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Chad Finke, Executive Officer / Clerk of the Court

By: D. Franklin Deputy

CALIFORNIA CIVIL RIGHTS LAW GROUP

Lawrence Organ (SBN 175503)
Marqui Hood (SBN 214718)
Cimone Nunley (SBN 326915)
332 San Anselmo Avenue
San Anselmo, CA 94960
Tel. (415) 453-4740
Fax (415) 785-7352
Email: larry@civilrightscs.com

BRYAN SCHWARTZ LAW, P.C.

Bryan Schwartz (SBN 209903)
Jennifer Reisch, Of Counsel (SBN 223671)
Jane Beasley Mackie (SBN 288380)
180 Grand Avenue, Suite 1380
Oakland, California 94612
Tel. (510) 444-9300
Fax (510) 444-9301
Email: bryan@bryanschwarzlaw.com

Attorneys for Plaintiffs and the Class

(Additional counsel listed on next page)

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

MARCUS VAUGHN, MONICA CHATMAN,
TITUS MCCALED, CHANEL HENDRIX,
and GARRET PARKER, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

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

Defendants.

Case No.: RG17882082

CLASS ACTION

**THIRD 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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1 **NICHOLS KASTER, LLP**

2 Matthew C. Helland (SBN 250451)

3 Jasjit Mundh (SBN 341455)

4 235 Montgomery St., Suite 810

5 San Francisco, CA 94104

6 Telephone: (415) 277-7235

7 Fax: (415) 277-7238

8 Email: helland@nka.com

9 **THE DERUBERTIS LAW FIRM, APC**

10 David M. deRubertis (SBN 208709)

11 8889 W. Olympic Blvd., Second Floor

12 Beverly Hills, CA 90211

13 Tel.: (818) 761-2322

14 Fax: (818) 761-2323

15 Email: david@derubertislaw.com

16 *Attorneys for Plaintiffs and the Class*

1 **I. NATURE OF THIS ACTION**

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

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

18 3. During the Class Period, Plaintiffs and the Class Members suffered severe and/or
19 pervasive harassment at the Tesla Factory because they are Black and/or African-American. Despite the
20 repeated attempts of Plaintiffs and numerous Class Members to curtail the harassment by, inter alia,
21 reporting repeated instances of race-based harassment to supervisors, Human Resources and Chief
22 Executive Officer Elon Musk (including prior lawsuits based upon this conduct), Defendants have failed
23 to take appropriate corrective action and permit the hostile work environment for Black and/or African-
24 American employees to persist. Plaintiffs Vaughn, Chatman, McCaleb, Hendrix, and Parker are seeking,
25 on behalf of themselves, and the Class and subclasses they seek to represent, declaratory and injunctive
26 relief; back pay; front pay; compensatory and punitive damages; and attorneys’ fees, costs and expenses
27 to redress Tesla’s pervasive, discriminatory employment policies, practices and/or procedures.
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1 **II. JURISDICTION AND VENUE**

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

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

6 **III. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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

15 **IV. PARTIES**

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

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

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

25 10. Since December 2020, Tesla has employed Plaintiff Chanel Hendrix on the production
26 floor as a production associate. Plaintiff Hendrix is, and at all relevant times herein was, an adult
27 Black/African-American residing in California.

28 11. Since May 2020, Tesla has employed Plaintiff Garret Parker as a Materials Handler on

1 the production floor. Plaintiff Parker is, and at all relevant times herein was, an adult Black/African-
2 American residing in California.

3 12. Defendant Tesla, Inc., d.b.a. Tesla Motors, Inc. is a publicly-traded Delaware corporation
4 with its principal place of business in Palo Alto, California. Tesla designs, manufactures, and sells
5 electric vehicles. One of Tesla's vehicle manufacturing facilities, also known as the "Tesla Factory," is
6 located at 45500 Fremont Boulevard in Fremont, California. The harassing conduct at issue in this case
7 took place at the Tesla Factory. Due to Tesla's ownership of the facility, its day-to-day managerial role
8 in the facility, its right to hire, fire and discipline the employees, and its control of all terms and
9 conditions of Plaintiffs' employment, Tesla was Plaintiffs' FEHA employer, or alternatively a joint
10 employer, which provides employment pursuant to contract.

11 13. In addition to Defendant Tesla, Plaintiffs sue fictitious defendants Does 1-50, inclusive,
12 because their names, capacities, status, or facts showing them to be liable are not presently known.
13 Plaintiffs are informed and believe, and thereon allege, that each of the fictitiously-named Defendants is
14 responsible in some manner for the occurrences herein alleged, and such Defendants caused Plaintiffs'
15 damages as herein alleged. Plaintiffs will amend this complaint to show their true names and capacities,
16 together with appropriate charging language, when such information has been ascertained.

17 14. Plaintiffs are informed, believe, and thereon allege that each of the Defendants herein
18 was at all times relevant to this action the agent, employee, representative partner, and/or joint venture
19 of the remaining Defendants and was acting within the course and scope of the relationship. Plaintiffs
20 are further informed, believe, and thereon allege that each of the Defendants herein gave consent to,
21 ratified, and authorized the acts alleged herein to the remaining Defendants.

22 **V. FACTUAL ALLEGATIONS**

23 **A. Defendants Have Maintained a Pattern or Practice of Race Discrimination**

24 15. Although Tesla stands out as a groundbreaking company at the forefront of the electric
25 car revolution, its standard operating procedure at the Tesla Factory is pre-Civil Rights Era race
26 discrimination. Race harassment has continued at the Tesla Factory, and became more widespread,
27 because despite the company's knowledge of the harassment, Defendants have done nothing that could
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1 be reasonably expected to stop it.

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

6 **i. Plaintiff Marcus Vaughn's Experience at the Tesla Factory**

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

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

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

24 ... All I want to happen is for things to really change... if one person doesn't care about the
25 quality of the car and just cares about speed, or is making people feel uncomfortable to the
26 point where they don't want to come to work, or people calling people names, saying racial
27 slurs, making fun of people then they shouldn't be at Tesla... I just hope who ever reads
28 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!!!!

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

20. Instead, Plaintiff Vaughn was terminated on October 31, 2017 for "not having a positive

1 attitude.”

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

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

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

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

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

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

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

1 27. In 2018, Ms. Chatman complained to Human Resources, including Rose Sanson, about
2 Mr. Beltran’s behavior, including his racist anti-Black behavior. Tesla did not take immediate or
3 appropriate action to stop the racist behaviors from continuing after she complained.

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

7 **iii. Plaintiff Titus McCaleb’s Experience at the Tesla Factory**

8 29. Plaintiff McCaleb was hired to work on the production floor on approximately October
9 26, 2016, through a staffing agency, West Valley Staffing. He did not sign an arbitration agreement. He
10 never became a direct hire of Tesla, and stopped working there on approximately June 2, 2017.

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

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

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

23 33. After he complained, Mr. McCaleb was told that if he kept complaining, he might be
24 terminated. Shortly after his last complaint in June 2017, he was terminated as further harassment and
25 as part of Tesla’s pattern of failing to prevent harassment and discrimination.

26 **iv. Plaintiff Chanel Hendrix’s Experience at the Tesla Factory**

27 34. Tesla hired Plaintiff Hendrix through a staffing agency, Balance Staffing, in December
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1 2020. In April 2021, Tesla directly hired Ms. Hendrix.

2 35. Throughout her time at Tesla, Ms. Hendrix has heard the N-word regularly at the
3 Fremont factory, often from non-Black coworkers who use it in regular conversation. One coworker
4 regularly uses it while discussing the business of the production line—for example, saying, “N***a,
5 why did you put this here?”

6 36. In addition to frequently using the N-word, Ms. Hendrix’s co-workers play music that
7 features the N-word and sing along. Associate managers walk along the production line while such
8 music plays without taking any action to stop the word’s use.

9 37. Ms. Hendrix often hears the terms “the Plantation” and “slave ship” used in reference to
10 the Fremont factory.

11 38. Along with racially harassing language, Ms. Hendrix observed a pattern of discriminatory
12 treatment against Black/African-American employees at the Fremont factory. Black/African-American
13 employees, including herself, were consistently assigned the most physically strenuous positions.
14

15 39. Ms. Hendrix reported to a non-Black supervisor that Black employees were being treated
16 differently from non-Blacks. Ms. Hendrix then approached her non-Black associate manager, who told
17 her to give the issue some time. A month later, with four other Black workers, Ms. Hendrix reported the
18 pattern of disparate treatment to Employee Relations. After someone (non-Black) from Employee
19 Relations met in November 2022 with Ms. Hendrix about the complaint, Tesla took no corrective action.

20 **v. Plaintiff Garret Parker’s Experience at the Tesla Factory**

21 40. Tesla hired Plaintiff Parker in May 2020. Since then, he was worked as a Material
22 Handler at the Fremont factory.

23 41. When Mr. Parker started in spring 2020, a non-Black coworker, Julio, and Mr. Parker got
24 into a disagreement after Julio bumped into Mr. Parker. Mr. Parker said, “what the f*ck are you doing?”
25 and Julio called Mr. Parker the N-word. After the disagreement, Julio and Mr. Parker received warnings
26 from their supervisor.

27 42. Mr. Parker heard Julio use the N-word on subsequent occasions, including in the
28 presence of a woman who asked him to stop. After that, Julio addressed a group of three Black men

1 using the N-word. Mr. Parker was offended by Julio’s use of the word.

2 43. Mr. Parker has heard the N-word regularly at the factory being used by others, including
3 non-Black workers, from the beginning of his employment until present.

4 44. Mr. Parker observes that Tesla regularly places him and other Black/African-American
5 employees in the most difficult jobs. Mr. Parker watched as less qualified non-Black employees were
6 promoted over him.

7 45. Mr. Parker reported the regular use of the N-word and that he had been denied a
8 promotion on the basis of race to a Tesla official. Mr. Parker was informed that an investigation was
9 opened and immediately closed, with no corrective action taken.

10 **vi. Other African-American Employees Shared Plaintiffs’ Experience**

11 46. Other African-American production floor employees have experienced the same pattern
12 and practice of race discrimination as Plaintiffs. Melvin Berry, who worked for Defendants from 2015
13 through October 22, 2016, heard supervisors use the terms “N****r” and “N***a” on a regular basis –
14 it was part of their everyday conversation, and leads and supervisors directed the term toward him when
15 criticizing his work. Four other employees, DeWitt Lambert, Owen Diaz, Demetric Diaz and Lamar
16 Patterson, filed lawsuits against Tesla alleging race harassment, including widespread use of the terms
17 “N****r” and “N***a” throughout the Tesla Factory. See Lambert v. Tesla Inc. et al., case number RG-
18 17854515, in the Superior Court for the State of California, Alameda County (March 26, 2017); Diaz et
19 al. v Tesla et al., case number 17-cv-06748-WHO in the Northern District of California, originally filed
20 as case number RG17878854, in the Superior Court of the State of California for the County of Alameda
21 (October 16, 2017). Mr. Berry, Mr. Cotton, and others filed similar claims in arbitration. Though
22 numerous individual cases have been filed, none have addressed the egregious, systemic racism and
23 racist harassment against Black/African-American workers and failure to prevent such on a class-wide
24 basis, as this suit will do.

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

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

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

12 50. Tesla’s Vice President of Production Peter Hochholdinger sent an email on March 11,
13 2017 to employees at the Tesla Factory about the “Production Work Environment,” stating, “I heard
14 some concerns about our work environment this week and I want to address them head on...Anyone
15 who is found in violation of [the harassment] policy will be subject to discipline up to and including
16 immediate termination.”

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

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

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

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

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

15 55. This behavior is in line with Tesla’s Chief Executive Officer’s belief of what “Doing the
16 right thing” entails when it comes to race harassment. On May 31, 2017, CEO Elon Musk wrote an
17 email to Tesla Factory employees stating:

18
19 ...Part of not being a huge jerk is considering how someone might feel who is part of [a]
20 historically less represented group...Sometimes these things happen unintentionally, in
21 which case you should apologize. In fairness, if someone is a jerk to you, but sincerely
22 apologizes, it is important to be thick-skinned and accept that apology.

23 56. In light of CEO Musk’s message to employees that racist epithets can be directed
24 “unintentionally” and that it is “important to be thick-skinned,” it is not surprising that the Tesla Factory
25 has become a hotbed for racist behavior.

26 **VI. CLASS ALLEGATIONS**

27 **A. Class Definition**

28 57. Plaintiffs bring this action pursuant to California Code of Civil Procedure § 382 on behalf
of themselves and on behalf of a class of Black and/or African-Americans who were employed on the

1 production floor at the Tesla Factory at any time from November 9, 2016 to the final disposition of this
2 action (“Class Members”), who were not subject to an arbitration agreement for all relief sought for the
3 entire period of their employment at Tesla.

4 58. Plaintiffs (or one or more of them) bring this action on behalf of the following subclasses:

- 5 a. as to Plaintiffs Vaughn and McCaleb, on behalf of those who have not signed a Tesla
6 arbitration agreement or an arbitration agreement with a staffing agency before or
7 after starting work at the Tesla factory;
- 8 b. as to all Plaintiffs, as to those who signed a Tesla arbitration agreement after starting
9 work at the Tesla factory, but previously worked on the production floor at the
10 factory without an arbitration agreement, with respect to the time periods worked
11 without an arbitration agreement;
- 12 c. as to all Plaintiffs, seeking injunctive relief for current and future employees, noting
13 that injunctive relief claims may be brought in court even under Tesla’s arbitration
14 agreement; and
- 15 d. seeking a “public injunction,” primarily for the benefit of the general public, which,
16 as described in *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, 961, 965, cannot be
17 waived in pre-dispute arbitration agreements as a matter of California public policy.
18 (*McGill*, 2 Cal. 5th at 961-66.) See also *Blair v. Rent-A-Center, Inc.* (9th Cir. 2019)
19 928 F.3d 819. It is a matter of public concern that Tesla, which was the fifth-most
20 valuable company in America in 2021, and one of Alameda County’s biggest
21 employers, flagrantly abuses its Black/African-American workers, flouting FEHA,
22 setting a horrific example for other employers and precluding countless
23 Black/African-American workers from pursuing careers in what might otherwise be a
24 desirable place to work.

25
26 59. This action is brought, and may properly be maintained, as a class action under § 382
27 because there is a well-defined community of interest in the litigation, and the proposed class is easily
28 ascertainable.

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

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

5 **C. Community of Interest**

6 61. There is a well-defined community of interest, because common questions of law and fact
7 exist as to all members of the Class and predominate over any questions solely affecting individual
8 members of the Class.

9 62. The common questions of law include, *inter alia*: (a) whether permitting pervasive use of
10 the terms “N****r” and “N***a” and other racially-derogatory terms and racist treatment and images on
11 the production floor constitutes unlawful harassment under FEHA; (b) whether Defendants engaged in a
12 pattern or practice of unlawful, systemic race harassment of its Black and/or African-American
13 employees; (c) whether Defendants are liable for a pattern or practice of violating FEHA by failing to
14 stop and prevent unlawful conduct - specifically, the prolific use of the terms “N****r” and “N***a” on
15 the production floor and associated race harassment against Blacks or African-Americans; and (d) a
16 determination of the proper standards for proving a pattern and/or practice of discrimination by
17 Defendants against the African-American employees on the production floor at the Tesla Factory. As to
18 those who worked at Tesla through staffing agencies, like Plaintiffs, another common question of law is
19 whether Tesla is a FEHA employer or joint employer with those staffing agencies.

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

12 **D. Typicality of Claims and Relief Sought**

13 64. The claims of Plaintiffs Vaughn, Chatman, McCaleb, Hendrix, and Parker are typical of
14 the claims of the proposed class and subclasses. The relief sought by the Plaintiffs for race
15 discrimination and harassment complained of herein is also typical of the relief sought on behalf of the
16 proposed class.

17 65. Plaintiffs are, like the members of the proposed class and subclasses, Black and/or
18 African-American and worked on the production floor at the Tesla Factory during the Class Period, and
19 were not subject to arbitration agreements for all or part of their time at Tesla.

20 66. Plaintiffs and members of the class have complained about race harassment, including by
21 informal and formal complaints to supervisors and managers up to and including Elon Musk, Chief
22 Executive Officer of Tesla. Defendants' investigations into these complaints have been inadequate, and
23 Plaintiffs and Class Members have been injured by Defendants' failure to take adequate remedial
24 measures to correct this pattern or practice of race discrimination.

25 67. Defendants failed to discipline its supervisors, managers and production employees
26 adequately when they violated the anti-discrimination laws, which has affected Plaintiffs and the Class
27 Members in similar ways.
28

1 68. Consequently, the claims alleged by the Plaintiffs are typical of the claims of the class.
2 Plaintiffs have worked at the Tesla Factory during the Class Period, during times they were not subject
3 to arbitration agreements, and have been subjected to the discriminatory policies or practices alleged
4 herein. The relief sought by the Plaintiffs for race discrimination and harassment is also typical of the
5 relief which is sought on behalf of the proposed class.

6 **E. Adequacy of Representation**

7 69. Plaintiffs' interests are co-extensive with those of the members of the proposed class and
8 subclasses they seek to represent, and Plaintiffs will fairly and adequately represent and protect the
9 interests of the class and subclasses they seek to represent, with no interests that conflict with those of
10 the Class Members. Plaintiffs seek to remedy Defendants' discriminatory employment policies,
11 practices and/or procedures so that Blacks and/or African-Americans working at the Tesla Factory will
12 not be subjected to a hostile environment. Plaintiffs are willing and able to represent the proposed class
13 fairly and vigorously, and have retained counsel experienced in class and race discrimination litigation.
14

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

16 70. Certification of a class and/or subclasses of Black and/or African-American employees
17 similarly situated to Plaintiffs is the most efficient and economical means of resolving the questions of
18 law and fact which are common to the claims of Plaintiff and the proposed class and subclasses. The
19 individual claims of Plaintiffs require the resolution of the common question of whether Defendants
20 engaged in a systemic pattern and/or practice of race discrimination and harassment and failing to
21 prevent such against Black and/or African-American employees not subject to arbitration. Plaintiffs seek
22 remedies to eliminate the adverse effects of such discrimination and harassment in their own lives,
23 careers and working conditions, and in the lives, careers and working conditions of the proposed Class
24 Members, and to prevent continued race discrimination and harassment in the future. Plaintiffs have
25 standing to seek such relief because of the adverse effect that such discrimination and harassment has
26 had on them individually and on Black and/or African-American employees at the Tesla Factory in
27 general. To gain such relief for themselves, as well as for the proposed Class Members, Plaintiffs will
28 first establish the existence of systemic race discrimination and harassment, pervasive use of the terms

1 “N****r” and “N****a” and other racially-derogatory terms, and racist images and treatment on the
2 production floor, and a failure to take immediate and appropriate corrective action in response, or to
3 prevent its frequent recurrence, as the premise for the relief they seek. Without class certification, the
4 same evidence and issues would be subject to re-litigation in a multitude of individual lawsuits without
5 ever addressing the systemic racism that infects Tesla’s Fremont Factory. Certification of the proposed
6 class and subclasses of Blacks and/or African-Americans who have been affected by these common
7 questions of law and fact is the most efficient and judicious means of presenting the evidence and
8 arguments necessary to resolve such questions for Plaintiffs, the proposed class and subclasses, and
9 Defendants. Additionally, individual employees may lack the financial resources to vigorously prosecute
10 separate lawsuits in court against large corporate defendants, and fear retaliation and blackballing in
11 their industry.

12
13 **G. Nature of Notice to the Proposed Class**

14 71. Plaintiffs intend to send notice to all Class Members to the extent required by California
15 Code of Civil Procedure § 382. Plaintiffs are informed and believe that Tesla’s records and/or those of
16 staffing agencies contain a last known address, email address, and/or phone number for Class Members.
17 Plaintiff contemplates that individual notice be given to Class Members at such last known address by
18 first-class mail, email, and text, informing them of the following:

- 19 1. The pendency of the class action, and the issues common to the class;
- 20 2. The nature of the action;
- 21 3. Their right to “opt out” of the action within a given time, in which event they will not
22 be bound by a decision rendered in the class action;
- 23 4. Their right, if they do not “opt out,” to be represented by their own counsel and enter
24 an appearance in the case; otherwise, they will be represented by Plaintiffs and their
25 counsel;
- 26 5. Which claims are covered by the class action, and examples of claims not covered by
27 the class action (*e.g.*, individual wrongful termination claims);
- 28 6. The extent to which arbitration agreements may limit the scope of their claims to be

1 litigated in the class action; and

2 7. Their right, if they do not “opt out,” to share in any recovery in favor of the class, and
3 conversely to be bound by any judgment on the common issues, adverse to the class.

4 **VII. CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

6 **Race-Based Discrimination in Violation of FEHA**
7 **California Government Code § 12940, et seq.)**

8 **(Against All Defendants; On Behalf of Plaintiffs and the Class and Subclasses)**

9 72. Plaintiffs, on behalf of themselves and the proposed class and subclasses, allege and
10 incorporate by reference the allegations in the preceding paragraphs.

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

14 74. Plaintiffs and the Class Members are Black and/or African-American and are thus
15 members of a protected class.

16 75. FEHA defines “employer” broadly to encompass “any person regularly employing five or
17 more persons, or any person acting as an agent of an employer, directly or indirectly.” California
18 Government Code § 12926(d). Here, all Defendants were employers of Plaintiff and the Class Members
19 as defined by FEHA because they regularly employed five or more persons. Furthermore, due to
20 Defendant Tesla’s ownership of the facility, its day-to-day managerial role in the facility, its right to
21 hire, fire and discipline the employees, and its control of all terms and conditions of Plaintiff and Class
22 Members’ employment, Defendant Tesla is Plaintiff and Class Members’ FEHA employer, or
23 alternatively a joint employer, which provides employment pursuant to contract. *See Vernon v. State*
24 (2004) 116 Cal.App.4th 114, 124.

25 76. As set forth above, Defendants discriminated against Plaintiffs and the Class Members
26 because of their race. Defendants engaged in illegal, intentional discrimination on the basis of race, by
27 creating a hostile work environment based on race. Plaintiffs have regularly complained to Defendants
28 regarding discrimination and harassment, but Defendants allowed the discrimination and harassment to

1 continue.

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

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

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

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

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

21
22 **SECOND CAUSE OF ACTION**
23 **Race-Based Harassment in Violation of FEHA**
24 **(California Government Code § 12940, *et seq.*)**
25 **(Against All Defendants; On Behalf Plaintiffs and the Class and Subclasses)**

26 82. Plaintiffs, on behalf of themselves and the proposed class and subclasses, allege and
27 incorporate by reference the allegations in the preceding paragraphs.

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

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

3 85. FEHA defines “employer” broadly to encompass “any person regularly employing five or
4 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 Plaintiffs and the Class
6 Members as defined by FEHA because they regularly employed five or more persons. Furthermore, due
7 to 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 Plaintiffs and Class
9 Members’ employment, Defendant Tesla is the Plaintiffs’ 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 86. Defendants created a hostile work environment based on race with respect to
13 Black/African-American employees. The harassment Plaintiffs and the Class Members experienced
14 while employed by Defendants was sufficiently severe or pervasive to alter the terms and conditions of
15 Plaintiffs and the Class Members’ work environment and was thus unlawful under FEHA.

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

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

25 89. Defendants’ actions were ratified by managing agents, and were willful, malicious,
26 fraudulent, and oppressive, and were committed with wrongful intent to harm Plaintiff and the Class
27 Members in conscious disregard of their rights. Plaintiff and the Class Members are therefore entitled to
28

1 recover punitive damages from Defendants in an amount according to proof at trial.

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

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

8 **THIRD CAUSE OF ACTION**

9 **Failure to Prevent Race-Based Discrimination and Harassment in Violation of FEHA**
10 **(California Government Code § 12940(k))**
11 **(Against All Defendants; On Behalf of Plaintiffs and the Class and Subclasses)**

12 92. Plaintiffs, on behalf of themselves and the proposed class and subclasses, allege and
13 incorporate by reference the allegations in the preceding paragraphs.

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

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

19 95. FEHA defines "employer" broadly to encompass "any person regularly employing five or
20 more persons, or any person acting as an agent of an employer, directly or indirectly." California
21 Government Code § 12926(d). Here, all Defendants were employers of the Plaintiffs and the Class
22 Members as defined by FEHA because they regularly employed five or more persons. Furthermore, due
23 to Defendant Tesla's ownership of the facility, its day-to-day managerial role in the facility, its right to
24 hire, fire and discipline the employees, and its control of all terms and conditions of Plaintiffs' and Class
25 Members' employment, Defendant Tesla is Plaintiffs' and Class Members' FEHA employer, or
26 alternatively a joint employer, which provides employment pursuant to contract. *See Vernon v. State*
27 (2004) 116 Cal.App.4th 114, 124.

28 96. Defendants failed to provide Plaintiffs and the Class Members with protections required

1 under California Government Code § 12940(k) by not taking immediate and sufficient action to correct
2 the discriminatory and harassing conduct directed at Black/African-American employees.

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

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

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

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

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

22 **VIII. PRAYER FOR RELIEF**

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

- 25 A. Certification of the Class as a class action, and of the class and subclasses, under Code of Civil
26 Procedure § 382, and designation of Plaintiffs as representatives of the Class and their counsel
27 of record as Class Counsel;
28

- 1 B. All damages which the Plaintiffs and the class and subclasses have sustained as a result of
2 Defendants' conduct, including general damages for pain, suffering, emotional distress, and
3 economic damages caused by the discriminatory practices of Defendants;
- 4 C. For an award of exemplary and punitive damages in an amount commensurate with
5 Defendants' ability to pay and to deter future conduct;
- 6 D. A preliminary and permanent injunction, and a public injunction, against Defendants and its
7 directors, officers, owners, agents, successors, employees and representatives, and any and all
8 persons acting in concert with them, from maintaining a hostile work environment on the basis
9 of race, and failing to prevent such an environment. Such relief at minimum should include
10 implementation of effective policies to prevent and correct race harassment, implementation
11 of mandatory training regarding harassment for all of Defendants' managerial and non-
12 managerial employees, and a public declaration that Tesla's widely-known racist practices
13 contravene California law and will not continue and will not be tolerated.
- 14 E. Declaratory relief against Defendants finding their employment policies, practices and/or
15 procedures challenged herein are illegal and in violation of the rights of Plaintiff and members
16 of the Class under California Government Code § 12940;
- 17 F. For an award of reasonable attorneys' fees, expert witness fees, litigation expenses and costs
18 incurred in the filing and prosecution of this action, pursuant to California Government Code
19 § 12965(b);
- 20 G. For pre-judgment and post-judgment interest, as provided by law;
- 21 H. For such other and further relief, in law or in equity, as this Court may deem proper and just.

22
23 **IX. DEMAND FOR JURY TRIAL**

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

26 DATED: June 20, 2024

27 By: /s/ Bryan J. Schwartz
28 BRYAN SCHWARTZ LAW, P.C.
CALIFORNIA CIVIL RIGHTS LAW GROUP
NICHOLS KASTER, LLP
THE DERUBERTIS LAW FIRM

Attorneys for Plaintiffs and the Putative Class

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