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VIA ONLINE ELECTRONIC SUBMISSION

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102
SUBMITTED ONLINE

Re: Notice Pursuant to California Labor Code § 2699.3.

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code § 2698, *et seq.*, Jordin McHenry provides this notice on behalf of himself and other aggrieved employees in the State of California to the Labor and Workforce Development Agency (“LWDA”) and Tesla Motors, Inc. (including any and all affiliates, subsidiaries, parents, directors, officers, and employees) (collectively, “Tesla”) of Labor Code violations committed by Tesla. Please allow this letter to serve as notice, and a request, pursuant to § 2699.3 of the California Labor Code, that your agency investigate the claims described below. If the agency does not intend to investigate the alleged violations, we ask that you please notify us of that fact. If your agency decides not to investigate the below-described claims, Mr. McHenry intends to pursue civil penalties through a court action, on behalf of himself, the State of California, and the other aggrieved employees against whom Tesla committed the Labor Code violations described below.

Introduction

Tesla is headquartered in Austin, Texas and is one of the leading and fastest-growing electric vehicle manufacturers in the world. Tesla’s Fremont Factory (the “Fremont Factory”) is “one of the largest manufacturing sites in California”¹ At 5.3 million square feet in size, the

¹ *Fremont Factory*, TESLA, <https://www.tesla.com/fremont-factory> (last visited Apr. 26, 2023).

Fremont Factory produced approximately 8,600 vehicles a week in 2021.² Tesla's Fremont Factory produces all models of Tesla's electric vehicles, including Model 3, Model Y, Model S, and Model X.³ The Fremont Factory has become the most productive car factory in the U.S., exceeding production from when Toyota and GM owned the factory.⁴ CEO of Tesla, Elon Musk, has acknowledged that the Fremont Factory is extremely busy with around 10,000 employees and running out of space.⁵

Under Tesla's business model, it employs Production Associates who participate in the assembly and production of Tesla vehicles. Tesla's Production Associates are required to perform physically demanding work on the assembly line for extended periods of time, up to 12 hours a day.⁶ One of the many individuals Tesla employed as a non-exempt employee is Mr. McHenry. Mr. McHenry worked for Tesla as a Production Associate from approximately June 1, 2022, through September 1, 2022. The position that Mr. McHenry held at Tesla was in the State of California. During Mr. McHenry's entire time of employment at Tesla, he worked as an hourly-paid, non-exempt employee pursuant to clear policies and procedures given to him by Tesla. During his employment, Mr. McHenry regularly worked more than eight (8) hours per day or forty (40) hours per week, often working twelve (12) hours a day and forty-eight (48) hours per week.

Unless the agency decides to investigate and issue citations, Mr. McHenry intends to bring a representative action in court seeking civil penalties under PAGA for violations of the Labor Code against Mr. McHenry and other employees. Mr. McHenry intends to pursue these penalties on behalf of himself, the State of California, and all aggrieved employees. The aggrieved employees on whose behalf Mr. McHenry will file a PAGA civil action will include all current and former hourly paid and/or non-exempt employees of Tesla in the State of California who worked during the relevant statutory period, including those other employees employed by Tesla (referred to herein as "aggrieved employees").

As set forth below, Tesla has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Order No. 1, 3, 4, 7.

² Tom Randall & Demetrios Pogkas, *Tesla Now Runs the Most Productive Auto Factory in America*, BLOOMBERG (Jan. 24, 2022) <https://www.bloomberg.com/graphics/2022-tesla-factory-california-texas-car-production/?leadSource=uverify%20wall>.

³ Fred Lambert, *Tesla now produces more cars at Fremont factory than when operated by GM and Toyota*, ELECTREK (June 11, 2022, 12:16 PM), <https://electrek.co/2022/06/11/tesla-produces-more-cars-fremont-factory-than-gm-toyota/>.

⁴ *Id.*

⁵ *Id.*

⁶ *Production Associate*, TESLA, <https://www.tesla.com/careers/search/job/production-associate-112189> (last visited Apr. 26, 2023).

Failure to Pay Minimum Wages and Failure to Pay Overtime Wages

Tesla violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay Mr. McHenry and other aggrieved employees at least minimum wages for all hours worked. Tesla had a company-wide policy and/or practice requiring Mr. McHenry and other aggrieved employees to perform work duties off-the-clock. Such off-the-clock work included, but was not limited to, waiting in line for and undergoing required security screenings, walking to and from the Fremont Factory's main entrance and his workstation, and waiting in line to clock-in and clock-out at the beginning and end of his shifts.

Additionally, during the relevant time period, Tesla maintained and implemented a company-wide policy of requiring all newly-hired employees and/or prospective employees to undergo a mandatory drug test as a condition of employment. At all times, upon information and belief, Tesla was in control of scheduling the date and time for the test, selecting the provider/facility where the test was to take place, and determining the scope of the test. Tesla gave Mr. McHenry and other aggrieved employees strict instructions to obtain a drug test as a condition of their employment, and Mr. McHenry and other aggrieved employees underwent the testing for the sole benefit of Tesla. However, Tesla did not compensate Mr. McHenry and other aggrieved employees for the time they spent traveling to and from the drug testing facility or for the time they spent undergoing drug testing.

Furthermore, during their employment, Mr. McHenry and other aggrieved employees were required to communicate with supervisors and co-workers on their days off and before and after their work shifts throughout the week. Regularly, Mr. McHenry spent three (3) to five (5) hours a week communicating with supervisors and co-workers about quality checks, inventory requirements, and other work-related matters while off-the-clock. Thus, Mr. McHenry and other aggrieved employees were also not compensated for the time spent participating in work-related communications while off-the-clock.

By failing to pay Mr. McHenry and other aggrieved employees any wages for off-the-clock work, Tesla violated Labor Code sections 1194, 1197, and 1197.1, which require employers to pay at least the legal minimum wage to their employees.

California Labor Code sections 510 and 1198 require employers to pay no less than one and one-half times the regular rate of pay of the employee for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice the regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek.

During the relevant time period, Mr. McHenry and other aggrieved employees worked in excess of 8 hours in a day and/or 40 hours in a week without overtime compensation because Tesla

failed to pay them for off-the-clock work as described above. On occasions when Mr. McHenry and other aggrieved employees had already worked eight hours in one day on-the-clock and also performed work off-the-clock, Tesla failed to pay them overtime compensation for this off-the-clock work. Therefore, Mr. McHenry and the other aggrieved employees were entitled to receive certain wages for overtime compensation but were not paid for overtime hours worked.

Failure to Provide Meal Periods and Rest Periods

California law requires employers to provide their employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). A second meal period of no less than thirty (30) minutes must be provided before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). Further, an employer must provide an uninterrupted rest period of no less than ten (10) minutes for every four (4) hours, or a major fraction thereof, worked. Cal. Lab. Code § 226.7. When an employer fails to provide a meal or rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

Tesla failed to provide Mr. McHenry and the other aggrieved employees with an opportunity to take off-duty timely, uninterrupted meal and rest periods of the requisite length, free from employer control. Mr. McHenry could not leave the premises during his meal and rest breaks because the walk from his workstation to the main entrance took approximately ten (10) minutes one-way. In order to exit the premises and return to his workstation, Mr. McHenry had to walk for approximately one (1) hour, which would have exceeded the time he was allowed to take for his breaks. Further, Tesla has a company-wide policy and/or practice requiring Mr. McHenry and aggrieved employees to carry handheld radios to communicate with supervisors and co-workers at all times. This prevented Mr. McHenry and other aggrieved employees from taking full, uninterrupted meal periods to which they were entitled and resulted in them working off-the-clock. Although Tesla imposed this requirement on Mr. McHenry and other aggrieved employees while present at the Tesla factory, Tesla did not compensate Mr. McHenry or other aggrieved employees for the time it took them to respond to radio calls from supervisors and co-workers while off-the-clock.

Moreover, Tesla had a company-wide policy requiring all newly hired employees to sign blanket Second Meal Period Waivers at or near their time of hire. Upon information and belief, Tesla took the position that non-exempt, hourly-paid employees had waived their rights to a second meal period for the entirety of their employment regardless of the number of hours they worked, and, on that basis, Tesla did not provide them with all meal periods to which they were entitled. Tesla's company-wide use of blanket meal waivers signed at or near the time of hire discouraged and prevented Mr. McHenry and/or other aggrieved employees from taking all meal periods to which they were entitled.

Tesla failed to compensate Mr. McHenry and the other aggrieved employees properly for the non-compliant meal and rest periods, including, inter alia, interrupted meal and rest periods. Tesla also failed to pay premium wages for the many non-compliant meal and rest breaks Mr. McHenry and the aggrieved employees received.

Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payments of wages for weekly, biweekly, or semimonthly payroll of the wages are paid not more than seven (7) calendar days following the close of the payroll period. During the relevant time period, Tesla failed to pay Mr. McHenry and other aggrieved employees all wages due to them, including minimum wages, overtime wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Failure to Keep Accurate Payroll Records

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, Tesla failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages paid to Mr. McHenry and other aggrieved employees. For example, any records kept by Tesla did not include the hours worked off-the-clock, the premium wages owed or non-compliant meal and rest breaks.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, inter alia, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown

as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer. In violation of California Labor Code section 226, Tesla failed to provide wage statements to Mr. McHenry and other aggrieved employees stating, inter alia, the total hours worked (including time spent working off-the-clock), the accurate amount of meal period premium wages earned, and the accurate amount of rest period premium wages earned.

Failure to Reimburse Necessary Business Expenses

California Labor Code section 2802 requires employers to indemnify their employees for all necessary business expenses that they incur in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time, Mr. McHenry and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Tesla. These costs include, but are not limited to, the use of personal cell phones and computers for work-related purposes and purchasing required uniforms necessary for work as a Production Associate. Tesla adopted a company-wide policy of requiring Mr. McHenry and other aggrieved employees to use their personal cellphone/other device for receiving important emails approximately twice a week and completing required surveys as well as purchasing steel-toed boots for their shifts, all at their own expense and without reimbursement by Tesla. Tesla had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred. Tesla's policy and/or practice of passing its operating costs on to other aggrieved employees violates California Labor Code section 2802. Mr. McHenry and the aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to California Labor Code section 2699(f)-(g).

Tesla is also Subject to Civil Penalties for Unpaid Wages

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." California Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

Tesla, at all relevant times, was an employer that violated Mr. McHenry's and other aggrieved employees' rights by failing to pay all wages owed for the reasons described above, including but not limited to failing to pay Mr. McHenry for work performed off the clock while traveling to his workstation. Accordingly, Mr. McHenry seeks civil penalties under section 558, in addition to the actual wages owed, for himself, the State of California, and all other aggrieved employees.

Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and 558. Mr. McHenry, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, the State of California, and all other aggrieved employees, against Tesla for violations of California Labor Code sections 203, 204, 226(a), 226.7, 558, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Order No. 1, 3, 4, 7.

* * *

Tesla has violated, caused to be violated, or is currently violating, numerous provisions of the California Labor Code, as described above. Mr. McHenry respectfully requests that the agency investigate the above allegations, and, in any event, provide notice regarding its intent to investigate pursuant to Labor Code § 2699.3. If the agency does not intend to investigate the alleged violations, Mr. McHenry respectfully requests a letter confirming the same so that we may bring a civil action under PAGA against Tesla for the violations described in this letter. Please know that we intend to file a civil complaint and to bring the appropriate claims under Labor Code § 2699 should your office decline to investigate, or investigate but decline to issue citations, within the time frames set out in Labor Code § 2699.3.

Should you require anything further or have questions, please do not hesitate to contact me. Thank you for your consideration.

Respectfully Submitted,

CLARKSON LAW FIRM, P.C.



Glenn A. Danas, Esq.

Via certified mail with return receipt:

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c/o CT Corporation,
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