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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

ANTHONY DAVIS, as a private attorney
general and as an individual and on behalf
of all others similarly situated,

Plaintiffs,

vs.

TESLA, INC., a Delaware corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.:

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) VIOLATION OF LAB. CODE § 226(a);
(2) VIOLATION OF LAB. CODE § 227.3
(3) VIOLATION OF BUS. & PROF. CODE
§§ 17200 *ET SEQ.*; AND
(4) VIOLATION OF LAB. CODE §§ 2698 *ET
SEQ.*

DEMAND OVER \$25,000.00

FILED BY FAX

ALAMEDA COUNTY

August 18, 2020

CLERK OF
THE SUPERIOR COURT
By Cheryl Clark, Deputy

CASE NUMBER:

RG20071150

1 On behalf of himself and other similarly situated current and former employees of
2 Defendants, and as a proxy for the State of California, Plaintiff, Anthony Davis, submits this
3 Class and Representative Action Complaint against Defendant, Tesla, Inc., and Does 1 through
4 50 (collectively, “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic illegal employment
7 practices resulting in violations of the California Labor Code against individuals who worked for
8 Defendants. The Complaint seeks penalties, damages, and other relief for Defendants’ violations
9 of Labor Code sections 201, 202, 226(a), and 227.3.¹

10 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
11 intentionally and with deliberate indifference and conscious disregard to the rights of employees
12 by failing to provide accurate itemized wage statements and by not paying earned and unused
13 PTO wages at the end of their employments. Specifically, Plaintiff was paid on an hourly basis
14 and earned “FLSA Prem Adj” wages, which were paid based on an hourly rate and number of
15 hours worked. When such wages were paid, the wage statements do not identify the applicable
16 hourly rate or number of hours worked. In addition, Plaintiff and other employees earned PTO,
17 which could be used for vacations or any other reason. Upon the end of their employments, all
18 earned and unused PTO wages were not paid out to Plaintiff and other employees. For example,
19 Plaintiff still had approximately four hours of earned but unused PTO. Plaintiff was not paid his
20 PTO wages for such hours as part of his final paycheck, and he still has not been paid for such
21 wages. Defendants thus violate Sections 201, 202, 226(a), and 227.3, and the Unfair Competition
22 Law, codified at Business and Professions Code sections 17200 *et seq.* (the “UCL”).

23 3. Plaintiff is informed and believes that Defendants have engaged in, among other
24 things, a system of willful violations of the Labor Code by creating and maintaining policies,
25 practices, and customs that knowingly deny its employees the above stated rights and benefits.
26
27

28 ¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 4. The policies, practices, and customs of Defendants resulted in unjust enrichment
2 of Defendants and an unfair business advantage over businesses that routinely adhere to the
3 strictures of the Labor Code.

4 **JURISDICTION AND VENUE**

5 5. The Complaint seeks relief in excess of \$25,000.00. The Court has jurisdiction of
6 Defendants' violations of Sections 201, 202, 226(a), and 227.3, and the UCL.

7 6. Venue is proper. Defendants are located in Alameda County. Plaintiff worked for
8 Defendants in Fremont, California.

9 **PARTIES**

10 7. Plaintiff began working for Defendants in or about June of 2018. Until his
11 employment as a Production Associate ended in or about June of 2020, Plaintiff was paid on an
12 hourly basis as a non-exempt employee. During his employment, Plaintiff was provided wage
13 statements that show earnings for "FLSA Prem Adj" wages, which are paid based on an hourly
14 rate and number of hours worked, but fail to identify the applicable rates of pay and numbers of
15 hours worked for such earnings. Plaintiff also earned PTO, which could be used for vacations or
16 any other reason. Upon the end of his employment, Plaintiff still had approximately four hours of
17 earned but unused PTO but was not paid all of his earned and unused PTO wages. Plaintiff is a
18 victim of the policies, practices, and customs of Defendants complained of in this action in ways
19 that have deprived him of the rights guaranteed by the Labor Code and the UCL.

20 8. Plaintiff is informed and believes that Tesla, Inc., was and is a Delaware
21 corporation. Plaintiff is informed and believes that at all times herein mentioned Defendant and
22 Does 1 through 50, are and were corporations, business entities, individuals, or partnerships that
23 are and were licensed to do business and actually doing business in the State of California. Based
24 upon all the facts and circumstances incident to Defendants' business, Defendants are subject to
25 Sections 201, 202, 226(a), and 227.3, and the UCL.

26 9. Plaintiff does not know the true names or capacities of the defendants sued herein
27 as Does 1 through 50, whether individual, partner, or corporate, and for that reason, said
28 defendants are sued under such fictitious names. Plaintiff prays for leave to amend this

Complaint when the true names and capacities are known. Plaintiff is informed and believes that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused the illegal employment practices, wrongs, and injuries complained of herein.

10. At all times herein mentioned, each of said Defendants participated in the doing of the acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of the other Defendants, as well as the agents of all Defendants, and were acting within the course and scope of said agency and employment.

11. Plaintiff is informed and believes that at all times material hereto, each of said Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with, each of the other Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or omissions of the acting Defendants.

12. Plaintiff is informed and believes that at all times material hereto each of the Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

CLASS ACTION ALLEGATIONS

13. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class certification of the following classes (i) all current and former non-exempt employees of Defendants in the State of California since April 6, 2019, who were paid “FLSA Prem Adj” wages (the “Wage Statement Class”), and (ii) all employees of Defendants in the State of California who earned PTO and whose employment ended (voluntarily or involuntarily) at any time since April 6, 2016 (the “PTO Class”). The Wage Statement Class and PTO Class are collectively referred to as the “Class.”

14. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants’ records, including

1 payroll records. Plaintiff is informed and believes that Defendants violated Section 226(a) by
2 failing to provide accurate itemized wage statements to Plaintiff and other employees by failing
3 to identify the applicable rates of pay and numbers of hours worked for “FLSA Prem Adj”
4 wages, which are paid based on an hourly rate and number of hours worked. Plaintiff also is
5 informed and believes that Defendants violated Sections 201, 202, and- 227.3 by not paying
6 Plaintiff and other employees earned and unused PTO wages at the end of their employments.

7 **15. Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
8 steps to represent fairly and adequately the interests of the Class defined above. Plaintiff’s
9 attorneys are ready, willing, and able to fully and adequately represent Plaintiff and the Class.
10 Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in the past and
11 continue to litigate numerous wage-and-hour class actions currently pending in California state
12 and federal courts.

13 **16. Common Question of Law and Fact:** There are predominant common questions
14 of law and fact and a community of interest amongst the claims of Plaintiff and of the Class.
15 Plaintiff is informed and believes that Defendants uniformly administer a corporate policy and
16 practice of failing to provide accurate itemized wage statements to Plaintiff and other employees
17 by failing to identify the applicable rates of pay and numbers of hours worked for “FLSA Prem
18 Adj” wages, which are paid based on an hourly rate and number of hours worked in violation of
19 Section 226(a). Plaintiff also is informed and believes that Defendants uniformly administer a
20 corporate policy and practice of failing to pay Plaintiff and other employees earned and unused
21 PTO wages at the end of their employments in violation of Sections 201, 202, and 227.3.

22 **17. Typicality:** The claims of Plaintiff are typical of the claims of all members of the
23 Class in that Plaintiff suffered the alleged harms in a similar and typical manner as other
24 members of the Class suffered. As with other members of the Class, Plaintiff was paid on an
25 hourly basis and earned “FLSA Prem Adj” wages, which were paid based on an hourly rate and
26 number of hours worked. When such wages were paid, Plaintiff’s wage statements did not
27 identify the applicable hourly rate or number of hours worked. As with other members of the
28 Class, Plaintiff earned PTO, which could be used for vacations or any other reason. Upon the end

1 of his employment, all earned and unused PTO wages were not paid out to Plaintiff, who still
2 had approximately four hours of earned but unused PTO. Plaintiff was not paid his PTO wages
3 for such hours as part of his final paycheck, and he still has not been paid for such wages.

4 Plaintiff thus is a member of the Class and has suffered the alleged violations of the Labor Code.

5 18. The Labor Code is broadly remedial in nature. Its laws serve an important public
6 interest in establishing minimum working conditions and requirements in California. These labor
7 standards protect employees from onerous terms and conditions of employment or exploitation
8 by employers who have superior economic and bargaining power.

9 19. The nature of this action and the format of laws available to Plaintiff and
10 members of the Class make the class action format a particularly efficient and appropriate
11 procedure to redress the wrongs alleged herein. If each employee were required to file an
12 individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
13 advantage since they would be able to exploit and overwhelm the limited resources of each
14 individual plaintiff with their vastly superior financial and legal resources. Requiring each
15 member of the Class to pursue an individual remedy would also discourage the assertion of
16 lawful claims by employees who would be disinclined to file an action against their former or
17 current employer for real and justifiable fear of retaliation and permanent damage to their careers
18 at their current or subsequent employment.

19 20. The prosecution of separate actions by individual members of the Class, even if
20 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
21 to individual members of the Class that would establish potentially incompatible standards of
22 conduct for Defendants, or (b) adjudications with respect to individual members of the Class that
23 would, as a practical matter, be dispositive of, or substantially impair or impede the ability to
24 protect, the interests of other members of the Class not parties to the adjudications. Further, the
25 claims of the individual members of the Class are not sufficiently large to warrant vigorous
26 individual prosecution considering the concomitant costs and expenses.

27 21. Defendants' pattern, practice, and uniform administration of corporate policy in
28 violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern

1 will establish the rights of Plaintiff and the Class to recover unpaid wages, including interest
2 thereon, applicable penalties, reasonable attorneys' fees, and costs of suit, pursuant to Sections
3 201-203, 218.5, 226, 227.3, and 1194, applicable IWC Wage Orders, the UCL, and Code of Civil
4 Procedure section 1021.5.

5 22. This action is brought for the benefit of the Class, which is commonly entitled to a
6 specific fund with respect to the compensation illegally and unfairly retained by Defendants. The
7 Class is commonly entitled to restitution of those funds being improperly withheld by Defendant.

8 **FIRST CAUSE OF ACTION**

9 **Violation of Labor Code § 226(a)**

10 **(By Plaintiff and the Wage Statement Class Against All Defendants)**

11 23. The preceding paragraphs are re-alleged and incorporated by this reference.

12 24. Section 226(a) requires employers to provide itemized wage statements to its
13 employees that show accurate information, including without limitation, all applicable hourly
14 rates in effect during the pay period and the corresponding number of hours worked at each
15 hourly rate by the employee. Defendants fail to provide accurate itemized wage statements to
16 Plaintiff and the Class in violation of Section 226(a).

17 25. Plaintiff and other members of the Class were paid on an hourly basis and earned
18 "FLSA Prem Adj" wages, which were paid based on an hourly rate and number of hours worked.
19 When such wages were paid, Plaintiff and other members of the Class were provided wage
20 statements that did not identify the applicable hourly rate or number of hours worked.

21 26. Such a pattern, practice, and uniform administration of corporate policy is
22 unlawful and entitles Plaintiff and the Wage Statement Class to recover applicable penalties,
23 attorneys' fees, and costs of suit.

24 **SECOND CAUSE OF ACTION**

25 **Violation of Labor Code § 227.3**

26 **(By Plaintiff and the PTO Class Against All Defendants)**

27 27. The preceding paragraphs are re-alleged and incorporated by this reference.

1 28. Under California law, the right to a paid vacation, when offered in an employer's
2 policy or contract of employment, constitutes deferred wages for services rendered. Once the
3 right to a paid vacation vests, it becomes part of the consideration earned by the employee and is
4 a protected right under Section 227.3. *See Suastez v. Plastic Dress-Up Co.*, 31 Cal. 3d 774, 780
5 (1982). Section 227.3 specifically provides that where an employee is terminated without having
6 taken off his or her vested vacation time, all vested vacation shall be paid to said employee as
7 wages at the final rate of pay upon termination.

8 29. During their employment with Defendants, Plaintiff and other employees earned
9 PTO, which could be used for vacations or any other reason. Upon the end of their employments,
10 all earned and unused PTO wages were not paid out to Plaintiff and other employees. Such
11 conduct is a direct violation of Section 227.3.

12 30. For example, Plaintiff still had approximately four hours of earned but unused
13 PTO upon the end of his employment. Plaintiff was not paid his PTO wages for such hours as
14 part of his final paycheck, and he still has not been paid for such wages. Plaintiff has been
15 damaged by Defendants' seizure of his unpaid vested PTO and is entitled to repayment of those
16 wages with interest thereon at the legal rate.

17 31. Section 203 provides that, if any employer fails to pay any of the wages owed to
18 an employee who is discharged or quits, the wages of the employee shall continue as a penalty
19 from the due date thereof at the same rate until paid or until an action therefore is commenced,
20 for up to thirty (30) days. Defendants' failure to fully compensate Plaintiff and other employees
21 their accrued and unused PTO balances constitutes a knowing and willful seizure of Plaintiff and
22 other employees' vested PTO wages. Defendants' conduct as described herein constitutes a
23 violation of Sections 201-202 for the failure to pay all the wages owed to Plaintiff and other
24 employees. As a result, Defendants are liable to Plaintiff and other employees for waiting time
25 penalties pursuant to Section 203, up to a maximum of thirty (30) days.

26 32. Such a pattern, practice, and uniform administration of corporate policy regarding
27 illegal employee compensation as described herein is unlawful and creates an entitlement to
28

1 recovery by Plaintiff and the PTO Class to recover unpaid PTO balances, including interest
2 thereon, applicable penalties, attorneys' fees, and costs of suit.

3 **THIRD CAUSE OF ACTION**

4 **Violation of Business and Professions Code §§ 17200 *Et Seq.***

5 **(By Plaintiff and the PTO Class Against All Defendants)**

6 33. The preceding paragraphs are re-alleged and incorporated by this reference.

7 34. Plaintiff is informed and believes that at Defendants have engaged and continue to
8 engage in unfair and unlawful business practices in California by utilizing the employment
9 policies and practices alleged herein, including the failure to pay earned and unused PTO wages
10 at the end of Plaintiff and other employees' employments, in violation of Sections 201, 202, and
11 227.3.

12 35. Defendants' utilization of such unfair and unlawful business practices constitutes
13 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors,
14 as proscribed by the UCL. Defendants have deprived Plaintiff and the other employees the
15 minimum working condition standards and conditions due to them under the Labor Code and
16 applicable IWC Wage Orders.

17 36. Such a pattern, practice, and uniform administration of corporate policy regarding
18 illegal employee compensation as described herein is unlawful and creates an entitlement to
19 recovery by Plaintiff and the PTO Class to full restitution of all monies withheld, acquired, or
20 converted by Defendants by means of the unfair practices complained of herein, including
21 interest thereon, attorneys' fees, and costs of suit.

22 **FOURTH CAUSE OF ACTION**

23 **Violation of Labor Code §§ 2698 *Et Seq.***

24 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

25 37. The preceding paragraphs are re-alleged and incorporated by this reference.

26 38. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code
27 §§ 2698 *et seq.* ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of
28 California. In this capacity, Plaintiff seeks penalties for Defendants' violations of Sections 201,

202, 226(a), and 227.3 committed since April 6, 2019, against all aggrieved employees. Under Section 2699(c), Plaintiff is an “aggrieved employee,” as one or more of the alleged violations was committed against Plaintiff as an employee of Defendants.

39. As stated herein, Defendants violate Section 226(a) by failing to provide accurate itemized wage statements to Plaintiff and other aggrieved employees. Specifically, Defendants violate Section 226(a) by failing to identify the applicable rates of pay and numbers of hours worked for “FLSA Prem Adj” wages, which are paid based on an hourly rate and number of hours worked. When such wages were paid, the wage statements do not identify the applicable hourly rate or number of hours worked.

40. As also stated herein, Defendants violate Sections 201, 202, and 227.3 by not paying Plaintiff and other aggrieved employees earned and unused PTO wages at the end of their employments. Specifically, Plaintiff and other aggrieved employees earned PTO, which could be used for vacations or any other reason. Upon the end of their employments, all earned and unused PTO wages were not paid out to Plaintiff and other employees. For example, Plaintiff still had approximately four hours of earned but unused PTO. Plaintiff was not paid his PTO wages for such hours as part of his final paycheck, and he still has not been paid for such wages.

41. On or about July 8, 2020, Plaintiff sent written notice to the Labor & Workforce Development Agency (“LWDA”) of specific facts and theories for Defendants’ violations of Section 226(a). Plaintiff simultaneously sent written notice to Defendants via certified mail. On or about July 27, 2020, Plaintiff sent written notice to the LWDA of specific facts and theories for Defendants’ violations of Sections 201, 202, and 227.3. Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in the written notices.

42. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable civil penalties for Defendants’ violations of Sections 201, 202, 226(a), and 227.3 against all aggrieved employees for the time period described above.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf
3 this suit is brought against Defendants, jointly and severally, as follows:

- 4 1. For an order certifying the proposed Class;
- 5 2. For an order appointing Plaintiff as the representative of the Class;
- 6 3. For an order appointing Counsel for Plaintiff as Class Counsel;
- 7 4. Upon the First Cause of Action for penalties pursuant to Section 226, and for
8 costs and attorneys' fees;
- 9 5. Upon the Second Cause of Action for unpaid vested wages and applicable
10 penalties, including interest thereon, pursuant to Sections 201-203, 218.5, and 227.3, and for
11 costs and attorneys' fees
- 12 6. Upon the Third Cause of Action for restitution of all funds unlawfully acquired by
13 Defendants by any acts or practices declared to be in violation of the UCL, including interest
14 thereon, and for costs and attorneys' fees;
- 15 7. Upon the Fourth Cause of Action for penalties according to proof pursuant to
16 Sections 201-203, 226.3, 227.3, and 2698 *et seq.*, and for costs and attorneys' fees;
- 17 8. Upon each cause of action for attorneys' fees and costs as provided by Sections
18 218.5, 226, and 2699, and Code of Civil Procedure section 1021.5; and
- 19 9. For such other and further relief that the Court may deem just and proper.
- 20

21 DATED: August 17, 2020

DIVERSITY LAW GROUP, P.C.

22 By: 

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24 Simon L. Yang
25 Attorneys for Plaintiff, the Class, and Aggrieved
26 Employees
27
28