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12 *Attorneys for Plaintiff Marcus Vaughn
13 and the Putative Class*

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

17 MARCUS VAUGHN, individually and on
18 behalf of all others similarly situated,

19 Plaintiffs,

20 vs.

21
22 TESLA, INC. doing business in California as
23 TESLA MOTORS, INC.; and DOES 1
THROUGH 50, INCLUSIVE,

24 Defendants.

Case No.: RG17882082

CLASS ACTION

COMPLAINT FOR DAMAGES

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

**ENDORSED
FILED
ALAMEDA COUNTY**

NOV 13 2017

CLERK OF THE SUPERIOR COURT
By Jamie Thomas
JAMIE THOMAS, Deputy

1 **I. NATURE OF THIS ACTION**

2 1. Plaintiff Marcus Vaughn brings this class action pursuant to Code of Civil Procedure
3 § 382, against Defendants Tesla, Inc. doing business in California as Tesla Motors, Inc. (“Tesla”); and
4 Does 1 through 50, inclusive (collectively, “Defendants”), alleging that Defendants have created an
5 intimidating, hostile, and offensive work environment for African-American employees that includes a
6 routine use of the terms “Nigger” and “Nigga” at Tesla’s production facility in Fremont, California
7 (“Tesla Factory”), by failing to take necessary steps to prevent race-based harassment and failing to
8 take appropriate corrective action once such race-based harassment has occurred, in violation of the
9 Fair Employment and Housing Act (“FEHA”), California Government Code § 12940, *et seq.*

10 2. Plaintiff Vaughn seeks to represent a class comprised of African-Americans who are
11 current and former employees working on the production floor at the Tesla Factory, at any time from
12 November 9, 2016 to the final disposition of this action (“Class Period”). These employees share a
13 community of interest and are similarly situated under California Code of Civil Procedure § 382.

14 3. During the Class Period, Plaintiff and the putative Class Members suffered severe and
15 pervasive harassment at the Tesla Factory because they are African-American. Despite the repeated
16 attempts of Plaintiff and numerous Class Members to curtail the harassment by, *inter alia*, reporting
17 repeated instances of race-based harassment to supervisors, Human Resources and Chief Executive
18 Officer Elon Musk (including prior lawsuits based upon this conduct), Defendants have failed to take
19 appropriate corrective action and permit the hostile work environment for African-American employees
20 to persist. Plaintiff Vaughn is seeking, on behalf of himself, and the Class he seeks to represent,
21 declaratory and injunctive relief; back pay; front pay; compensatory and punitive damages; and
22 attorneys’ fees, costs and expenses to redress Tesla’s pervasive, discriminatory employment policies,
23 practices and/or procedures.

24 **II. JURISDICTION AND VENUE**

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

27 5. Venue is proper in Alameda County, California, pursuant to California Government

1 Code § 12965(b), because the unlawful practices and acts alleged herein were committed within this
2 county.

3 **III. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

4 6. On November 9, 2017, Plaintiff Vaughn timely filed a charge of discrimination with the
5 California Department of Fair Employment and Housing (“DFEH”). The DFEH issued a Right-to-Sue
6 Notice on November 9, 2017. Accordingly, Plaintiff has timely exhausted his administrative remedies.
7 A true-and-correct copy of Plaintiff’s Right-to-Sue Notice is attached to this complaint as Exhibit A.

8 **IV. PARTIES**

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

13 8. Defendant Tesla, Inc., d.b.a. Tesla Motors, Inc. is a publicly-traded Delaware
14 corporation with its principal place of business in Palo Alto, California. Tesla designs, manufactures,
15 and sells electric vehicles. One of Tesla’s vehicle manufacturing facilities, also known as the “Tesla
16 Factory,” is located at 45500 Fremont Boulevard in Fremont, California. The harassing conduct at issue
17 in this case took place at the Tesla Factory. Due to Tesla’s ownership of the facility, its day-to-day
18 managerial role in the facility, its right to hire, fire and discipline the employees, and its control of all
19 terms and conditions of Plaintiff’s employment, Tesla is Plaintiff’s FEHA employer, or alternatively a
20 joint employer, which provides employment pursuant to contract.

21 9. In addition to Defendant Tesla, Plaintiff sues fictitious defendants Does 1-50, inclusive,
22 because their names, capacities, status, or facts showing them to be liable are not presently known.
23 Plaintiff is informed and believes, and thereon alleges, that each of the fictitiously named Defendants
24 is responsible in some manner for the occurrences herein alleged, and such Defendants caused
25 Plaintiff’s damages as herein alleged. Plaintiff will amend this complaint to show their true names and
26 capacities, together with appropriate charging language, when such information has been ascertained.

27 10. Plaintiff is informed, believes, and thereon alleges that each of the Defendants herein
28

1 was at all times relevant to this action the agent, employee, representative partner, and/or joint venture
2 of the remaining Defendants and was acting within the course and scope of the relationship. Plaintiff is
3 further informed, believes, and thereon alleges that each of the Defendants herein gave consent to,
4 ratified, and authorized the acts alleged herein to the remaining Defendants.

5 **V. FACTUAL ALLEGATIONS**

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

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

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

16 **Plaintiff Marcus Vaughn's Experience at the Tesla Factory**

17 13. Plaintiff Marcus Vaughn began working at the Tesla Factory on April 23, 2017 on the
18 production floor as a General Assembly Associate. Shortly thereafter, employees and supervisors began
19 targeting Mr. Vaughn for harassment on the basis of his race. This harassment included the use of the
20 terms "Nigger" and "Nigga" on a regular basis. Mr. Vaughn also observed other African-American
21 employees, including African-American co-worker Timothy Cotton, being called "Nigger" and
22 "Nigga."

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

27 ...Things really got worse for Tim [Cotton] when we had safety day and my AM T.O
28 and my supervisor Tim [last name unknown] was talking about Harassment and if

1 anything is happening that you don't like speak up. So Tim [Cotton] spoke up and said
2 he didn't like when associates Say Nigga on the line it made him and a lot of us on the
3 line feel uncomfortable. Since that day there has been so much back lash. From him
getting hit in the back of the head with the chair, to him getting called bipolar, sensitive,
people say nigga around him just to get a reaction out of him...

4 ...All I want to happen is for things to really change...if one person doesn't care about
5 the quality of the car and just cares about speed, or is making people feel uncomfortable
6 to the point where they don't want to come to work, or people calling people names,
7 saying racial slurs, making fun of people then they shouldn't be at Tesla...I just hope
8 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!!!!

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

11 16. Instead, Plaintiff Vaughn was terminated on October 31, 2017 for "not having a positive
12 attitude."

13 **Other African-American Employees Shared Mr. Vaughn's Experience**

14 17. Other African-American production floor employees have experienced the same pattern
15 and practice of race discrimination as Mr. Vaughn. Melvin Berry, who worked for Defendants from
16 2015 through October 22, 2016, heard supervisors use the terms "Nigger" and "Nigga" on a regular
17 basis – it was part of their everyday conversation, and leads and supervisors directed the term toward
18 him when criticizing his work. Four other employees, DeWitt Lambert, Owen Diaz, Demetric Di-az
19 and Lamar Patterson, filed lawsuits against Tesla this year alleging race harassment, including
20 widespread use of the terms "Nigger" and "Nigga" throughout the Tesla Factory. *See Lambert*
21 *v. Tesla Inc. et al.*, case number RG-17854515, in the Superior Court for the State of
22 California, Alameda County (March 26, 2017); *Diaz et al. v Tesla et al.*, case number RG17878854, in
the Superior Court of the State of California for the County of Alameda (October 16, 2017).

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

25 19. As a result, while on the production lines, Class Members constantly have to worry about
26 being called "Nigger" and "Nigga" by their supervisors and co-workers.

1 20. African-American employees, including Plaintiff and other Class Members, have
2 complained to their supervisors, Human Resources and upper management about the racist behavior in
3 the workplace, both verbally and in writing. As early as fall 2015, Mr. Lambert complained to his
4 Supervisor Charles Lambert about the frequent use of the N-words, and a year later showed Human
5 Resources Business Partner Rose Sanson hateful, violent and racist videos created on his phone by an
6 employee and a supervisor at the Tesla Factory. *See Lambert v. Tesla Inc. et al.*, case number RG-
7 17854515, in the Superior Court for the State of California, Alameda County (March 26, 2017).
8 However, Tesla took no action, either to investigate or reprimand the harassers.¹ Similarly, Mr. Berry,
9 over a year ago, complained of racial harassment and the use of the terms “Nigger” and “Nigga” to
10 Tesla’s Human Resources Business Partner Maggie Crosby, and subsequently to Ms. Crosby’s
11 supervisor. (*See Exhibit B at ¶ 8.*) However, no action was taken against the harassers, and the
12 harassment continued.

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

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

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

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

8 24. Plaintiff Vaughn is informed and believes, and thereupon alleges that Defendants
9 maintain a pattern or practice of ignoring and/or failing to act promptly to investigate harassment
10 complaints; conduct inadequate investigations; maintain inadequate anti-harassment policies and
11 practices; fail to adequately train leads, supervisors and managers about their policies and procedures,
12 and about how to prevent harassment from occurring; fail to implement an adequate complaint
13 mechanism for receiving and addressing complaints of harassment; and refuse to discipline identified
14 harassers, allowing employees against whom harassment complaints have been made to continue
working at the Tesla Factory, earning money, unaffected by the complaint.

15 25. Plaintiff Vaughn is further informed and believes, and thereupon alleges Defendants
16 have a pattern or practice of permitting employees who have engaged in harassment to remain with the
17 company, and rehiring known harassers to the company, even with the foreseeable consequence that
18 they racially harass additional African-American employees day-in and day-out.

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

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

1 27. In light of CEO Musk's message to employees that racist epithets can be directed
2 "unintentionally" and that it is "important to be thick-skinned," it is not surprising that the Tesla Factory
3 has become a hotbed for racist behavior.

4 **VI. CLASS ALLEGATIONS**

5 **A. Class Definition**

6 28. Plaintiff Vaughn brings this action pursuant to California Code of Civil Procedure § 382
7 on behalf of himself and on behalf of a class of all African-Americans who were employed on the
8 production floor at the Tesla Factory at any time from November 9, 2016 to the final disposition of this
9 action.

10 29. This action is brought, and may properly be maintained, as a class action under § 382
11 because there is a well-defined community of interest in the litigation, and the proposed class is easily
12 ascertainable.

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

14 30. The proposed Class Members are sufficiently numerous that joinder of all members is
15 impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed class
16 consists of more than 100 African-Americans.

17 **C. Community of Interest**

18 31. There is a well-defined community of interest, because common questions of law and
19 fact exist as to all members of the Class and predominate over any questions solely affecting individual
20 members of the Class.

21 32. The common questions of law include, *inter alia*: (a) whether permitting pervasive use
22 of the terms "nigger" and "nigga" on the production floor constitutes unlawful harassment under FEHA;
23 (b) whether Defendants engaged in a pattern or practice of unlawful, systemic race harassment of its
24 African American employees; (c) whether Defendants are liable for a pattern or practice of violating
25 FEHA by failing to stop and prevent unlawful conduct - specifically, the prolific use of the terms
26 "nigger" and "nigga" on the production floor and associated race harassment against African-
27 Americans; and (d) a determination of the proper standards for proving a pattern and/or practice of

1 discrimination by Defendants against the African-American employees on the production floor at the
2 Tesla Factory.

3 33. The common questions of fact would include, *inter alia*: whether, through its policies,
4 practices and/or procedures: (a) Defendants created and sustained a hostile work environment among
5 its African-American employees at the Tesla Factory by permitting and failing to prevent pervasive use
6 of the terms “nigger” and “nigga” on the production floor; (b) Human Resources personnel and/or
7 management were aware of the race harassment; (c) Defendants engaged in a pattern or practice of
8 failing to take prompt and effective action to remedy the pervasive race harassment of African American
9 employees, including failing to: conduct prompt and adequate investigations; maintain adequate anti-
10 harassment policies, practices and training; implement adequate complaint mechanisms for receiving
11 and addressing complaints of harassment; and discipline employees; and (d) whether injunctive relief
12 and punitive damages are warranted.

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

14 34. The claims of Plaintiff Vaughn are typical of the claims of the proposed class. The relief
15 sought by the Plaintiff for race discrimination complained of herein is also typical of the relief sought
16 on behalf of the proposed class.

17 35. Plaintiff is, like the members of the proposed class, African-American and worked on
18 the production floor at the Tesla Factory during the Class Period.

19 36. Plaintiff and members of the class have complained about race harassment, including by
20 informal and formal complaints to supervisors and managers up to and including Elon Musk, Chief
21 Executive Officer of Tesla. Defendants’ investigations into these complaints have been inadequate, and
22 Plaintiff and Class Members have been affected in the same ways by Defendants’ failure to take
23 adequate remedial measures to correct this pattern or practice of race discrimination.

24 37. Defendants failed to adequately discipline its supervisors, managers and production
25 employees when they violate the anti-discrimination laws, which has affected Plaintiff and the Class
26 Members in similar ways.

27 38. Consequently, the claims alleged by the Plaintiff are typical of the claims of the class.

1 Plaintiff has worked at the Tesla Factory during the Class Period and has been subjected to the
2 discriminatory policies or practices alleged herein. The relief sought by the Plaintiff for race
3 discrimination is also typical of the relief which is sought on behalf of the proposed class.

4 **E. Adequacy of Representation**

5 39. Plaintiff Vaughn’s interests are co-extensive with those of the members of the proposed
6 class he seeks to represent, and Plaintiff will fairly and adequately represent and protect the interests of
7 the class, with no interests that conflict with those of the Class Members. Plaintiff seeks to remedy
8 Defendants’ discriminatory employment policies, practices and/or procedures so that African-
9 Americans working at the Tesla Factory will not be subjected to a hostile environment. Plaintiff is
10 willing and able to represent the proposed class fairly and vigorously, and has retained counsel
11 experienced in class and race discrimination litigation.

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

13 40. Certification of a class of African-American employees similarly situated to Plaintiff is
14 the most efficient and economical means of resolving the questions of law and fact which are common
15 to the claims of Plaintiff and the proposed class. The individual claims of Plaintiff require the resolution
16 of the common question of whether Defendants engaged in a systemic pattern and/or practice of race
17 discrimination against African-American employees. Plaintiff seeks remedies to eliminate the adverse
18 effects of such discrimination in his own life, career and working conditions, and in the life, career and
19 working conditions of the proposed Class Members, and to prevent continued race discrimination in the
20 future. Plaintiff has standing to seek such relief because of the adverse effect that such discrimination
21 has had on him individually and on African-American employees at the Tesla Factory in general. To
22 gain such relief for himself, as well as for the proposed Class Members, Plaintiff will first establish the
23 existence of systemic race discrimination, pervasive use of the terms “nigger” and “nigga” on the
24 production floor, and a failure to take immediate and appropriate corrective action in response, as the
25 premise for the relief he seeks. Without class certification, the same evidence and issues would be
26 subject to re-litigation in a multitude of individual lawsuits. Certification of the proposed class of
27 African-Americans who have been affected by these common questions of law and fact is the most

1 efficient and judicious means of presenting the evidence and arguments necessary to resolve such
2 questions for Plaintiff, the proposed class and Defendants. Additionally, individual employees may lack
3 the financial resources to vigorously prosecute separate lawsuits in court against large corporate
4 defendants, and fear retaliation and blackballing in their industry.

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

6 41. Plaintiffs intend to send notice to all Class Members to the extent required by California
7 Code of Civil Procedure § 382. Plaintiffs are informed and believe that Tesla’s records contain a last
8 known address for Class Members. Plaintiff contemplates that individual notice be given to Class
9 Members at such last known address by first class mail, informing them of the following:

- 10 1. The pendency of the class action, and the issues common to the class;
- 11 2. The nature of the action;
- 12 3. Their right to “opt out” of the action within a given time, in which event they will
13 not be bound by a decision rendered in the class action;
- 14 4. Their right, if they do not “opt out,” to be represented by their own counsel and enter
15 an appearance in the case; otherwise, they will be represented by Plaintiffs and their
16 counsel; and
- 17 5. Their right, if they do not “opt out,” to share in any recovery in favor of the class,
18 and conversely to be bound by any judgment on the common issues, adverse to the
19 class.

20 **VII. CAUSES OF ACTION**

21 **FIRST CAUSE OF ACTION**

22 **Race-Based Discrimination in Violation of FEHA**

23 **(California Government Code § 12940, *et seq.*)**

24 **(Against All Defendants; On Behalf of Plaintiff Vaughn and the Class)**

25 42. Plaintiff Vaughn, on behalf of himself and the proposed class, alleges and incorporates
26 by reference the allegations in the preceding paragraphs.

27 43. In relevant part, California Government Code section 12940(a) provides that it shall be
28 unlawful for an employer to discriminate against an employee in the terms and conditions of his

1 employment because of his race.

2 44. Plaintiff Vaughn and the Class Members are African-American and are thus members
3 of a protected class.

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

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

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

21 48. By reason of the conduct of Defendants, Plaintiff has necessarily retained attorneys to
22 prosecute the action on behalf of himself and the class. Pursuant to California Government Code
23 § 12965(b), as a result of Defendants’ discrimination, Plaintiff and the class are entitled to recover
24 damages for economic harm and emotional distress, attorneys’ fees, costs, and expert witness fees.
25 Plaintiff and the class are also entitled to attorneys’ fees pursuant to California Code of Civil Procedure
26 § 1021.5.

27 49. Defendants’ actions were ratified by managing agents, and were willful, malicious,
28

1 fraudulent, and oppressive, and were committed with wrongful intent to harm Plaintiff and the Class
2 Members in conscious disregard of their rights. Plaintiff and the Class Members are therefore entitled
3 to recover punitive damages from Defendants in an amount according to proof at trial.

4 50. Plaintiff timely exhausted administrative remedies.

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6 **SECOND CAUSE OF ACTION**
7 **Race-Based Harassment in Violation of FEHA**
8 **(California Government Code § 12940, *et seq.*)**
9 **(Against All Defendants; On Behalf of Plaintiff Vaughn and the Class)**

10 51. Plaintiff, on behalf of himself and the proposed class, alleges and incorporates by
11 reference the allegations in the preceding paragraphs.

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

14 53. Plaintiff and the Class Members are African-American and are thus members of a
15 protected class.

16 54. FEHA defines “employer” broadly to encompass “any person regularly employing five
17 or 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 55. Defendants created a hostile work environment based on race with respect to African-
26 American employees. The harassment Plaintiff and the Class Members experienced while employed by
27 Defendants was sufficiently severe or pervasive to alter the terms and conditions of Plaintiff and the
28 Class Members’ work environment and was thus unlawful under FEHA.

1 Government Code § 12926(d). Here, all Defendants were employers of Plaintiff and the Class Members
2 as defined by FEHA because they regularly employed five or more persons. Furthermore, due to
3 Defendant Tesla’s ownership of the facility, its day-to-day managerial role in the facility, its right to
4 hire, fire and discipline the employees, and its control of all terms and conditions of Plaintiff and Class
5 Members’ employment, Defendant Tesla is Plaintiff and Class Members’ FEHA employer, or
6 alternatively a joint employer, which provides employment pursuant to contract. *See Vernon v. State*
7 (2004) 116 Cal.App.4th 114, 124.

8 64. Defendants failed to provide Plaintiff and the Class Members with protections required
9 under California Government Code § 12940(k) by not taking immediate and sufficient action to correct
10 the discriminatory and harassing conduct directed at African-American employees.

11 65. As a direct, legal and proximate result of the discrimination, Plaintiff and the proposed
12 Class Members have suffered damages, including emotional distress, lost wages and other economic
13 damages, in an amount to be proven at trial.

14 66. By reason of the conduct of Defendants, Plaintiff has necessarily retained attorneys to
15 prosecute the action on behalf of himself and the Class. Pursuant to California Government Code
16 § 12965(b), as a result of Defendants’ discrimination and harassment, Plaintiff and the Class are entitled
17 to recover damages for economic harm and emotional distress, attorneys’ fees, costs, and expert witness
18 fees. Plaintiff and the Class are also entitled to attorneys’ fees pursuant to California Code of Civil
19 Procedure § 1021.5.

20 67. Defendants’ actions were ratified by managing agents and were willful, malicious,
21 fraudulent, and oppressive, and were committed with wrongful intent to harm Plaintiff and the Class
22 Members in conscious disregard of their rights. Plaintiff and the Class Members are therefore entitled
23 to recover punitive damages from Defendants in an amount according to proof at trial.

24 68. Plaintiff timely exhausted administrative remedies.

25 **VIII. PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff, on behalf of himself and the proposed class, requests judgment and the
27 following specific relief against Defendants:

- 1 A. Certification of the Class as a class action under Code of Civil Procedure § 382, and
2 designation of Plaintiff Marcus Vaughn as representative of the Class and his counsel of
3 record as Class Counsel;
- 4 B. All damages which the Plaintiff and the Class have sustained as a result of Defendants’
5 conduct, including general damages for pain, suffering, emotional distress, and special
6 damages for lost compensation, including back, front pay and job benefits that they would
7 have received but for the discriminatory practices of Defendants;
- 8 C. For an award of exemplary and punitive damages in an amount commensurate with
9 Defendants’ ability to pay and to deter future conduct;
- 10 D. A preliminary and permanent injunction against Defendants and its directors, officers,
11 owners, agents, successors, employees and representatives, and any and all persons acting
12 in concert with them, from maintaining a hostile work environment on the basis of race.
13 Such relief at minimum should include implementation of effective policies to prevent and
14 correct race harassment, and implementation of mandatory training regarding harassment
15 for all of Defendants’ managerial and non-managerial employees.
- 16 E. Declaratory relief against Defendants finding their employment policies, practices and/or
17 procedures challenged herein are illegal and in violation of the rights of Plaintiff and
18 members of the Class under California Government Code § 12940;
- 19 F. For an award of reasonable attorneys’ fees, expert witness fees, litigation expenses and costs
20 incurred in the filing and prosecution of this action, pursuant to California Government Code
21 § 12965(b);
- 22 G. For pre-judgment and post-judgment interest, as provided by law;
- 23 H. For such other and further relief, in law or in equity, as this Court may deem proper and just.

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IX. DEMAND FOR JURY TRIAL

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

DATED: November 13, 2017

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

By:



Lawrence Organ (SBN 175503)
Bryan Schwartz (SBN 209903)
Navruz Avloni (SBN 279556)
Logan Starr (SBN 305598)
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



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Enclosures

cc: Balance Staffing Workforce LLC

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
5 **(Gov. Code, § 12900 et seq.)**

6 In the Matter of the Complaint of
7 **Marcus Vaughn, Complainant.**

DFEH No. 971821-322021

8
9 vs.

10 Tesla, Inc. DBA Tesla Motors, Inc.,
11 Respondent.
12 818 West 7th Street, Suite 930
13 Los Angeles, California 90017

14 Complainant alleges:

15 1. Respondent **Tesla, Inc. DBA Tesla Motors, Inc.** is a subject to suit under the
16 California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).
Complainant believes respondent is subject to the FEHA.

17 2. On or around **October 31, 2017**, complainant alleges that respondent took the
18 following adverse actions against complainant: **Discrimination, Harassment**
19 **Denied a work environment free of discrimination and/or retaliation,** .
20 Complainant believes respondent committed these actions because of their: **Color,**
Race, Other Failure to prevent harassment and discrimination.

21 3. Complainant **Marcus Vaughn** resides in the City of **Tracy**, State of **California**. If
22 complaint includes co-respondents please see below.

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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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