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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES
12 UNLIMITED JURISDICTION

13 EBERT VELA, on behalf of himself, all other
14 similarly situated aggrieved employees, and
the general public,

15 *Plaintiff,*

16 v.

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

19 *Defendants.*
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Case No. **21STCV41351**

REPRESENTATIVE ACTION

COMPLAINT

1. Civil Penalties (Lab. Code § 2698, *et seq.*)

1 Plaintiff EBERT VELA¹ ("Plaintiff"), on behalf of himself, all other similarly situated
2 aggrieved employees, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action against defendants TESLA, INC., a
5 Delaware corporation; and DOES 1 through 50, inclusive, (collectively referred to as
6 "Defendants") for alleged violations of the Labor Code. As set forth below, Plaintiff alleges that
7 Defendants have

- 8 (1) failed to provide Plaintiff and all other similarly situated individuals with meal
9 periods;
- 10 (2) failed to provide them with rest periods;
- 11 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 12 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular
13 rate of pay;
- 14 (5) failed to pay them at least minimum wage for all hours worked;
- 15 (6) failed to pay them overtime wages at the correct rate;
- 16 (7) failed to pay them double time wages at the correct rate;
- 17 (8) failed to pay them overtime and/or double time wages by failing to include all
18 applicable remuneration in calculating the regular rate of pay;
- 19 (9) failed to reimburse them for all necessary business expenses;
- 20 (10) failed to provide them with accurate written wage statements; and
- 21 (11) failed to pay them all of their final wages following separation of employment.

22 Based on these alleged violations, Plaintiff now brings this representative action to recover civil
23 penalties and related relief on behalf of himself and all other similarly situated aggrieved
24 employees, and the State of California.

25 _____
26 ¹ Plaintiff Ebert Vela brings this suit on behalf of all other aggrieved employees, the State of
27 California and pursuant to the Private Attorney General Act, Cal. Labor Code § 2699, et seq.
28 ("PAGA"), for all claims alleged. See *Huff v. Securitas Security Services USA, Inc.* (2018) 23
Cal.App.5th 745 reh'g denied (June 13, 2018), review denied (Aug. 8, 2018).

1 **JURISDICTION AND VENUE**

2 2. This Court has subject matter jurisdiction to hear this case because the penalties sought
3 by Plaintiff from Defendants exceeds the minimal jurisdictional limits of the Superior Court of the
4 State of California.

5 3. Venue is proper in the County of Los Angeles pursuant to Code of Civil Procedure
6 §§ 393(a), 395(a) and 395.5 in that liability arose there, because at least some of the transactions that
7 are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains
8 offices, transacts business, and/or has an agent therein.

9 **PARTIES**

10 4. Plaintiff is and was, and at all relevant times mentioned herein, an individual
11 residing in the State of California.

12 5. Plaintiff is informed and believes, and thereupon alleges, that Defendant TESLA,
13 INC. is, and at all relevant times mentioned herein, a Delaware corporation doing business in the
14 State of California.

15 6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
16 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
17 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants
18 when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the
19 fictitiously named defendants are responsible in some manner for the occurrences, acts and
20 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these
21 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and
22 capacities of the DOE defendants when ascertained.

23 7. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
24 mentioned herein, some or all of the defendants were the representatives, agents, employees,
25 partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some
26 or all of the other defendants, and, in doing the things alleged herein, were acting within the course
27 and scope of such relationship and with the full knowledge, consent, and ratification by such other
28 defendants.

1 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

2 8. Plaintiff worked for Defendants as an hourly, non-exempt employee during the
3 applicable statutory period.

4 **Off-the-Clock Work**

5 9. Plaintiff and the aggrieved employees were not paid all wages earned as Defendants
6 directed, permitted, or otherwise encouraged Plaintiff and the aggrieved employees to perform off-
7 the-clock work.

8 10. Plaintiff and the aggrieved employees were regularly required by Defendants to
9 perform work after their scheduled work hours while “off-the-clock” and were not paid for this
10 time.

11 11. As a result of performing off-the-clock work that was directed, permitted, or
12 otherwise encouraged by Defendants, Plaintiff and the aggrieved employees should have been paid
13 for this time. Instead, Defendants only paid Plaintiff and the aggrieved employees based on the time
14 they were clocked in for their shifts and did not pay Plaintiff and the aggrieved employees for any
15 of the time spent working off-the-clock.

16 12. Defendants knew or should have known that Plaintiff and the aggrieved employees
17 were performing work before and after their scheduled work shifts and failed to pay Plaintiff and
18 the aggrieved employees for these hours.

19 13. Defendants were aware of this practice and directed, permitted, or otherwise
20 encouraged Plaintiff and the aggrieved employees to perform off-the-clock work.

21 14. As a result of Defendants’ policies and practices, Plaintiff and the aggrieved
22 employees were not paid for all hours worked.

23 **Missed Meal Periods**

24 15. Plaintiff and the aggrieved employees were not provided with meal periods of at
25 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants’ policy of not
26 scheduling each meal period as part of each work shift; (2) chronically understaffing each work
27 shift with not enough workers; (3) imposing so much work on each employee such that it made it
28 unlikely that an employee would be able to take their breaks if they wanted to finish their work on

1 time; and (4) no formal written meal and rest period policy that encouraged employees to take their
2 meal and rest periods.

3 16. Defendants have a policy and/or practice of requiring Plaintiff and the aggrieved
4 employees to take their meal periods after the fifth hour of work. Specifically, Plaintiff and
5 aggrieved employees began their shifts around 7 a.m., and their meal period was scheduled to
6 begin at 12:00 p.m. However, Plaintiff and aggrieved employees would regularly arrive to work
7 early in order to ensure they had enough time to go through a security check and verify their badge
8 with security personnel before clocking into their shift. Plaintiff and aggrieved employees were
9 expected to start their shifts on time, and so arriving early to comply with the security checks
10 occurred every shift in order to avoid being reprimanded by Defendants for starting their shift late.
11 Accordingly, Plaintiff and aggrieved employees would regularly wind up beginning their shift
12 before 7 a.m. Additionally, Plaintiff and aggrieved employees were required to leave their
13 workstations and scan their cards to clock out for their meal period. Consequently, although their
14 shifts were scheduled such that they were to begin their meal period at precisely the fifth hour of
15 work, the reality was that they regularly took their meal period after the fifth hour of work had
16 commenced.

17 17. As a result of Defendants' policy, Plaintiff and the aggrieved employees were
18 regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five
19 (5) hours worked due to complying with Defendants' productivity requirements that required
20 Plaintiff and the aggrieved employees to work through their meal periods in order to complete their
21 assignments on time.

22 Missed Rest Periods

23 18. Plaintiff and the aggrieved employees were not provided with rest periods of at least
24 ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
25 Defendants' policy of not scheduling each rest period as part of each work shift; (2) chronically
26 understaffing each work shift with not enough workers; (3) imposing so much work on each
27 employee such that it made it unlikely that an employee would be able to take their breaks if they
28 wanted to finish their work on time; and (4) no formal written meal and rest period policy that

1 encouraged employees to take their meal and rest periods.

2 19. As a result of Defendants' policy, Plaintiff and the aggrieved employees were
3 regularly not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4)
4 hours worked due to complying with Defendants' productivity requirements that required Plaintiff
5 and the aggrieved employees to work through their rest periods in order to complete their
6 assignments on time.

7 **Expense Reimbursement**

8 20. Plaintiff and the aggrieved employees members were required to utilize their own
9 personal tools to perform their job duties working on electric vehicles.

10 21. Plaintiff and the aggrieved employees members were not reimbursed for business
11 expenses incurred in purchasing and/or maintaining their tools. Additionally, Plaintiff and the
12 aggrieved employees never got their personal tools back when they separated from employment.

13 22. Defendants failed to reimburse Plaintiff and the aggrieved employees for such
14 necessary business expenses incurred by them.

15 **Wage Statements**

16 23. Plaintiff and the aggrieved employees were not provided with accurate wage
17 statements as mandated by law pursuant to Labor Code § 226.

18 24. Plaintiff alleges, on information and belief, that Defendants failed to comply with
19 Labor Code section 226(a) as Plaintiff and aggrieved employees were not given the option of
20 receiving a physical check and were instead paid exclusively through electronic means.

21 25. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
22 earned" were not accurately reflected in that all hours worked, including overtime and "off-the-
23 clock" work were not included.

24 26. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours
25 worked by the employee" were not accurately reflected in that all hours worked, including overtime
26 and "off-the-clock" work were not included.

27 27. Defendants failed to comply with Labor Code section 226(a)(5) as "net wages
28 earned" were not accurately reflected in that all hours worked, including overtime and "off-the-

1 clock” work were not included.

2 28. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
3 hourly rates in effect during the pay period and the corresponding number of hours worked at each
4 hourly rate by the employee” were not accurately reflected in that all hours worked, including
5 overtime and “off-the-clock” work were not included.

6 **Failure to Timely Respond to Copy of Records Request**

7 29. Defendants failed to comply with Labor Code 226(c) which requires that “an
8 employer who receives a written or oral request to inspect or receive a copy of records pursuant to
9 subdivision (b) pertaining to a current or former employee shall comply with the request as soon as
10 practicable, but no later than 21 calendar days from the date of the request.”. Plaintiff sent a request
11 for records postmarked April 8, 2020. Defendants responded with a letter dated May 12, 2020,
12 thirty four (34) days after the date of the request.

13 **FIRST CAUSE OF ACTION**

14 **CIVIL PENALTIES**

15 **(Lab. Code §§ 2698 *et seq.*)**

16 30. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

17 31. During the applicable limitations period, Defendants have violated Labor Code §§
18 201, 202, 203, 204, 223, 226(a), 226(c), 226.7, 510, 512, 1194, 1197, 1198, and 2802.

19 32. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of
20 himself and other current and former employees, to bring a representative civil action to recover
21 civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not,
22 be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

23 33. Plaintiff, a former employee against whom Defendants committed one or more of the
24 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
25 within the meaning of Labor Code § 2699(c).

26 34. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
27 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency
28 (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an

1 intent to intervene.

2 35. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
3 penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226(c),
4 226.7, 510, 512, 1194, 1197, 1198 and 2802:

- 5 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 1194, 1198 and
6 2802, one hundred dollars (\$100) for each employee per pay period for each
7 initial violation and two hundred dollars (\$200) for each employee per pay
8 period for each subsequent violation (penalties set by Labor Code
9 § 2699(f)(2));
- 10 iii. For violations of Labor Code § 203, a penalty in an amount not exceeding
11 thirty (30) days' pay as waiting time (penalties set by Labor Code § 256);
- 12 iv. For violations of Labor Code § 204, one hundred dollars (\$100) for each
13 employee for each initial violation that was neither willful nor intentional,
14 two hundred dollars (\$200) for each employee, plus 25% of the amount
15 unlawfully withheld from each employee, for each initial violation that was
16 either willful or intentional, and two hundred dollars (\$200) for each
17 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
18 from each employee, for each subsequent violation, regardless of whether the
19 subsequent violation was either willful or intentional (penalties set by Labor
20 Code § 210);
- 21 v. For violations of Labor Code § 223, one hundred dollars (\$100) for each
22 employee for each initial violation that was neither willful nor intentional,
23 two hundred dollars (\$200) for each employee, plus twenty-five percent
24 (25%) of the amount unlawfully withheld from each employee, for each
25 initial violation that was either willful or intentional, and two hundred dollars
26 (\$200) for each employee, plus twenty-five percent (25%) of the amount
27 unlawfully withheld from each employee, for each subsequent violation,
28 regardless of whether the subsequent violation was either willful or

intentional (penalties set by Labor Code § 225.5);

vi. For violations of Labor Code § 226, if this action is deemed to be an initial citation, two hundred and fifty dollars (\$250) for each employee for each violation. Alternatively, if an initial citation or its equivalent occurred before the filing of this action, one thousand dollars (\$1,000) for each employee for each violation (penalties set by Labor Code § 226.3);

vii. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each employee for each initial pay period for which the employee was underpaid, and one hundred dollars (\$100) for each employee for each subsequent pay period for which the employee was underpaid (penalties set by Labor Code § 558);

viii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each aggrieved employee for each initial violation of Labor Code § 1197 that was intentional and two hundred and fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation of Labor Code § 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code § 1197.1);

ix. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable attorneys' fees and costs in connection with Plaintiff's claims for civil penalties.

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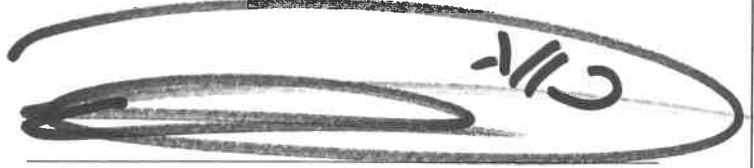
1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on behalf of himself, all other similarly situated aggrieved
3 employees, and the general public, prays for relief and judgment against Defendants as follows:

- 4 (1) Pre-judgment interest;
5 (2) Civil penalties;
6 (3) Costs of suit;
7 (4) Reasonable attorneys' fees; and
8 (5) Such other relief as the Court deems just and proper.
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10 Dated: November 9, 2021

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