

October 30, 2023

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency (“LWDA”)

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Tesla, Inc.
12832 Frontrunner Blvd
Draper, UT 84020

Re: Second Amended Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act (“PAGA”), sent by Tammy Spears as a proposed Representative of the State of California

Dear PAGA Administrator:

This letter shall serve as Tammy Spears’s (hereafter “Claimant”) second amended Notice pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), California Labor Code sections 2698, *et seq.* regarding PAGA claims against Tesla, Inc. (referred to herein as “the Employer”).

Claimant and other aggrieved employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and caused violation of the Labor Code as set forth below. If the LWDA does not intend to investigate the alleged violations, Claimant intends to file a representative action for PAGA civil penalties. A copy of this notice is being sent to the Employer by certified mail at the address above.

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FACTUAL STATEMENT

Claimant is a female African American, who worked as a Production Associate. Employer failed to pay Claimant and other female aggrieved employees the same wage as male employees for substantially similar work, as required by California Labor Code § 1195.5(a). Employer also failed to pay Claimant and other minority aggrieved employees the same wage as employees of another race or ethnicity for substantially similar work, as required by California Labor Code § 1195.5(b). Substantially similar work comprises of work that is mostly similar in skill, effort, responsibility, and performed under similar working conditions. By failing to pay Claimant and aggrieved employees the same wage to employees engaging in substantially similar work within similar conditions on the basis of gender, race, and ethnicity, Employer has violated California Labor Code §§ 1195.5(a) and 1195.5(b).

Indeed, racism and discrimination are widespread at Employer's worksites, including use of racial slurs and references to the plant as a "plantation" or "slave ship." Consistent with this culture, many of Claimant's non-minority and male co-workers were paid at least \$1.50 per hour more than she was paid. When Claimant inquired about the disparate pay, she was scolded and told that employees should not be discussing their pay, raises, or performance reviews with one another. Moreover, many of Claimant's minority and female co-workers were subjected to more laborious work and were disciplined more frequently than Claimant's non-minority and male co-workers.

As a Production Associate, Claimant was required to receive Employer's vehicles and insert a 'front end' and 'back end' to the vehicles so that batteries could be inserted. Afterwards, the vehicles would go to the next checkpoint in the production line, where other Production Associates would work on them.

However, Claimant and other female aggrieved employees (including other Production Associates) were and are regularly paid less than male employees (including Production Associates, who performed substantially similar work. For example, many of Claimant's male co-workers were paid at least \$1.50 per hour more than she was paid.

Additionally, Claimant and other African American aggrieved employees (including other Production Associates) were and are regularly paid less than Production Associates of another race or ethnicity who performed substantially similar work. For example, many of Claimant's non-minority co-workers were paid at least \$1.50 per hour more than she was paid.

Moreover, Employer violated California Labor Code § 232 by disciplining and retaliating against Claimant for discussing wages and pay raises with other employees. After inquiring about her disparate pay, Claimant was retaliated against by being given faulty equipment with which to do her work, which made it take her longer to complete her work and made completing her work more difficult. Also, on multiple occasions, and at least one time in direct response to inquiring about why she was being paid less than her coworkers, Claimant was purposefully isolated in a room by herself containing only broken equipment and was mockingly chastised for being unable to perform the work required of her.

For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order on behalf of herself and all other aggrieved employees of Defendant. Claimant alleges that Defendant:

1. Failed to pay Claimant and other aggrieved employees the same wages as employees of the opposite gender for substantially similar work;
2. Failed to pay Claimant and other aggrieved employees the same wages as employees of another race or ethnicity for substantially similar work;
3. Failure to refrain from prohibiting employees from disclosing their wages; and
4. Failed to produce all employment records.

Accordingly, Claimant now seeks civil penalties pursuant to the PAGA on behalf of the State of California based on the alleged violations of the California Labor Code.

**FAILURE TO PAY THE SAME WAGE AS EMPLOYEES
OF THE OPPOSITE GENDER**

(Violation of Labor Code § 1197.5(a))

California Labor Code § 1197.5(a) provides in pertinent part: “An employer shall not pay any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions,” except when the payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any bona fide factor other than sex.

The factors relied on by the Employer to explain or justify a wage differential must be “applied reasonably” and must “account for the entire wage differential.” Cal. Lab. Code § 1197.5(a)(2), (a)(3). An employee’s prior salary cannot justify any disparity in compensation; however, an employer may make a compensation decision based on a current employee’s existing salary as long as any wage differential resulting from that compensation decision is justified by one or more of the factors listed above. Cal. Lab. Code § 1197.5(a)(4), (b)(4).

Noncompliance subjects the employer to liability to the aggrieved employees in the amount of wages, with interest, of which the employee has been deprived by reason of the violation, and an additional equal amount as liquidated damages. Cal. Lab. Code § 1197.5(b). Labor Code § 1197.5(g) states that if the aggrieved employee files a civil action, costs and attorney’s fees may also be available, notwithstanding any agreement to work for a lesser wage.

Here, Employer violated Labor Code section 1197.5(a) by failing to pay Claimant and other current and former female aggrieved employees, including Production Associates, the same wages earned by other employees of the opposite sex for performing substantially similar work with substantially similar skill, effort, and responsibility under

similar working conditions. Claimant and other female aggrieved employees of Employer were and are regularly paid less than their male counterparts who started working for Employer at the same time and performed substantially the same work, at substantially the same skill level. Specifically, Employer required Production Associates to complete standard work processes utilizing various tools, equipment, and machinery to build its vehicles on a production line. Despite the similarities in work performed, many of Claimant's male co-workers were paid at least \$1.50 per hour more than her and the female aggrieved employees.

Accordingly, Claimant now seeks civil penalties pursuant to the PAGA on behalf of the State of California based on the alleged violations of the California Labor Code.

**FAILURE TO PAY THE SAME WAGE AS EMPLOYEES OF
ANOTHER RACE OR ETHNICITY**
(Violation of Labor Code §§ 1997.5(b))

California Labor Code § 1197.5(b) provides in pertinent part: "An employer shall not pay any of its employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions," except when the payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any bona fide factor other than sex.

The factors relied on by the Employer to explain or justify a wage differential must be "applied reasonably" and must "account for the entire wage differential." Cal. Lab. Code § 1197.5(b)(2), (b)(3). An employee's prior salary cannot justify any disparity in compensation; however, an employer may make a compensation decision based on a current employee's existing salary as long as any wage differential resulting from that compensation decision is justified by one or more of the factors listed above. Cal. Lab. Code § 1197.5(a)(4), (b)(4).

Here, the Employer violated Labor Code section 1197.5(b) by failing to pay Claimant and other current and former, African American aggrieved employees the same wages earned by employees of another race or ethnicity for performing substantially similar work with substantially similar skill, effort, and responsibility under similar working conditions. Claimant and other African American aggrieved employees were and are regularly paid less than employees of another race or ethnicity who performed substantially similar work. Specifically, Employer required Production Associates to complete standard work processes utilizing various tools, equipment, and machinery to build its vehicles on a production line. Despite the similarities in the work performed, many of Claimant's non-minority co-workers were paid at least \$1.50 per hour more than her and the African American aggrieved employees.

Racism and discrimination are widespread at Employer's worksites, including use of racial slurs and references to the plant as a "plantation" or "slave ship." Consistent with this culture, many of Claimant's non-minority co-workers were paid at least \$1.50 per hour more than she was paid.

Accordingly, Claimant now seeks civil penalties pursuant to the PAGA on behalf of the State of California based on the alleged violations of the California Labor Code.

**FAILURE TO REFRAIN FROM PROHIBITING EMPLOYEES FROM
DISCLOSING THEIR WAGES**

(Violation of § 232)

Labor Code § 232(a) states that no employer may “[r]equire, as a condition of employment that an employee refrain from disclosing the amount of his or her wages.” Labor Code § 232(b) states that no employer may “[d]ischarge, formally discipline, or otherwise discriminate against an employee who discloses the amount of his or her wages.

Here, Claimant was lectured and told that employees should not be discussing their pay, raises, or performance reviews with one another when she inquired about being paid less than other employees of the opposite sex and of another race or ethnicity. Employer told its employees that they could not discuss their pay, raises, and performance reviews with each other. After inquiring about her disparate pay, Claimant was retaliated against by being given faulty equipment with which to do her work, which made it take her longer to complete her work and made completing her work more difficult. Also, on multiple occasions, and at least one time in response to inquiring about why she was being paid less than her coworkers, Claimant was purposefully isolated in a room by herself containing only broken equipment and was mockingly chastised for being unable to perform the work required of her.

Accordingly, Claimant now seeks civil penalties pursuant to the PAGA on behalf of the State of California based on the alleged violations of the California Labor Code.

FAILURE TO PRODUCE ALL EMPLOYMENT RECORDS

(Violation of §§ 226, 1198.5 and the “Records” section of the applicable IWC Wage Order)

Labor Code § 226(c) states in pertinent part that: “An employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.”

Labor Code § 1198.5(b)(1) states in pertinent part that: “The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer’s receipt of the written request.”

The “Records” Section of applicable IWC Wage Order states: “Every employer shall keep accurate information with respect to each employee including the following: ... (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.”

The Employer was required to provide Claimant her entire personnel file, including her time records, upon request. However, Employer has failed to do so and only produced Claimant's wage statements.

Accordingly, Claimant now seeks civil penalties pursuant to the PAGA on behalf of the State of California based on the alleged violations of the California Labor Code.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 1197.5 and 2699, *et seq.*)

Labor Code section 1197.5(b) states that noncompliance subjects the employer to liability to the aggrieved employees in the amount of wages, with interest, of which the employee has been deprived by reason of the violation, and an additional equal amount as liquidated damages. Labor Code § 1197.5(g) states that if the aggrieved employee files a civil action, costs and attorney's fees may also be available, notwithstanding any agreement to work for a lesser wage.

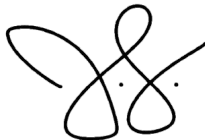
Pursuant to Labor Code sections 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, the Employer is liable for these items in addition to the unpaid wages. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of the Employer's unlawful actions.

CONCLUSION

Employer violated multiple California Labor Code sections as set forth herein. Claimant will pursue all remedies on behalf of herself and other aggrieved employees, including recovery of attorney's fees, costs, and penalties to the extent allowed by law. The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, she reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint.

Should you have any questions, please feel free to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan M. Lebe', with a stylized flourish at the end.

Jonathan M. Lebe, Esq.

Attorney for Tammy Spears,

As a Proposed Representative of the State of California