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*Attorneys for Representative Plaintiffs Sharonda Taylor,
Tatianna Smith, Zenobia Milligan, and Shaka Green*

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

SHARONDA TAYLOR, TATIANNA
SMITH, ZENOBIA MILLIGAN, and SHAKA
GREEN, individually and on behalf of all
aggrieved employees,

Representative Plaintiffs,

vs.

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

Defendants.

Case No.: **23CV028922**

COMPLAINT

Representative Action

**Violation of the Labor Code Private Attorneys
General Act of 2004, California Labor Code §
2698 et seq.**

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
03/07/2023 at 05:32:48 PM
By: Angela Linhares,
Deputy Clerk

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PRELIMINARY STATEMENT

1. This is a representative action pursuant to the Private Attorney General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), brought by Representative Plaintiffs Sharonda Taylor, Tatianna Smith, Zenobia Milligan, and Shaka Green (collectively, “Representative Plaintiffs”), on their own behalf, and on behalf of all aggrieved employees described below. Representative Plaintiffs and other aggrieved employees were employed by Defendant Tesla, Inc., d.b.a. Tesla Motors (“Tesla” or “Defendant”), a publicly traded Delaware corporation, which does business in Fremont, California, among other locations.

2. Defendant has routinely shirked its duties under the Labor Code by failing to provide current and former employees with complete personnel records, time and pay records, and signed instruments upon the request of the current or former employee.

3. In this PAGA law enforcement action, Representative Plaintiffs seek civil penalties for the above acts, which violate the Labor Code, plus injunctive relief, and attorney’s fees and costs.

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JURISDICTION AND VENUE

4. Pursuant to section 10 of Article VI of the California Constitution, subject matter jurisdiction is proper in the Superior Court of California, State of California, which has original jurisdiction of all causes of action pled herein.

5. Pursuant to sections 395 and 395.5 of the California Code of Civil Procedure, venue is appropriate in the Superior Court of California for the County of Alameda, State of California, because this is where Defendant employed the Representative Plaintiffs and this is where the wrongful misconduct alleged herein occurred.

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THE PARTIES

6. Representative Plaintiff Sharonda Taylor is an individual who, during the time periods relevant to this Complaint, was employed within the State of California, at the Fremont factory. She was employed at Tesla through a staffing agency, West Valley Staffing, from July 2015 until February 2017,

1 but Tesla controlled every aspect of her employment. Representative Plaintiff Taylor did not sign an
2 arbitration agreement with Tesla.

3 7. Representative Plaintiff Tatianna Smith is an individual who, during the time periods relevant to
4 this Complaint, was employed within the State of California, at the Fremont factory. She was employed
5 at Tesla through a staffing agency, Volt Information Sciences, from October 2019 until March 2020. At
6 all times at the Fremont factory, Tesla controlled every aspect of Representative Plaintiff Smith's
7 employment. Representative Plaintiff Smith did not sign an arbitration agreement with Tesla.

8 8. Representative Plaintiff Shaka Green is an individual who, during the time periods relevant to
9 this Complaint, was employed within the State of California, at the Fremont factory. He was employed
10 at Tesla from August 2018 until October 2021. He had an agreement to arbitrate that excluded
11 representative claims such as the PAGA claims herein, which may thus be brought in court. *See*
12 *generally Galarsa v. Dolgen California, LLC*, No. F082404, __ Cal.App.5th ___, 2023 WL 2212196, as
13 modified on denial of rehearing Feb. 24, 2023.

14 9. Representative Plaintiff Zenobia Milligan is an individual who, during the time periods relevant
15 to this Complaint, was employed within the State of California, at the Fremont factory. She was
16 employed at Tesla from August 2018 until March 2022. She had an agreement to arbitrate that excluded
17 representative claims such as the PAGA claims herein, which may thus be brought in court. *See*
18 *generally Galarsa, supra*.

19 10. Defendant Tesla, Inc., d.b.a. Tesla Motors, Inc. is a publicly-traded corporation. Tesla designs,
20 manufactures, and sells electric vehicles. One of Tesla's vehicle manufacturing facilities is located at
21 45500 Fremont Boulevard in Fremont, California. Due to Tesla's ownership of the facility, its day-to-
22 day managerial role in the facility, its right to cause the hiring, firing, and discipline of the employees,
23 and its control of all terms and conditions of Representative Plaintiffs' employment, Tesla was
24 Representative Plaintiffs' employer, or alternatively a joint employer, which provides employment
25 pursuant to contract.
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THE ALLEGATIONS

11. This is a representative action filed pursuant to PAGA, Labor Code sections 2698, 2699.

12. Representative Plaintiffs, on behalf of the State of California, represent aggrieved employees who worked for Defendant as direct hires or through staffing agencies, in the state of California from February 9, 2021 to the present, and who requested but were not provided timely and/or complete personnel records, including but not limited to time and pay records, signed arbitration agreements, and documents concerning grievances.

13. All members of the represented group are referred to as the “Aggrieved Employees.”

14. The “Representative Period” means from one year before the statutorily required correspondence to the LWDA to the present, the timeframe where the scope of statute allows Representative Plaintiffs to obtain injunctive relief and penalties. The correspondence (**Exhibit A**, hereto) was sent on February 9 and April 19, 2022, and the Representative Period thus includes February 9, 2021 to the present.

15. Defendant has failed to produce complete personnel records for more than 500 current or former employees who were employed by Tesla, and/or who were employed at Tesla through a staffing agency, that have been requested by counsel to the Representative Plaintiffs.

16. Upon information and belief, dozens of current and former direct or joint employees have been provided with deficient personnel records, including personnel files that did not contain internal grievances (*e.g.*, discrimination complaints) made by the requesting employee or former employee, personnel records that did not contain signed instruments, and personnel records that included performance reviews provided in unintelligible formats, such as tables split across dozens of pages with no indication of their actual organization.

17. As a direct result and consequence of Defendant’s failure and refusal to permit Representative Plaintiffs and other aggrieved employees full access to their records, Representative Plaintiffs seek injunctive and declaratory relief in the form of an order or decree that Representative Plaintiffs are entitled to these records and mandating Defendant’s compliance as to themselves and all other aggrieved employees. Representative Plaintiffs and aggrieved employees have suffered and will suffer harm as a result of Defendant’s ongoing refusal to comply.

1 18. Representative Plaintiffs also seek recovery of the statutory penalty of \$750 per employee who
2 has requested personnel records based upon Defendant's violation of Labor Code section 1198.5, plus
3 full attorneys' fees and costs under PAGA, Labor Code §2699(g)(1).

4 19. Tesla and its managers controlled every aspect of Representative Plaintiffs Taylor and Smith's
5 jobs working at Tesla. Representative Plaintiffs Smith and Taylor had almost no day-to-day interaction
6 with their staffing agency, and their staffing agencies provided no supervision of their day-to-day work.
7 Throughout Representative Plaintiffs Smith and Taylor's employment at Tesla they reported to Tesla
8 supervisors.

9 20. On February 16, 2018, Representative Plaintiff Taylor made a written complaint that she had
10 been harassed and wrongfully terminated to a Tesla HR Coordinator. On January 15, 2019,
11 Representative Plaintiff Taylor made another written complaint of harassment and wrongful termination
12 by email.

13 21. On March 6, 2020, Representative Plaintiff Smith made a verbal complaint of discrimination and
14 harassment to multiple Tesla supervisors. On March 7, 2020, Representative Plaintiff Smith made a
15 written complaint of discrimination and harassment to Tesla's Human Resources.

16 22. During her employment, Representative Plaintiff Green sent an email to Tesla employees
17 Thomas Dunning and Jonathan [LNU] reporting that he had been called the N-word and threatened by a
18 coworker.

19 23. On or about April 26, 2021, through her counsel, Representative Plaintiff Taylor issued a written
20 request to Defendant "to make available all of [her] time and pay records and personnel records
21 covering the duration of [her] employment with" Tesla. Under Labor Code sections 226, 432, and
22 1198.5, such records were required to include, but were not limited to, all records relating to the
23 Representative Plaintiff's hours worked, wage statements and compensation, and grievances concerning
24 her. On or about June 25, 2021, Defendant's counsel issued a written statement conveying that
25 Defendant was unable to locate Representative Plaintiff Taylor amongst its roster of current or former
26 employees, and was thus not obligated to produce or make any records available for copying and
27 inspection.
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1 24. On or about December 9, 2021, through his counsel, Representative Plaintiff Green issued a
2 written request to Defendant to “make available all of [his] time and pay records and personnel records
3 covering the duration of [his] employment with” Tesla. Under Labor Code sections 226, 432, and
4 1198.5, such records were required to include but were not limited to, all records relating to the
5 Representative Plaintiff’s hours worked, wage statements and compensation, and grievances concerning
6 him. Defendant failed to respond to this request and failed to produce or make any personnel records for
7 Representative Plaintiff Green available for copying and inspection.

8 25. On or about February 17, 2022, through her counsel, Representative Plaintiff Smith issued a
9 written request to Defendant to “make available all of [her] time and pay records and personnel records
10 covering the duration of [her] employment with” Tesla.. Under Labor Code sections 226, 432, and
11 1198.5, such records were required to include, but were not limited to, all records relating to the
12 Representative Plaintiff’s hours worked, wage statements and compensation, and grievances concerning
13 her. Defendant failed to respond to this request and failed to produce or make any personnel records for
14 Representative Plaintiff Smith available for copying and inspection.

15 26. On or about March 30, 2022, Representative Plaintiff Milligan emailed a request to
16 fveiga@tesla.com to provide copies of documents pertaining to her employment, and attaching a signed
17 document requesting “personnel and payroll records relating to my employment with Tesla, including
18 but not limited to all applications, agreements, reviews, supervisor submissions, and all other records
19 relating to my job performance.” Defendant failed to respond to this request and failed to produce or
20 make any personnel records for Representative Plaintiff Milligan available for copying and inspection.

21 27. The requests and responses of all of the Aggrieved Employees were essentially the same as the
22 requests and responses of the Representative Plaintiffs described above.

23 28. On information and belief, current and former Aggrieved Employees’ rights were violated as
24 described in this Complaint. Defendant has routinely failed to provide, or provided only deficient
25 versions of, the Aggrieved Employees’ personnel records and time and pay records.
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1 29. California law provides that an employee may file an action against an employer to recover
2 penalties for violations of the Labor Code and Wage Orders provided the aggrieved employee file an
3 action on behalf of himself or herself and similarly situated current and former employees.

4 30. As to penalty claims under PAGA, on February 9, 2022 Plaintiff Taylor, via counsel, sent the
5 statutorily required correspondence to the LWDA via certified U.S. Mail and electronic submission and
6 filed the necessary paperwork with the LWDA, indicating Representative Plaintiffs' intention of
7 pursuing the claims alleged in this Complaint. The correspondence covered violations of Labor Code §§
8 226, 432, and 1198.5 for Representative Plaintiff Taylor and all other aggrieved employees.

9 31. On April 19, 2022 Representative Plaintiffs Green, Smith, and Milligan, via counsel, sent to the
10 statutorily required correspondence to the LWDA via certified U.S. Mail and electronic submission and
11 filed the necessary paperwork with the LWDA, indicating Representative Plaintiffs' intention of
12 pursuing the claims alleged in this Complaint. The correspondence covered violations of Labor Code §§
13 226, 432, and 1198.5 for Representative Plaintiffs Green, Smith, Milligan and all other aggrieved
14 employees.

15 32. More than sixty-five (65) days have passed since the letter(s)/correspondence alleged above, and
16 the LWDA did not serve Representative Plaintiffs with notice of intent to assume jurisdiction over the
17 applicable penalty claims and did not provide notice as set forth in Labor Code section 2699.3(a)(2)(A)
18 within the statutory period.

19 33. Therefore, the Representative Plaintiffs have exhausted their administrative remedies to pursue
20 claims and remedies as authorized by PAGA.

21 34. The Cause of Action alleged herein are appropriately suited for a Representative Action under
22 PAGA because:

23 a. This action involves allegations of violations of provisions of the Labor Code that provides for a
24 civil penalty to be assessed and collected by the LWDA or any departments, divisions, commissions,
25 board, agencies or employees;
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1 b. Representative Plaintiffs are “aggrieved employees” because Representative Plaintiff were
2 employed directly or jointly by the alleged violator and had one or more of the alleged violations
3 committed against each of them; and

4 c. Representative Plaintiffs have satisfied the procedural requirements of Labor Code section
5 2699.3, as set forth above.

6 **CAUSE OF ACTION**

7 **VIOLATION OF THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT (“PAGA”)**
8 **(California Labor Code § 2698 et seq.)**
9 **(ON BEHALF OF THE STATE OF CALIFORNIA AND ALL AGGRIEVED EMPLOYEES)**
10

11 **A. Failure to Make Personnel Records Available for Inspection and Copying**

12 35. Representative Plaintiffs re-allege and incorporates herein each and every allegation contained in
13 each of the preceding paragraphs in this Complaint as fully set forth herein by reference.

14 36. California Labor Code Section 1198.5 provides:

15 (a) Every current and former employee, or his or her representative, has the right to inspect
16 and receive a copy of the personnel records that the employer maintains relating to the
17 employee’s performance or to any grievance concerning the employee.

18 (b) The employer shall make the contents of those personnel records available for
19 inspection to the current or former employee, or his or her representative, at reasonable
20 intervals and at reasonable times, but not later than 30 calendar days from the date the
21 employer receives a written request, unless the current or former employee, or his or her
22 representative, and the employer agree in writing to a date beyond 30 calendar days to
23 inspect the records, and the agreed-upon date does not exceed 35 calendar days from the
24 employer’s receipt of the written request to inspect the records. Upon a written request
25 from a current or former employee, or his or her representative, the employer shall also
26 provide a copy of the personnel records...not later than 30 calendar days from the date the
27 employer receives the request...
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1 (k) If an employer fails to permit a current or former employee, or his or her representative,
2 to inspect or copy personnel records within the times specified in this section... the current
3 or former employee may recover a penalty of seven hundred fifty dollars (\$750) from the
4 employer.

5 (1) A current or former employee may also bring an action for injunctive relief to obtain
6 compliance with this section, and may recover costs and reasonable attorney's fees in such
7 an action.

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9 37. Representative Plaintiffs and over 500 Aggrieved Employees have issued written requests to
10 Defendant for copies of their personnel records. Under California Labor Code § 1198.5, such records were
11 to include all records relating to Representative Plaintiffs' and Aggrieved Employees' performance and
12 grievances concerning the Plaintiffs. Defendant has failed to provide Representative Plaintiffs and the
13 Aggrieved Employees with copies of records or an opportunity to inspect or copy their employment
14 records within thirty calendar days of their requests. See Cal. Lab. Code § 1198.5(b)(1).

15 38. Under California Labor Code § 1198.5(k), Defendant is subject to a civil penalty of seven hundred
16 fifty dollars (\$750) for all Aggrieved Employees for each violation of Labor Code § 1198.5 for failure to
17 provide timely inspection and/or copying of personnel records.

18 39. Under California Labor Code § 1198.5(l) and 2699, Defendant is subject to injunctive and
19 declaratory relief compelling compliance with Labor Code § 1198.5.

20 40. Under California Labor Code §§ 1198.5(l) and 2699(g), and Code of Civil Procedure § 1021.5,
21 Representative Plaintiffs may recover the costs and reasonable attorney's fees in this action.

22
23 **B. For Failure to Allow Copying and/or Access to Wage Statements, under Section 226**

24 41. California Labor Code Section 226 provides:

25 (a) An employer, semimonthly or at the time of each payment of wages, shall furnish to
26 his or her employee...an accurate itemized statement in writing...

27 (b) An employer that is required by this code or any regulation adopted pursuant to this
28 code to keep the information required by subdivision (a) shall afford current and former

1 employees the right to inspect or review a copy of records pertaining to their employment,
2 upon reasonable request to the employer....

3 (c) An employer who receives a written or oral request to inspect or receive a copy of
4 records pursuant to subdivision (b) pertaining to a current or former employee shall comply
5 with the request as soon as practicable, but no later than 21 calendar days from the date of the
6 request....

7 (f) A failure by an employer to permit a current or former employee to inspect or receive
8 a copy of records within the time set forth in subdivision (c) entitles the current or former
9 employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty
10 from the employer....

11 (h) An employee may also bring an action for injunctive relief to ensure compliance with
12 this section, and is entitled to an award of costs and reasonable attorney's fees.

13
14 42. Representative Plaintiffs and the Aggrieved Employees have all issued a written request to
15 Defendant for copies all of their time and pay records. Under California Labor Code 226, such records
16 were to include Representative Plaintiffs' and Aggrieved Employees' hourly rate(s) of compensation,
17 gross wages earned, and net wages earned. Defendant has failed to provide Representative Plaintiffs and
18 Aggrieved Employees with an opportunity to inspect or copy their time and pay records within twenty-
19 one calendar days of their requests. See Cal. Lab. Code § 226(c).

20 43. Under California Labor Code § 226(f), Defendant is subject to a civil penalty of seven hundred
21 fifty dollars (\$750) for all Aggrieved Employees for each violation of Labor Code § 226(c) for failure to
22 provide timely inspection and/or copying of wage statements.

23 44. Under California Labor Code § 226(h) and 2699, Defendant is subject to injunctive and declaratory
24 relief compelling compliance with Labor Code § 226.

25 45. Under California Labor Code § 226(h) and 2699(g), and Code of Civil Procedure § 1021.5,
26 Representative Plaintiffs may recover the costs and reasonable attorneys' fees in this action.
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C. For Failure to Allow Copying of Signed Instruments

46. California Labor Code Section 432 provides that “If an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.”

47. Representative Plaintiffs and the Aggrieved Employees have all issued a written request to Defendant for copies all of their signed instruments. Defendant has failed to provide Representative Plaintiffs and the Aggrieved Employees with copies of their signed instruments.

48. Under California Labor Code § 2699(f)(2), Defendant is subject to a civil penalty of one hundred dollar (\$100) for all Aggrieved Employees for each initial violation, and two hundred dollars (\$200) for each subsequent violation.

49. Under California Labor Code § 2699(g)(1) and Code of Civil Procedure §1021.5, Representative Plaintiffs may recover the costs and reasonable attorney’s fees in this action.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

3 50. That the Court award to the State of California and all Aggrieved Employees penalties subject to
4 proof at trial;

5 51. That the Court award to the State of California and all Aggrieved Employees injunctive and
6 declaratory relief in the form of an order or decree mandating Defendant's compliance as to themselves
7 and all other aggrieved employees;

8 52. That Representative Plaintiffs and the Aggrieved Employees be awarded reasonable attorneys'
9 fees and costs, including but not limited to pursuant to Labor Code §§ 226(h), 2699(g), Code of Civil
10 Procedure § 1021.5, and/or other applicable laws; and

11 53. Such other and further relief as the Court may deem proper and just.
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15 DATED: March 2, 2023

CALIFORNIA CIVIL RIGHTS GROUP
BRYAN SCHWARTZ LAW

/s/

Bryan Schwartz (SBN 209903)

Lawrence Organ (SBN 175503)

Attorneys for Representative Plaintiffs

EXHIBIT A

February 9, 2022

VIA CERTIFIED MAIL AND ELECTRONIC SUBMISSION

PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
(916) 653-9900

RE: *Sharonda Taylor, et al. v. Tesla Motors, Inc.*

To Whom It May Concern:

Our office represents the Plaintiff Sharonda Taylor (hereafter referred to as “Plaintiff”), and others similarly situated, in the above-captioned matter. Plaintiff asserts claims under California law and seeks to represent other aggrieved employees for violations of California law related to failure to preserve employment records as required by Labor Code § 226; failure to provide complete personnel files as mandated by Labor Code § 1198.5; the public policy of disclosure of one’s own signed documents embodied in Labor Code §432; declaratory and injunctive relief; statutory penalties and attorneys’ fees and costs against Defendant Tesla Motors, Inc. (hereafter referred to as “Defendant”).

I am writing this letter to the Labor & Workforce Development Agency (“LWDA”) pursuant to the exhaustion requirements of Labor Code §§ 2699 and 2699.3, because our client intends to file a civil action, including claims under the Private Attorneys General Act (“PAGA”), after fully exhausting the remedies available through your agency. The purpose of my letter is to find out whether LWDA intends to investigate our client’s allegations of violations of California Labor Code §§ 226, 432, and 1198.5. The following is a brief summary of Plaintiff’s allegations against Defendant.

Defendant employs manufacturing employees at its factory in Fremont, California through a combination of employees that are directly hired by Defendant and employees that are retained to work for Tesla through various staffing agencies. For all of these employees, Defendant controls their working hours, the manner in which they complete their work, and when they may take breaks, among many other factors exhibiting complete control. All employees are trained by Defendant and report directly to Defendant’s supervisors and managers. Employees retained through staffing agencies have almost no day-to-day interaction with their staffing agency – they simply and exclusively receive their checks from the staffing agencies.

Defendant has repeatedly provided deficient personnel files in violation of Labor Code § 1198.5. Personnel files are required to include “personnel records...relating to...any grievance concerning the employee.” Lab. Code § 1198.5(a). The term “personnel files” must be broadly interpreted in the employee’s favor. *See Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal.App.4th 110, 124. In *Wellpoint*, the trial court found (and the appellate court did not reverse) that investigations into complaints of discrimination are properly considered personnel files subject to disclosure under Labor

Code § 1198.5, but the appellate court did limit disclosure to exclude attorney-client privileged documents. *Id.* at 124-125. As such, internal complaints made by an employee and evidence of an ensuing non-attorney investigation are included within the definition of personnel files, as a complaint is by definition a grievance and inherently concerns the employee making the complaint.

Further, Labor Code § 1198.5 expressly lists certain categories of documents that are excluded from mandatory disclosure. These categories, in full, are:

1. Records relating to the investigation of a possible criminal offense;
2. Letters of reference;
3. Ratings, reports, or records that were:
 - A. Obtained prior to the employee's employment.
 - B. Prepared by identifiable examination committee members.
 - C. Obtained in connection with a promotional examination.

Lab. Code § 1198.5(h)(1)-(3). Records of internal complaints are not among these enumerated exemptions, and thus must be considered personnel files subject to mandatory disclosure.

We have received responses to requests for over 100 personnel files from Defendant over the past year, including Plaintiff's. None of these personnel files have included any record of internal complaints that were made by the requesting employee or former employee or any resulting investigation. We have independently received documentation confirming that at least some of these employees or former employees, including Plaintiff, made written complaints of harassment and discrimination while employed with Defendant. Numerous other employees or former employees have indicated that they lodged similar written and verbal complaints while employed with Defendant: records of these complaints or any ensuing investigation were also not produced in any of their personnel files. Such complaints are "grievance[s] concerning the employee" and are thus personnel files that are subject to mandatory disclosure under Labor Code § 1198.5, and the failure to include these records makes all of these personnel file productions deficient.

The personnel files that Defendant has produced are deficient in other ways, too. Defendant has routinely omitted requestors' job applications and any of the documents that the requestor signed at the start of employment. Other documents, including performance reviews, are provided in unintelligible formats, such as tables that are split across dozens of pages with no indication of their actual organization. We are aware that some aggrieved employees who have requested their personnel records independently – *i.e.*, without assistance of counsel – have received drastically incomplete records that did not include complete employment offer letters, performance reviews, or other basic employment documents. Other times Defendant has ignored these requests for months, forcing the requesting employee, or former employee, to retain counsel in order to obtain their personnel files and pay records.

We have further requested dozens of personnel files for employees, including Plaintiff, who were employed with Defendant through staffing agencies. Defendant has not provided any of these employees with their personnel records and contends that they are not obligated to provide personnel records for these employees. This argument is without any legal basis. Defendant's relationship with employees retained through staffing agencies meets the definition of "employer" under common law, the Labor Code, the IWC Wage Orders, and jurisprudence interpreting such, all of which govern working conditions at the Tesla factory. *See, e.g., Martinez v. Combs* (2010) 49 Cal.4th 35; *Castaneda v. Ensign* (2014) 229 Cal.App.4th 1015. Whether these employees are included in Defendant's "roster" (as

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Defendant states to excuse itself from complying with the requirement to produce records) is irrelevant. To the extent that Defendant possesses information about these workers, the company is required to provide them access, pursuant to Labor Code § 1198.5.

Even if Tesla were not subject to record-keeping requirements concerning wages, under the Labor Code, Tesla was the "employer" of all of the concerned workers under the Fair Employment and Housing Act (FEHA) and had a duty to maintain records relating to any complaints, investigations, or corrective actions taken as result of their discrimination and harassment complaints. *See*, regarding the FEHA employment standard, *Jimenez v. U.S. Continental Mktg.* (2019) 41 Cal.App.5th 189. *See* regarding recordkeeping requirements, *e.g.*, 2 C.C.R. §11013; Gov. Code § 12946. Tesla violated section 1198.5 by failing/refusing to produce all of those records (which constitute "grievances" within meaning of Labor Code § 1198.5) regardless of whether they were direct employees on Tesla's payroll.

Thank you for your assistance and cooperation in this matter. Please contact the undersigned if you have any questions.

Sincerely,

Dylan J. Colbert

cc: (by certified mail)

C T Corporation System
330 N Brand Blvd, Ste 700
Glendale, CA 91203
As Registered Agent for Tesla Motors, Inc.

April 19, 2022

VIA CERTIFIED MAIL AND ELECTRONIC SUBMISSION

PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
(916) 653-9900

RE: *Shaka Green, et al. v. Tesla Motors, Inc.*

To Whom It May Concern:

Our office represents the Plaintiffs Shaka Green, Tatianna Smith, and Zenobia Milligan (hereafter referred to as “Plaintiffs”), and others similarly situated, in the above-captioned matter. Plaintiffs assert claims under California law and seeks to represent other aggrieved employees for violations of California law related to failure to preserve employment records as required by Labor Code § 226; failure to provide complete personnel files as mandated by Labor Code § 1198.5; the public policy of disclosure of one’s own signed documents embodied in Labor Code § 432; declaratory and injunctive relief; statutory penalties and attorneys’ fees and costs against Defendant Tesla Motors, Inc. (hereafter referred to as “Defendant”).

I am writing this letter to the Labor & Workforce Development Agency (“LWDA”) pursuant to the exhaustion requirements of Labor Code §§ 2699 and 2699.3, because our client intends to file a civil action, including claims under the Private Attorneys General Act (“PAGA”), after fully exhausting the remedies available through your agency. The purpose of my letter is to find out whether LWDA intends to investigate our client’s allegations of violations of California Labor Code §§ 226, 432, and 1198.5. On February 9th, 2022, our office wrote to LWDA to exhaust similar claims against Defendant on behalf of Sharonda Taylor, and this letter is intended to supplement those exhaustion efforts. The following is a brief summary of Plaintiffs’ allegations against Defendant.

Defendant employs manufacturing employees at its factory in Fremont, California through a combination of employees that are directly hired by Defendant and employees that are retained to work for Tesla through various staffing agencies. For all of these employees, Defendant controls their working hours, the manner in which they complete their work, and when they may take breaks, among many other factors exhibiting complete control. All employees are trained by Defendant and report directly to Defendant’s supervisors and managers. Employees retained through staffing agencies have almost no day-to-day interaction with their staffing agency – they simply and exclusively receive their checks from the staffing agencies.

On December 30, 2021, under Labor Code § 1198.5, we requested the personnel files of 50 current and former employees of Defendant, which included a request for Plaintiff Green and Plaintiff Smith’s personnel files, and copies of wage statements under Labor Code § 226. The file production for Plaintiffs

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should also have included copies of signed instruments, under Labor Code §432. Some of these employees were employed directly by Defendant and some of them were employed by Defendant through a staffing agency. Defendant failed to even acknowledge the December 30th request until prompted to do so on February 1st, 2022, after the 30-day deadline to make these personnel files available for inspection and copying had passed. We granted a two-week courtesy extension to Defendant's deadline to make these personnel files available, though such is not provided-for specifically by statute, yet Defendant once again failed to perform. Defendant promised that it would make these files available by February 28, 2022 (a full month after they were statutorily required to do so); however, Defendant failed to make a single personnel file available. To date, Defendant has not made any of these 50 personnel files available for inspection and copying, despite repeated promises to do so. Plaintiff Milligan requested her personal file and wage statements without assistance of counsel on March 15, 2022. Defendant similarly failed to respond to Plaintiff Milligan's request in any manner, and the thirty-day deadline to make her files available for inspection and copying has now passed.

Defendant's consistent failure to provide personnel files timely violates Labor Code §1198.5, and Defendant's failure to provide copies of signed instruments violates Labor Code §432, and Defendant's failure to provide copies of wage statements violates Labor Code §226. Defendant should be subject to penalties, attorneys' fees and costs, and injunctive relief requiring immediate performance of the statutory obligations.

Thank you for your assistance and cooperation in this matter. Please contact the undersigned if you have any questions.

Sincerely,

/s/ Dylan J. Colbert
Dylan J. Colbert

cc: (by electronic mail)

C T Corporation System
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Glendale, CA 91203
As Registered Agent for Tesla Motors, Inc.