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Tesla Workers' Atty Rips Claim Of Influence Over State Agency

By **Dorothy Atkins**

Law360 (April 15, 2024, 9:31 PM EDT) -- Counsel representing a putative class of roughly 6,000 Black Tesla workers alleging the automaker has allowed racism to run rampant at its California factory fired back during a class certification hearing Monday, calling Tesla's suggestion that plaintiffs counsel are driving the state's civil-rights litigation "beyond preposterous."



Lawsuits from Black Tesla workers generally seek to hold the company liable for not allegedly doing enough to prevent racism from running rampant at its Fremont, California, factory since at least 2015. (AP Photo/Aaron M. Sprecher)

Bryan Schwartz of Bryan Schwartz Law PC's comments came at the end of an hourlong hearing before Alameda County Superior Court Judge Noël Wise on a motion for class certification in hotly contested **litigation initially filed in 2017** by contract worker Marcus Vaughn.

Schwartz disputed Tesla's arguments that only state and federal government enforcement agencies, like the California Civil Rights Department, have the legal authority to show Tesla has a pattern or practice of fostering discrimination. Schwartz argued that for two decades legal precedent has allowed workers to pursue such claims.

The attorney also disputed Tesla's argument that the CRD has an obligation to be neutral, noting that such an obligation doesn't exist when the agency in scenarios such as this one in which the agency has filed its own race bias complaint against Tesla.

"Counsel is trying to create a strawman that I'm responsible for the CRD. I'm not," Schwartz told Judge Wise. "It's so beyond preposterous I can't even begin telling you. I wish that were true your honor, but [the CRD attorneys] don't listen to me. I wish that they listen to me more than they do."

The workers' case is one legal front in multiple race bias actions proceeding in parallel — including the CRD's February 2022 lawsuit launched in state court and a lawsuit that the U.S. Equal Employment Opportunity Commission filed in federal court in **September 2023**.

The litigation follows a recently settled lawsuit brought by former Tesla worker Owen Diaz who scored a **nearly \$137 million judgment** against Tesla, which was later reduced to a **\$3.2 million verdict**.

The lawsuits generally seek to hold Tesla liable for not doing enough to prevent racism from allegedly running rampant at its Fremont, California, factory since at least 2015, with managers allegedly regularly using racial slurs, racial epithets and racial stereotypes at the workplace, and allegedly ignoring racially offensive graffiti.

The hearing on Monday was the second hearing held on the motion since the plaintiffs filed their bid to certify the class **request in June**. During the first hearing **held in March**, Judge Wise indicated she's prepared to certify certain common class issues, but she cautioned that she's still "exploring a range of options" on how to best adjudicate the case.

Following that hearing, the parties submitted responses to more than a dozen questions regarding certification, and on Monday, the judge indicated that she's inclined to hold a "first phase" trial in which a jury would be asked to decide common issues among the workers, but she indicated that each worker would likely have to individually sue for damages.

In response to the judge's comments, parties argued over what those common questions could be, and they agreed to meet and confer and submit a joint stipulation to the court on any potential agreements.

However, Tesla's counsel, Raymond A. Cardozo and Tyree Jones of Reed Smith LLP, argued that only the state and federal government have the authority to pursue allegations that Tesla has a pattern or practice of fostering discrimination, and there are too many individual issues for the allegations to be resolved on a classwide basis.

Tesla's attorneys also argued that the parallel proceedings are duplicative and should be limited. They also asserted that the company's policies defeat the claims. Tesla's counsel additionally suggested that class counsel hid certain discovery in the CRD litigation to purportedly benefit the workers, and the CRD should be a neutral party.

However, Schwartz disputed Tesla's allegations, and although he acknowledged that there has been some "obvious confusion" regarding certain discovery produced in the workers litigation and the CRD case, he said the confusion has since been rectified and noted that there's no advantage for the workers to foster such confusion.

He also argued Tesla never raised its discovery complaints before, called and it "outrageous" that defense counsel waited until this month to make its "gotcha"-type argument, improperly suggesting he might have breached his legal duties in hiding discovery. He added that the allegation is "incredibly disrespectful."

At the end of the hearing, the parties agreed to submit any joint stipulations by April 23, and the next hearing in the case is set for May 8.

This isn't the first time class counsel have taken issue with Tesla's litigation arguments. In January, attorneys for both the CRD and a putative class of Black workers **accused Tesla** of "obfuscation," "scorched earth litigation" and intentionally delaying litigation with **purportedly unfounded arbitration arguments** in their years-old race bias cases while Tesla's counsel argued that the allegations are bogus, and any delays are of the plaintiffs' own making.

The class certification fight comes weeks after U.S. District Judge Jacqueline Scott Corley **denied** Tesla's **bid to stay or dismiss** the EEOC case, finding **after a hearing** that parallel state court cases can't resolve the federal agency's claims.

The proposed class is represented by Bryan Schwartz of Bryan Schwartz Law PC.

Tesla is represented by Raymond A. Cardozo and Tyree Jones of Reed Smith LLP.

The state enforcement action is the California Department of Fair Employment and Housing v. Tesla Inc. et al., case number 22CV006830, the putative class action is Marcus Vaughn v. Tesla Inc. et al., case number RG17882082, and the lead case of the related individual actions is Jessica Barraza v. Tesla Inc. et al., case number 21CV002714, all in the Superior Court of the State of California, County of Alameda.

The federal case is Equal Employment Opportunity Commission v. Tesla Inc., case number 3:23-cv-04984, in the U.S. District Court for the Northern District of California. The settled case is Owen Diaz et al. v. Tesla Inc. et al., case number 3:17-cv-06748, in the U.S. District Court for the Northern District of California.

--Editing by Kristen Becker.

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