Factory because they are Black and/or African-American.
22 Despite the repeated attempts of Plaintiffs and numerous Class Members to curtail the harassment by,
23 *inter alia*, reporting repeated instances of race-based harassment to supervisors, Human Resources and
24 Chief Executive Officer Elon Musk (including prior lawsuits based upon this conduct), Defendants have
25 failed to take appropriate corrective action and permit the hostile work environment for Black and/or
26 African-American employees to persist. Plaintiffs Vaughn, Chatman, McCaleb, and Hall are seeking,
27 on behalf of themselves, and the Class and subclasses they seek to represent, declaratory and injunctive
28

1 relief; back pay; front pay; compensatory and punitive damages; and attorneys' fees, costs and expenses
2 to redress Tesla's pervasive, discriminatory employment policies, practices and/or procedures.

3 **II. JURISDICTION AND VENUE**

4 4. This Court has jurisdiction in that the amount in controversy exceeds the jurisdictional
5 limits of this Court according to proof at trial, and pursuant to California Government Code § 12965(b).

6 5. Venue is proper in Alameda County, California, pursuant to California Government
7 Code § 12965(b), because the unlawful practices and acts alleged herein were committed within this
8 county.

9 **III. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

10 6. On November 9, 2017, Plaintiff Vaughn timely filed a class charge of discrimination
11 with the California Department of Fair Employment and Housing ("DFEH"). The DFEH issued a Right-
12 to-Sue Notice on November 9, 2017. Accordingly, Plaintiff has timely exhausted the class's
13 administrative remedies. A true-and-correct copy of Plaintiff's Right-to-Sue Notice is attached to this
14 complaint as Exhibit A. Subsequently, Plaintiffs are informed and believe that the Director of the DFEH
15 initiated a Director's Complaint raising similar allegations, and further exhausting these race
16 discrimination and harassment and failure-to-prevent claims.

17 **IV. PARTIES**

18 7. Plaintiff Marcus Vaughn ("Vaughn" or "Plaintiff") was employed as a General
19 Assembly Associate by Defendants from approximately April 23, 2017 through October 31, 2017.
20 Plaintiff Vaughn is, and at all relevant times herein was, an adult Black/African-American residing in
21 California.

22 8. Plaintiff Monica Chatman was employed as a Materials Handler (Forklift Operator) from
23 approximately November 16, 2016 until approximately September 11, 2019. Plaintiff Chatman is, and
24 at all relevant times herein was, an adult Black/African-American residing in California.

25 9. Plaintiff Titus McCaleb was employed on the production floor from approximately
26 October 2016 through June 2017. Plaintiff McCaleb is, and at all relevant times herein was, an adult
27 Black/African-American residing in California.

1 because despite the company’s knowledge of the harassment, Defendants have done nothing that could
2 be reasonably expected to stop it.

3 15. In fact, Defendants have a policy of creating a hostile work environment at the Tesla
4 Factory. Non-African American employees, including supervisors, made and continue to make
5 offensive racist comments and engage in offensive racist behavior towards Plaintiffs and Class and
6 Subclass Members in the Tesla Factory on a daily basis.

7 **i. Plaintiff Marcus Vaughn’s Experience at the Tesla Factory**

8 16. Plaintiff Marcus Vaughn began working at the Tesla Factory on April 23, 2017 through
9 the Balance Staffing agency, on the production floor as a General Assembly Associate. He never signed
10 an arbitration agreement. Shortly thereafter, employees and supervisors began targeting Mr. Vaughn
11 for harassment on the basis of his race. This harassment included the use of the terms “N****r” and
12 “N***a” on a regular basis. Mr. Vaughn also observed other Black/African-American employees,
13 including Black/African-American co-worker Timothy Cotton, being called “N****r” and “N***a.”

14 17. On July 21, 2017, Plaintiff Vaughn complained in writing to Human Resources Business
15 Partner Rose Sanson and CEO Elon Musk, on behalf of himself and other Black/African-American
16 employees, about the hostile work environment, and the racism directed at him, Mr. Cotton, and other
17 Black/African-American employees at the Tesla Factory, saying:

18 ...Things really got worse for Tim [Cotton] when we had safety day and my AM T.O
19 and my supervisor Tim [last name unknown] was talking about Harassment and if
20 anything is happening that you don’t like speak up. So Tim [Cotton] spoke up and said
21 he didn’t like when associates Say Nigga on the line it made him and a lot of us on the
22 line feel uncomfortable. Since that day there has been so much back lash. From him
23 getting hit in the back of the head with the chair, to him getting called bipolar, sensitive,
24 people say nigga around him just to get a reaction out of him...

25 ...All I want to happen is for things to really change...if one person doesn’t care about
26 the quality of the car and just cares about speed, or is making people feel uncomfortable
27 to the point where they don’t want to come to work, or people calling people names,
28 saying racial slurs, making fun of people then they shouldn’t be at Tesla...I just hope
who ever reads this does something about it before someone on my line snaps and
someone gets hurt. That’s the last thing I would want to see happen but tension is very
high on my line and the morale on my line is low. Something has to change!!!!

1 18. Defendants did not conduct an investigation into Plaintiff Vaughn’s above-referenced
2 complaint, nor was he interviewed about his serious allegations of racism at the Tesla Factory.

3 19. Instead, Plaintiff Vaughn was terminated on October 31, 2017 for “not having a positive
4 attitude.”

5 **ii. Plaintiff Monica Chatman’s Experience at the Tesla Factory**

6 20. Plaintiff Monica Chatman began working as a Forklift Operator on November 16, 2016,
7 placed by West Valley Staffing. She did not sign an arbitration agreement during the time she worked
8 for Tesla through West Valley Staffing.

9 21. On approximately March 8, 2017, she became a direct hire of Tesla, remaining in that
10 capacity until approximately September 11, 2019. During this period, she had an arbitration agreement
11 in her paperwork as a direct hire.

12 22. Plaintiff Chatman worked on the General Assembly Line and the Model 3 Line. She
13 heard the words “N****r” and “N***a” used frequently by coworkers in the Tesla factory throughout
14 her time at Tesla, when working there through West Valley Staffing and as a direct hire. She was called
15 “N****r” by her Tesla supervisor, Roger Beltran, on two occasions, and overheard Mr. Beltran use
16 phrases like “I can’t stand her Black ass,” and “tell her to get her Black ass over here,” when referring
17 to her. Plaintiff Chatman also heard the terms “monkey” and “dirty” used as racial slurs toward
18 Black/African-American workers by coworkers in the Tesla factory.

19 23. Ms. Chatman witnessed both Black/African-American and other employees referring to
20 the Tesla Factory as “the Plantation.” Her understanding is that people refer to the Tesla factory as “the
21 Plantation” because Tesla dehumanizes its Black/African-American employees, *i.e.*, treating them like
22 slaves.

23 24. Along with racially harassing language, Ms. Chatman observed a pattern of
24 discriminatory treatment against Black/African-American employees at the Fremont factory.
25 Black/African-American employees, including herself, were not given raises, and were promoted far
26 less than non-Black/African-American employees, while being reprimanded, disciplined, and written
27 up more often than non-Black/African-American employees at Tesla.

1 25. Ms. Chatman further saw that Mr. Beltran segregated the Model 3 Line by race, and
2 stationed almost all of the Black/African-American employees together at the very back of the Line,
3 out of sight.

4 26. In 2018, Ms. Chatman complained to Human Resources, including Rose Sanson, about
5 Mr. Beltran's behavior, including his racist anti-Black behavior. Tesla did not take immediate or
6 appropriate action to stop the racist behaviors from continuing after she complained.

7 27. On approximately September 11, 2019, Ms. Chatman was terminated for hitting a
8 sprinkler with a forklift, despite the fact that others who are not Black/African-American and who did
9 not complain of discrimination were not terminated for similar actions.

10 **iii. Plaintiff Titus McCaleb's Experience at the Tesla Factory**

11 28. Plaintiff McCaleb was hired to work on the production floor on approximately October
12 26, 2016, through a staffing agency, West Valley Staffing. He did not sign an arbitration agreement. He
13 never became a direct hire of Tesla, and stopped working there on approximately June 2, 2017.

14 29. During his employment at Tesla, he heard the words "N****r" and "N****a" used
15 frequently in the factory also, and estimates he was directly called "N****r" and "N****a" numerous
16 times by coworkers and/or by his supervisor at the Fremont factory. Throughout his Tesla employment,
17 he saw racist graffiti written inside of the bathroom stalls, including such offensive writings as:
18 "N****r;" "Fuck you n****s;" and "I love black pussy." Like Plaintiff Chatman, he heard both Black
19 and non-Black employees refer to the Tesla Factory as "the Plantation."

20 30. Mr. McCaleb witnessed supervisors being present during the use of the N-word, but they
21 did not take action to stop it. Even after Mr. McCaleb informed the supervisors that he was offended
22 by the use of the N-word, they did not take action to stop its use.

23 31. Mr. McCaleb reported the racially harassing conduct to supervisors, managers and to
24 Tesla's Human Resources Department, including Brandie To, numerous times, but Tesla failed to take
25 adequate remedial measures to address the harassment and it continued after his complaints.

1 “N****r” and “N***a” throughout the Tesla Factory. *See Lambert v. Tesla Inc. et al.*, case number RG-
2 17854515, in the Superior Court for the State of California, Alameda County (March 26, 2017); *Diaz et*
3 *al. v Tesla et al.*, case number 17-cv-06748-WHO in the Northern District of California, originally filed
4 as case number RG17878854, in the Superior Court of the State of California for the County of Alameda
5 (October 16, 2017). Mr. Berry, Mr. Cotton, and others filed similar claims in arbitration. Though
6 numerous individual cases have been filed, none have addressed the egregious, systemic racism and
7 racist harassment against Black/African-American workers and failure to prevent such on a class-wide
8 basis, as this suit will do.

9 38. Supervisors regularly witness employees engaging in offensive racist conduct, and also
10 engage in race harassment themselves, therefore giving license to subordinates to do the same.

11 39. As a result, while on the production lines, Class Members constantly have to worry about
12 being called “N****r” and “N***a” by their supervisors and co-workers.

13 40. Black/African-American employees, including Plaintiffs and other Class Members, have
14 complained to their supervisors, Human Resources and upper management about the racist behavior in
15 the workplace, both verbally and in writing. As early as fall 2015, Mr. Lambert complained to his
16 Supervisor Charles Lambert about the frequent use of the N-words, and a year later showed Human
17 Resources Business Partner Rose Sanson hateful, violent and racist videos created on his phone by an
18 employee and a supervisor at the Tesla Factory. However, Tesla took no action, either to investigate or
19 reprimand the harassers.¹ Similarly, Mr. Berry, in 2016, complained of racial harassment and the use of
20 the terms “N****r” and “N***a” to Tesla’s Human Resources Business Partner Maggie Crosby, and
21 subsequently to Ms. Crosby’s supervisor. However, no action was taken against the harassers, and the
22 harassment continued.

23 41. Tesla’s Vice President of Production Peter Hochholding sent an email on March 11,
24 2017 to employees at the Tesla Factory about the “Production Work Environment,” stating, “I heard

25
26 ¹ Defendant Tesla claims it investigated Mr. Lambert’s allegations and terminated the harassers but only *after* Mr. Lambert
27 filed his lawsuit in March 2017, or over a year and a half after his initial complaint to the company. Based on information
28 and belief, after terminating their employment, Defendants informed the harassers that they were eligible to reapply to
work at the Tesla Factory after a six-months period.

1 some concerns about our work environment this week and I want to address them head on...Anyone
2 who is found in violation of [the harassment] policy will be subject to discipline up to and including
3 immediate termination.”

4 42. Unfortunately, like the promises made by management and Human Resources, Mr.
5 Hochholdinger’s statement about disciplining harassers turned out to be an empty promise. To illustrate,
6 Mr. Cotton, who worked on the production line with Plaintiff, was called “N****r” and “N***a” by
7 Leads Christian Coronas, Sergio Cruz, Richard Hilario and Lou Saephan in fall 2017, complained about
8 the harassing conduct, yet no disciplinary action was taken against the harassers as promised by Mr.
9 Hochholdinger a few months prior.

10 43. When supervisors, Human Resources, and the Chief Executive Officer – essentially
11 everyone at Tesla with the responsibility and ability to stop race harassment – have actual knowledge
12 of the illegal conduct, because they are present and able to hear the comments, which are openly made
13 in common areas, or because the comments are repeated, reliably reported, and contained in lawsuits,
14 backed by evidence, over a period of years, it is a reasonable inference that Defendants intentionally
15 choose not to address the illegality, and therefore intentionally seek the result of its indifference.

15 **B. Defendants’ Ineffective Anti-Discrimination Efforts**

16 44. Plaintiffs are informed and believe, and thereupon allege that Defendants maintain a
17 pattern or practice of ignoring and/or failing to act promptly to investigate harassment complaints;
18 conduct inadequate investigations; maintain inadequate anti-harassment policies and practices; fail to
19 adequately train leads, supervisors and managers about their policies and procedures, and about how to
20 prevent harassment from occurring; fail to implement an adequate complaint mechanism for receiving
21 and addressing complaints of harassment; and refuse to discipline identified harassers, allowing
22 employees against whom harassment complaints have been made to continue working at the Tesla
23 Factory, earning money, unaffected by the complaint.

24 45. Plaintiffs are further informed and believe, and thereupon allege, that Defendants have
25 a pattern or practice of permitting employees who have engaged in harassment to remain with the
26 company, and rehiring known harassers to the company, even with the foreseeable consequence that
27 they racially harass additional Black/African-American employees day-in and day-out.

1 even under Tesla’s arbitration agreement; and

2 d. seeking a “public injunction,” primarily for the benefit of the general
3 public, which, as described in *McGill v. Citibank, N.A.* (2017) 2 Cal.5th
4 945, 961, 965, cannot be waived in pre-dispute arbitration agreements as
5 a matter of California public policy. (*McGill*, 2 Cal. 5th at 961-66.) *See*
6 *also Blair v. Rent-A-Center, Inc.* (9th Cir. 2019) 928 F.3d 819. It is a
7 matter of public concern that Tesla, which was the fifth-most valuable
8 company in America in 2021, and one of Alameda County’s biggest
9 employers, flagrantly abuses its Black/African-American workers,
10 flouting FEHA, setting a horrific example for other employers and
11 precluding countless Black/African-American workers from pursuing
12 careers in what might otherwise be a desirable place to work.

13 50. This action is brought, and may properly be maintained, as a class action under § 382
14 because there is a well-defined community of interest in the litigation, and the proposed class is easily
15 ascertainable.

16 **B. Numerosity and Impracticability of Joinder**

17 51. The proposed Class Members are sufficiently numerous that joinder of all members is
18 impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed class and
19 each of the subclasses consists of more than 100 Black and/or African-Americans.

20 **C. Community of Interest**

21 52. There is a well-defined community of interest, because common questions of law and
22 fact exist as to all members of the Class and predominate over any questions solely affecting individual
23 members of the Class.

24 53. The common questions of law include, *inter alia*: (a) whether permitting pervasive use
25 of the terms “N****r” and “N****a” and other racially-derogatory terms and racist treatment and images
26 on the production floor constitutes unlawful harassment under FEHA; (b) whether Defendants engaged
27 in a pattern or practice of unlawful, systemic race harassment of its Black and/or African-American
28

1 employees; (c) whether Defendants are liable for a pattern or practice of violating FEHA by failing to
2 stop and prevent unlawful conduct - specifically, the prolific use of the terms “N****r” and “N****a”
3 on the production floor and associated race harassment against Blacks or African-Americans; and (d) a
4 determination of the proper standards for proving a pattern and/or practice of discrimination by
5 Defendants against the African-American employees on the production floor at the Tesla Factory. As
6 to those who worked at Tesla through staffing agencies, like Plaintiffs, another common question of
7 law is whether Tesla is a FEHA employer or joint employer with those staffing agencies.

8 54. The common questions of fact would include, *inter alia*: whether, through its policies,
9 practices and/or procedures: (a) Defendants created and sustained a hostile work environment among
10 its Black or African-American employees at the Tesla Factory by permitting and failing to prevent
11 pervasive use of the terms “N****r” and “N****a” and other racially derogatory terms, treatment and
12 images on the production floor; (b) Human Resources personnel and/or management were aware of the
13 race discrimination and harassment; (c) Defendants engaged in a pattern or practice of failing to take
14 prompt and effective action to remedy the pervasive race harassment of Black and/or African-American
15 employees, including failing to: conduct prompt and adequate investigations; maintain adequate anti-
16 harassment policies, practices and training; implement adequate complaint mechanisms for receiving
17 and addressing complaints of harassment; communicate to employees that harassing conduct will not
18 be tolerated; and discipline employees; and (d) whether injunctive relief and punitive damages are
19 warranted. As to those who signed Tesla’s standard arbitration agreement after they began at Tesla,
20 like Plaintiffs Chatman and Hall, another common question of fact is whether the agreement on its face
21 is limited to the period after the date individuals became direct-hire Tesla employees, as the Court has
22 found. As to those who worked at Tesla through staffing agencies, like Plaintiffs, other common
23 questions of fact are whether Tesla maintained the right to supervise, direct, and control their day-to-
24 day work, provided supervision, directed what hours to work and when to take breaks, instructed them
25 on how to perform job duties, and provided the equipment necessary to perform their duties.

26
27 **D. Typicality of Claims and Relief Sought**

1 **F. Efficiency of Class Prosecution of Common Claims**

2 61. Certification of a class and/or subclasses of Black and/or African-American employees
3 similarly situated to Plaintiffs is the most efficient and economical means of resolving the questions of
4 law and fact which are common to the claims of Plaintiff and the proposed class and subclasses. The
5 individual claims of Plaintiffs require the resolution of the common question of whether Defendants
6 engaged in a systemic pattern and/or practice of race discrimination and harassment and failing to
7 prevent such against Black and/or African-American employees not subject to arbitration. Plaintiffs
8 seek remedies to eliminate the adverse effects of such discrimination and harassment in their own lives,
9 careers and working conditions, and in the lives, careers and working conditions of the proposed Class
10 Members, and to prevent continued race discrimination and harassment in the future. Plaintiffs have
11 standing to seek such relief because of the adverse effect that such discrimination and harassment has
12 had on them individually and on Black and/or African-American employees at the Tesla Factory in
13 general. To gain such relief for themselves, as well as for the proposed Class Members, Plaintiffs will
14 first establish the existence of systemic race discrimination and harassment, pervasive use of the terms
15 “N****r” and “N****a” and other racially-derogatory terms, and racist images and treatment on the
16 production floor, and a failure to take immediate and appropriate corrective action in response, or to
17 prevent its frequent recurrence, as the premise for the relief they seek. Without class certification, the
18 same evidence and issues would be subject to re-litigation in a multitude of individual lawsuits without
19 ever addressing the systemic racism that infects Tesla’s Fremont Factory. Certification of the proposed
20 class and subclasses of Blacks and/or African-Americans who have been affected by these common
21 questions of law and fact is the most efficient and judicious means of presenting the evidence and
22 arguments necessary to resolve such questions for Plaintiffs, the proposed class and subclasses, and
23 Defendants. Additionally, individual employees may lack the financial resources to vigorously
24 prosecute separate lawsuits in court against large corporate defendants, and fear retaliation and
25 blackballing in their industry.

26 **G. Nature of Notice to the Proposed Class**

27 62. Plaintiffs intend to send notice to all Class Members to the extent required by California

1 Code of Civil Procedure § 382. Plaintiffs are informed and believe that Tesla’s records and/or those of
2 staffing agencies contain a last known address, email address, and/or phone number for Class Members.
3 Plaintiff contemplates that individual notice be given to Class Members at such last known address by
4 first-class mail, email, and text, informing them of the following:

- 5 1. The pendency of the class action, and the issues common to the class;
- 6 2. The nature of the action;
- 7 3. Their right to “opt out” of the action within a given time, in which event they will
8 not be bound by a decision rendered in the class action;
- 9 4. Their right, if they do not “opt out,” to be represented by their own counsel and enter
10 an appearance in the case; otherwise, they will be represented by Plaintiffs and their
11 counsel;
- 12 5. Which claims are covered by the class action, and examples of claims not covered
13 by the class action (*e.g.*, individual wrongful termination claims);
- 14 6. The extent to which arbitration agreements may limit the scope of their claims to be
15 litigated in the class action; and
- 16 7. Their right, if they do not “opt out,” to share in any recovery in favor of the class,
17 and conversely to be bound by any judgment on the common issues, adverse to the
18 class.

19 **VII. CAUSES OF ACTION**
20 **FIRST CAUSE OF ACTION**
21 **Race-Based Discrimination in Violation of FEHA**
22 **(California Government Code § 12940, *et seq.*)**
23 **(Against All Defendants; On Behalf of Plaintiffs and the Class and Subclasses)**

24 63. Plaintiffs, on behalf of themselves and the proposed class and subclasses, allege and
25 incorporate by reference the allegations in the preceding paragraphs.

26 64. In relevant part, California Government Code section 12940(a) provides that it shall be
27 unlawful for an employer to discriminate against employees in the terms and conditions of their
28 employment because of their race.

1 65. Plaintiffs and the Class Members are Black and/or African-American and are thus
2 members of a protected class.

3 66. FEHA defines “employer” broadly to encompass “any person regularly employing five
4 or more persons, or any person acting as an agent of an employer, directly or indirectly.” California
5 Government Code § 12926(d). Here, all Defendants were employers of Plaintiff and the Class Members
6 as defined by FEHA because they regularly employed five or more persons. Furthermore, due to
7 Defendant Tesla’s ownership of the facility, its day-to-day managerial role in the facility, its right to
8 hire, fire and discipline the employees, and its control of all terms and conditions of Plaintiff and Class
9 Members’ employment, Defendant Tesla is Plaintiff and Class Members’ FEHA employer, or
10 alternatively a joint employer, which provides employment pursuant to contract. *See Vernon v. State*
11 (2004) 116 Cal.App.4th 114, 124;

12 67. As set forth above, Defendants discriminated against Plaintiffs and the Class Members
13 because of their race. Defendants engaged in illegal, intentional discrimination on the basis of race, by
14 creating a hostile work environment based on race. Plaintiffs have regularly complained to Defendants
15 regarding discrimination and harassment, but Defendants allowed the discrimination and harassment to
16 continue.

17 68. As a direct, legal and proximate result of the discrimination, Plaintiffs and the proposed
18 Class Members have suffered damages, including emotional distress, lost wages and other economic
19 damages, in an amount to be proven at trial.

20 69. By reason of the conduct of Defendants, Plaintiffs have necessarily retained attorneys to
21 prosecute the action on behalf of themselves and the class and subclasses. Pursuant to California
22 Government Code § 12965(b), as a result of Defendants’ discrimination, Plaintiffs and the class and
23 subclasses are entitled to recover damages for economic harm and emotional distress, attorneys’ fees,
24 costs, and expert witness fees. Plaintiffs and the class and subclasses are also entitled to attorneys’ fees
25 pursuant to California Code of Civil Procedure § 1021.5.

26 70. Defendants’ actions were ratified by managing agents, and were willful, malicious,
27 fraudulent, and oppressive, and were committed with wrongful intent to harm Plaintiffs and the Class
28

1 Members in conscious disregard of their rights. Plaintiffs and the Class Members are therefore entitled
2 to recover punitive damages from Defendants in an amount according to proof at trial.

3 71. Plaintiff Vaughn timely exhausted administrative remedies on behalf of the other
4 Plaintiffs and the entire Class, and the DFEH Director's Complaint further exhausted such.

5 72. By reason of the foregoing violations, Plaintiffs are entitled to an injunction for current
6 and future employees, and a public injunction, enjoining Defendants from committing further violations
7 of the FEHA with respect to race discrimination and harassment against Black and/or African-American
8 workers, and failure to prevent such.

9
10 **SECOND CAUSE OF ACTION**
11 **Race-Based Harassment in Violation of FEHA**
12 **(California Government Code § 12940, *et seq.*)**
13 **(Against All Defendants; On Behalf Plaintiffs and the Class and Subclasses)**

14 73. Plaintiffs, on behalf of themselves and the proposed class and subclasses, allege and
15 incorporate by reference the allegations in the preceding paragraphs.

16 74. In relevant part, California Government Code section 12940 states that it shall be
17 unlawful for an employer or for any other person to harass an employee because of race.

18 75. Plaintiffs and the Class Members are Black and/or African-American and are thus
19 members of a protected class.

20 76. FEHA defines "employer" broadly to encompass "any person regularly employing five
21 or more persons, or any person acting as an agent of an employer, directly or indirectly." California
22 Government Code § 12926(d). Here, all Defendants were employers of Plaintiffs and the Class
23 Members as defined by FEHA because they regularly employed five or more persons. Furthermore, due
24 to Defendant Tesla's ownership of the facility, its day-to-day managerial role in the facility, its right to
25 hire, fire and discipline the employees, and its control of all terms and conditions of Plaintiffs and Class
26 Members' employment, Defendant Tesla is the Plaintiffs' and Class Members' FEHA employer, or
27 alternatively a joint employer, which provides employment pursuant to contract. *See Vernon v. State*

1 (2004) 116 Cal.App.4th 114, 124.

2 77. Defendants created a hostile work environment based on race with respect to
3 Black/African-American employees. The harassment Plaintiffs and the Class Members experienced
4 while employed by Defendants was sufficiently severe or pervasive to alter the terms and conditions of
5 Plaintiffs and the Class Members' work environment and was thus unlawful under FEHA.

6 78. As a direct, legal and proximate result of the discrimination, Plaintiffs and the proposed
7 Class Members have suffered damages, including emotional distress, lost wages and other economic
8 damages, in an amount to be proven at trial.

9 79. By reason of the conduct of Defendants, Plaintiffs have necessarily retained attorneys to
10 prosecute the action on behalf of themselves and the class and subclasses. Pursuant to California
11 Government Code § 12965(b), as a result of Defendants' harassment, Plaintiffs and the class and
12 subclasses are entitled to recover damages for emotional distress and economic harm, attorneys' fees,
13 costs, and expert witness fees. Plaintiffs and the class and subclasses are also entitled to attorneys' fees
14 pursuant to California Code of Civil Procedure § 1021.5.

15 80. Defendants' actions were ratified by managing agents, and were willful, malicious,
16 fraudulent, and oppressive, and were committed with wrongful intent to harm Plaintiff and the Class
17 Members in conscious disregard of their rights. Plaintiff and the Class Members are therefore entitled
18 to recover punitive damages from Defendants in an amount according to proof at trial.

19 81. Plaintiff Vaughn timely exhausted administrative remedies on behalf of the other
20 Plaintiffs and the entire Class, and the DFEH Director's Complaint further exhausted such.

21 82. By reason of the foregoing violations, Plaintiffs are entitled to an injunction for current
22 and future employees, and a public injunction, enjoining Defendants from committing further violations
23 of the FEHA with respect to race discrimination and harassment against Black and/or African-American
24 workers, and failure to prevent such.

1 **THIRD CAUSE OF ACTION**
2 **Failure to Prevent Race-Based Discrimination and Harassment in Violation of FEHA**
3 **(California Government Code § 12940(k))**
4 **(Against All Defendants; On Behalf of Plaintiffs and the Class and Subclasses)**

5 83. Plaintiffs, on behalf of themselves and the proposed class and subclasses, allege and
6 incorporate by reference the allegations in the preceding paragraphs.

7 84. California Government Code § 12940(k) provides that it shall be an unlawful
8 employment practice for an employer to fail to take all reasonable steps necessary to prevent
9 discrimination, harassment and retaliation from occurring in the workplace.

10 85. Plaintiffs and the Class Members are Black and/or African-American and are thus
11 members of a protected class.

12 86. FEHA defines “employer” broadly to encompass “any person regularly employing five
13 or more persons, or any person acting as an agent of an employer, directly or indirectly.” California
14 Government Code § 12926(d). Here, all Defendants were employers of the Plaintiffs and the Class
15 Members as defined by FEHA because they regularly employed five or more persons. Furthermore, due
16 to Defendant Tesla’s ownership of the facility, its day-to-day managerial role in the facility, its right to
17 hire, fire and discipline the employees, and its control of all terms and conditions of Plaintiffs’ and Class
18 Members’ employment, Defendant Tesla is Plaintiffs’ and Class Members’ FEHA employer, or
19 alternatively a joint employer, which provides employment pursuant to contract. *See Vernon v. State*
20 (2004) 116 Cal.App.4th 114, 124.

21 87. Defendants failed to provide Plaintiffs and the Class Members with protections required
22 under California Government Code § 12940(k) by not taking immediate and sufficient action to correct
23 the discriminatory and harassing conduct directed at Black/African-American employees.

24 88. As a direct, legal and proximate result of the discrimination, Plaintiffs and the proposed
25 Class Members have suffered damages, including emotional distress, lost wages and other economic
26 damages, in an amount to be proven at trial.

27 89. By reason of the conduct of Defendants, Plaintiffs have necessarily retained attorneys to
28

1 prosecute the action on behalf of himself and the class and subclasses. Pursuant to California
2 Government Code § 12965(b), as a result of Defendants' discrimination and harassment, Plaintiffs and
3 the class and subclasses are entitled to recover damages for economic harm and emotional distress,
4 attorneys' fees, costs, and expert witness fees. Plaintiffs and the class and subclasses are also entitled
5 to attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

6 90. Defendants' actions were ratified by managing agents and were willful, malicious,
7 fraudulent, and oppressive, and were committed with wrongful intent to harm Plaintiffs and the Class
8 Members in conscious disregard of their rights. Plaintiffs and the Class Members are therefore entitled
9 to recover punitive damages from Defendants in an amount according to proof at trial.

10 91. Plaintiff Vaughn timely exhausted administrative remedies on behalf of the other
11 Plaintiffs and the entire Class, and the DFEH Director's Complaint further exhausted such.

12 92. By reason of the foregoing violations, Plaintiffs are entitled to an injunction for current
13 and future employees, and a public injunction, enjoining Defendants from committing further violations
14 of the FEHA with respect to race discrimination and harassment against Black and/or African-American
15 workers, and failure to prevent such.

16 **VIII. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs, on behalf of themselves and the proposed class and subclasses, requests
18 judgment and the following specific relief against Defendants:

- 19 A. Certification of the Class as a class action, and of the class and subclasses, under Code of
20 Civil Procedure § 382, and designation of Plaintiffs as representatives of the Class and their
21 counsel of record as Class Counsel;
- 22 B. All damages which the Plaintiffs and the class and subclasses have sustained as a result of
23 Defendants' conduct, including general damages for pain, suffering, emotional distress, and
24 economic damages caused by the discriminatory practices of Defendants;
- 25 C. For an award of exemplary and punitive damages in an amount commensurate with
26 Defendants' ability to pay and to deter future conduct;

1 D. A preliminary and permanent injunction, and a public injunction, against Defendants and its
2 directors, officers, owners, agents, successors, employees and representatives, and any and
3 all persons acting in concert with them, from maintaining a hostile work environment on the
4 basis of race, and failing to prevent such an environment. Such relief at minimum should
5 include implementation of effective policies to prevent and correct race harassment,
6 implementation of mandatory training regarding harassment for all of Defendants'
7 managerial and non-managerial employees, and a public declaration that Tesla's widely-
8 known racist practices contravene California law and will not continue and will not be
9 tolerated.

10 E. Declaratory relief against Defendants finding their employment policies, practices and/or
11 procedures challenged herein are illegal and in violation of the rights of Plaintiff and
12 members of the Class under California Government Code § 12940;

13 F. For an award of reasonable attorneys' fees, expert witness fees, litigation expenses and costs
14 incurred in the filing and prosecution of this action, pursuant to California Government Code
15 § 12965(b);

16 G. For pre-judgment and post-judgment interest, as provided by law;

17 H. For such other and further relief, in law or in equity, as this Court may deem proper and just.

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22 **IX. DEMAND FOR JURY TRIAL**

23 Pursuant to Code of Civil Procedure section 631, Plaintiff, individually, and on behalf of others
24 similarly situated, demands a trial by jury.

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26 DATED: July 6, 2021

**CALIFORNIA CIVIL RIGHTS LAW GROUP
BRYAN SCHWARTZ LAW**

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By: /s/ Bryan Schwartz
Lawrence Organ (SBN 175503)
Bryan Schwartz (SBN 209903)
Jennifer Reisch, Of Counsel (SBN 223671)
Navruz Avloni (SBN 279556)
Cassidy Clark (SBN 335523)

Attorneys for Plaintiff and the Putative Class

EXHIBIT A



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

November 09, 2017

RE: Notice of Filing of Discrimination Complaint

DFEH Matter Number: 971821-322021

Right to Sue: Vaughn / Tesla, Inc. DBA Tesla Motors, Inc.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

Enclosures

cc: Balance Staffing Workforce LLC

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Co-Respondents:

Balance Staffing Workforce LLC

2800 North Cherryland Ave.
Stockton California 95215

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Additional Complaint Details:

Marcus Vaughn and similarly-situated African American employees at Tesla`s Fremont Factory were subjected to the pervasive use of the "N word" in the workplace, and other harassment based upon their race--African American. Complainant makes these allegations and asserts these claims on behalf of himself and others similarly situated. On information and belief, Respondents are engaging in class-wide pattern and/or practice of discrimination and harassment by failing to take prompt and effective action to remedy the pervasive race harassment in the workplace, by failing to prevent this pattern of conduct from occurring and continuing, despite repeated complaints to Human Resources and other Respondent supervisors and managers, by failing to have and/or implement appropriate anti-harassment policies, by failing to discipline those accused of harassment, and by failing to implement an adequate complaint mechanism for receiving and addressing complaints of race harassment. The harassment and Respondents` failure to prevent and correct it altered the terms and conditions of Complainant and similarly-situated African American employees` working environment, making it a hostile and abusive environment.

1 VERIFICATION

2 I, **Navruz Avloni**, am the Attorney for Complainant in the above-entitled complaint.
3 I have read the foregoing complaint and know the contents thereof. The same is
4 true of my own knowledge, except as to those matters which are therein alleged on
information and belief, and as to those matters, I believe it to be true.

5 On November 09, 2017, I declare under penalty of perjury under the laws of the
6 State of California that the foregoing is true and correct.

7 **San Anselmo, California**
8 **Navruz Avloni**

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