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Shannon Brown and Tami Okada

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County of San Joaquin
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN**

SHANNON BROWN, an individual; TAMI
OKADA, an individual, on behalf of the State
of California and all other aggrieved employees

Plaintiffs,

v.

TESLA, INC. d/b/a TESLA MOTORS, INC.;
and DOES 1 through 10, Inclusive,

Defendants.

Case No.: STK-cv-UOE-2024-0004169

**FIRST AMENDED
REPRESENTATIVE ACTION
COMPLAINT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT
("PAGA"), REPRESENTATIVE
CLAIMS ONLY**

1 Plaintiffs SHANNON BROWN and TAMI OKADA (“Plaintiffs”), by and through their
2 attorneys, allege the following based upon information and belief, the investigation of counsel, and
3 personal knowledge as to the allegations pertaining to themselves, each respectively.

4 **INTRODUCTION**

5 1. On behalf of the State of California and other aggrieved employees, Plaintiffs bring
6 this representative action under the California Private Attorneys General Act of 2004, as codified in
7 Labor Code §§ 2698, *et seq.* (“PAGA”) against Defendants TESLA, INC. d/b/a TESLA MOTORS,
8 INC. (hereafter “Tesla”, or Defendant), and Does 1 through 10 inclusive (collectively “Defendants”)
9 for civil penalties, interest, costs of suit and attorneys’ fees, and all other appropriate relief, resulting
10 from Defendants’ wage-and-hour violations and other unlawful conduct.

11 2. Plaintiffs allege that they have been subjected to violations of their rights under the
12 California Labor Code, and are therefore aggrieved employees for the purposes of the Private
13 Attorneys General Act.

14 3. However, by this action, Plaintiffs do not seek penalties deriving from violations they
15 were subjected to (the so-called Individual PAGA Claim), but only the penalties for violations that
16 other aggrieved employees were subjected to (the so-called Representative PAGA Action). The
17 United States Supreme Court ruled that the Individual PAGA Action may be severed from the
18 Representative PAGA Action. *Viking River Cruises, Inc. v Moriana* (2022) 596 U.S. 639, 659-662.
19 The California Supreme Court ruled that a PAGA plaintiff has standing to prosecute a Representative
20 PAGA Action in the Superior Court of California if severed and independent of her Individual PAGA
21 Action. *Adolph v Uber Technologies, Inc.* (2023) 14 Cal 5th 1104, at 1126. Plaintiffs, by this
22 Complaint, seek to prosecute the State’s interest in enforcing the Labor Code as applied to other
23 aggrieved employees ONLY, and bring ONLY their Representative PAGA Action.

24 4. Defendant Tesla is a large car manufacturer which operates distribution center
25 warehouses and assembly facilities throughout the state of California and employs numerous
26 employees at those warehouses and assembly facilities.

27 5. Plaintiff Shannon Brown worked as a non-exempt material handler at Defendants’
28 Fremont Boulevard warehouse in Fremont, California from in or around November 2022 through in

1 or around February 2023.

2 6. Plaintiff Tami Okada worked as a non-exempt production associate at Defendants'
3 Page Avenue and Fremont Boulevard warehouses in Fremont, California from in or around February
4 2022 through in or around March 2023.

5 7. Defendants compensated Plaintiffs at an hourly rate of pay. Defendants also
6 compensated Plaintiffs on a regular basis with bonuses.

7 8. Plaintiffs worked five days a week during most weeks. Plaintiffs regularly worked
8 more than eight hours a day and more than 40 hours a week.

9 9. Defendants denied Plaintiffs and other non-exempt employees in California specific
10 rights afforded to them under the California Labor Code, and the applicable Industrial Welfare
11 Commission Wage Order ("IWC Wage Order").

12 10. Defendants failed to provide full timely uninterrupted meal breaks, and failed to
13 provide a second meal break when Plaintiffs and similarly situated employees worked shifts of 10 or
14 more hours. Plaintiffs and other aggrieved employees were required to clock out on time clocks for
15 meal breaks but it took approximately 10 minutes to go each way to and from the cafeteria after
16 clocking out. Accordingly, Plaintiffs and other aggrieved employees were provided with meal breaks
17 of less than 30 minutes.

18 11. Defendants failed to authorize and permit Plaintiffs and other aggrieved employees
19 legally adequate rest breaks. They did this by failing to provide sufficient break time to allow
20 Plaintiffs and other aggrieved employees to travel from the time clock to a break area or restroom
21 (and return) and still have a full ten minute uninterrupted break relieved of all duty. Furthermore,
22 Plaintiffs and other aggrieved employees were required to complete their processes, put their tools
23 away, plug in their tuggers and make sure nothing was in the car they were working on before they
24 could go on break. If they were in the middle of a process, they would need to finish it before going
25 on break. This resulted in Plaintiffs and other aggrieved employees not taking full rest breaks, as all
26 employees were required to take their rest breaks at the same time.

27 12. Furthermore, despite Plaintiffs and other aggrieved employees regularly earning
28 bonuses, Defendants did not properly include all those bonuses in the calculation of their regular rates

1 of pay. Therefore, Defendants did not pay Plaintiffs and other aggrieved employees overtime pay,
2 sick and vacation pay and meal and rest break premiums at the correct hourly rates.

3 13. Additionally, Defendants required Plaintiffs and other aggrieved employees to work
4 off-the-clock, including but not limited to, working through meal breaks or meal breaks being
5 interrupted, working before their shifts including the time spent before shifts conducting checks on
6 their equipment and replacing batteries to be ready on time. In addition, Plaintiffs and other aggrieved
7 employees when they arrived at the warehouse, were required to badge in, then go to a security desk
8 where their badge was then checked, then badge in at another door, then walk through part of the
9 warehouse, then badge through another door and then finally they reached a time clock where they
10 would need to wait for others to clock in ahead of them. It took them approximately 15 minutes just
11 to get to the time clock from when they entered the facility. At the end of their shifts, Plaintiffs and
12 other aggrieved employees needed to go through this process again after clocking out. Defendants
13 did not pay Plaintiffs and other aggrieved employees for these hours worked.

14 14. Defendants also required Plaintiffs and other aggrieved employees to purchase steel-
15 toed boots for work purposes and did not reimburse them for those business expenses.

16 15. Derivatively, Defendants failed to pay Plaintiffs and similarly situated employees all
17 wages owed timely during employment and upon termination of employment and failed to and
18 continues to fail to provide accurate wage statements and maintain accurate records as required by
19 California law.

20 16. Defendants also violated the California quota laws by failing to provide employees
21 with written descriptions of each quota and any potential adverse employment action that could result
22 from failure to meet the quota. Defendants also violated the quota laws by requiring employees to
23 meet quotas that prevented compliance with meal and rest periods and use of bathroom facilities,
24 including reasonable travel time to and from bathroom facilities, and by taking adverse employment
25 actions against employees, including termination, for failure to meet a quota that did not allow them
26 to take meal and rest periods and use the bathroom facilities, including reasonable travel time to and
27 from bathroom facilities, and for failure to meet a quota that had never been disclosed to them.

28 17. Finally, Defendants failed to provide places of employment that were safe and

1 healthful, by forcing employees to work in the heat without air conditioning.

2 18. Plaintiffs bring this action on behalf of the State of California and all other non-exempt
3 employees who are or were employed by Defendants in the State of California at distribution center
4 warehouses and assembly centers during the period of December 29, 2023 through the time of trial
5 of this action and who have experienced one or more of the violations alleged herein (“aggrieved
6 employees”).

7 **JURISDICTION AND VENUE**

8 19. This Court has jurisdiction over all causes of action asserted herein pursuant to the
9 California Constitution, Article VI, §10, because this case is a cause not given by statute to other
10 trial courts. The penalties sought by Plaintiffs total more than this Court’s jurisdictional minimum.

11 20. Plaintiffs are each a citizen of California because their domiciles are in California.

12 21. This Court has jurisdiction over Defendants because they conduct substantial
13 business in California, employ numerous individuals in California, and have intentionally availed
14 themselves of the laws and markets of California through the operation of their business in
15 California.

16 22. Venue is proper in this Court because Defendants transact business in San Joaquin
17 County, and Defendants are otherwise within this Court’s jurisdiction for purposes of service of
18 process. On information and belief, Defendants employ numerous individuals throughout San
19 Joaquin County. Furthermore, Defendants committed wage-and-hour violations in this County.

20 23. There is no federal question at issue here for removal under 28 U.S.C. §1331, as the
21 issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage
22 Orders, and Code of Civil Procedure. Further, as a representative action under PAGA, the matter is
23 not subject for removal under 28 U.S.C. §1332(a)-(d). Plaintiffs do not seek individual damages, but
24 rather civil penalties for violations other aggrieved employees were subject to, and as such, do not
25 seek damages on their own behalf and therefore neither the \$75,000 amount in controversy nor
26 damages for a class in an amount greater than \$5 million thresholds are not met

27 **PARTIES**

28 **A. PLAINTIFFS**

1 24. Plaintiff Brown is an individual over the age of eighteen years, and at all times relevant
2 herein was and is, a resident of Sacramento County in the State of California.

3 25. Plaintiff Okada is an individual over the age of eighteen years, and at all times relevant
4 herein was and is, a resident of Sacramento County in the State of California.

5 26. Plaintiffs worked at Defendants' facilities in San Joaquin County and Alameda County.

6 **B. DEFENDANTS**

7 27. Defendant Tesla is a Delaware Corporation with its principal place of business in Texas.

8 28. On information and belief, Defendants operate assembly and distribution center
9 warehouses throughout the State of California and employ numerous employees in those warehouses.

10 29. Based on information and belief, Defendants had the authority to, directly or indirectly,
11 or through an agent or other person, employ or exercise control over Plaintiffs' and other aggrieved
12 employees' wages, hours, and working conditions.

13 30. Based on information and belief, wage and hour policies, including those which caused
14 violations of California law alleged in this Complaint, were drafted and administered centrally
15 between the various Defendants. Additionally, Defendants, each, had knowledge of the wage-and-
16 hour violations alleged herein and each defendant had the power to prevent the violations from
17 occurring. Having knowledge of the wage-and-hour violations set forth in this Complaint, Defendants
18 could have but failed to prevent the violations from occurring.

19 31. Plaintiffs do not know the true names and capacities of defendants sued herein as DOES
20 1 through 10, and therefore sue these defendants by such fictitious names. Plaintiffs will amend their
21 Complaint to allege the true names and capacities when they are ascertained.

22 32. Plaintiffs believe and thereon allege that each "Doe" Defendant is responsible in some
23 manner for the occurrences herein alleged, and Plaintiffs' injuries as herein alleged are directly,
24 proximately and/or legally caused by Defendants and their acts.

25 33. Plaintiffs are informed and believes and thereon alleges that the aforementioned DOES
26 are somehow responsible for the acts alleged herein as the agents, employers, representatives or
27 employees of other named Defendants, and in doing the acts herein alleged were acting within the
28 scope of their agency, employment or representative capacity of said named Defendants.

1 34. The tortious acts and omissions alleged herein were performed by Defendants'
2 management level employees. Defendants allowed and/or condoned a continuing pattern of unlawful
3 practices in violation of the California Labor Code.

4 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

5 35. Defendants operate distribution center warehouses and assembly centers throughout the
6 State of California. Workers at those warehouses are provided with pallet jacks or forklifts and are
7 given assignments to complete. The assignments consist of moving their pallet jacks up and down
8 aisles in enormous warehouses, taking items off the shelves and loading them onto pallets to be
9 ultimately shipped to customers and/or retail stores, or delivered to assembly lines for assembly
10 workers to assemble or otherwise work on. Assembly workers are required to work at a station and
11 assemble parts which are delivered by warehouse workers to assembly lines.

12 **Off-the-clock Work**

13 36. Employees are also required to work time off-the-clock both before and after their
14 shifts.

15 37. Defendants required Plaintiffs and other aggrieved employees to work off-the-clock,
16 including but not limited to, working through meal breaks or meal breaks being interrupted.

17 38. Additionally, Plaintiffs and other aggrieved employees are required to be ready to start
18 their assignments at the starting time of their shift. If they are not ready, they are disciplined by
19 Defendants. Accordingly, Plaintiffs and other aggrieved employees worked before their shifts
20 including the time spent before shifts conducting checks on their equipment and replacing batteries
21 to be ready on time.

22 39. In addition, Plaintiffs and other aggrieved employees when they arrived at the
23 warehouse, were required to badge in, then go to a security desk where their badge was then checked,
24 then badge in at another door, then walk through part of the warehouse, then badge through another
25 door and then finally they reached a time clock where they would need to wait for others to clock in
26 ahead of them. It took them approximately 15 minutes just to get to the time clock from when they
27 entered the facility. At the end of their shifts, Plaintiffs and other aggrieved employees needed to go
28 through this process again after clocking out.

1 40. Defendants did not pay Plaintiffs and other aggrieved employees for these hours
2 worked.

3 **Failure to Accurately Calculate the Regular Rate of Pay and Therefore Failure to Pay all Wages**
4 **at Legally Required Rates**

5 41. Defendants regularly paid various types of bonuses.

6 42. However, Defendants failed to incorporate those bonuses into the appropriate
7 calculations of the regular rate of pay for: overtime premium wages; missed meal and rest period
8 wages; sick leave wages; and vacation wages.

9 **Meal Breaks**

10 43. Defendants required employees to take a 30 minute meal break within a 35 or 45
11 minute period, but the time clocks are not in the break areas, rather employees clock out and then
12 walk several minutes to the break areas, and then walk several minutes back to the clock at the end
13 of breaks. This results in breaks being less than 30 minutes.

14 44. Plaintiffs and aggrieved employees were not paid premiums for all of these missed meal
15 periods.

16 **Rest Breaks**

17 45. Defendant only provides Plaintiffs and other aggrieved employees 10 minutes for rest
18 breaks, but with both warehouse and assembly workers there are tools that have to be put away and
19 stored and then the employee has to walk to the break area. As such, it is not possible for employees
20 to get full 10 minute breaks.

21 46. Plaintiffs and other aggrieved employees were not paid premiums for those missed rest
22 periods.

23 **Paid Sick Leave and COVID-19 Supplemental Paid Sick Leave**

24 47. California Healthy Workplaces Healthy Families Act, ARTICLE 1.5. 'Paid Sick Days'
25 [sections §§ 245-249] requires employers to provide paid sick leave and COVID-19 supplemental
26 paid sick leave to employees.

27 48. Defendants failed to provide paid sick leave to Plaintiffs and other aggrieved employees
28 in accordance with California law.

1 49. In failing to provide paid sick leave and COVID-19 supplemental paid sick leave,
2 Defendants also violated the requirement under Labor Code § 246(i) to provide with the employee
3 wage statements the number of hours earned and used at the appropriate and accurate rates.

4 50. Alternatively, Defendants failed to pay sick leave at the correct rate required by law,
5 and failed to provide accurate notices of accrued benefits as required by law.

6 **Unreimbursed Expenses**

7 51. Defendants also require employees to purchase steel-toed boots which they must use
8 when working in the warehouses. Defendants do not reimburse them for the cost of these items.

9 **Violation of Quota Laws**

10 52. On information and belief, at the distribution facility and assembly in which Plaintiffs
11 worked for Defendants, Defendants employed or exercised control over the wages, hours, or working
12 conditions of 100 or more employees at any given point in time, during the PAGA period, and
13 therefore, Defendants fall under California's law regulating the use of quotas at distribution facilities.

14 53. Defendants did not provide a written description of each quota to which Plaintiffs and
15 aggrieved employees were subject, including the quantified number of tasks to be performed or
16 materials to be produced or handled, within the defined time period, and any potential adverse
17 employment action that could result from failure to meet the quota.

18 54. Defendants also required Plaintiffs and aggrieved employees to meet a quota that
19 prevents compliance with meal or rest periods and use of bathroom facilities, including reasonable
20 travel time to and from bathroom facilities.

21 55. Defendants also took adverse employment action against aggrieved employees for
22 failure to meet such quotas.

23 **Failure to Provide a Safe and Healthful Workplace**

24 56. Defendants operate using a quota system, which is illegal and can and should be
25 enjoined under Labor Code seq. § 2100. This quota, because it denies proper access to rest breaks and
26 bathroom time, causes employees to have to work at speeds beyond those which are safe and without
27 proper periods of rest, causing unnecessary injuries. Plaintiff suffered one of those such injuries.
28

1 57. Additionally, California Code of Regulations, Title 8 § 3364 (b) states “Toilet facilities
2 shall be kept clean, maintained in good working order and be accessible to the employees at all times.
3 Where practicable, toilet facilities should be within 200 feet of locations at which workers are
4 regularly employed and should not be more than one floor-to-floor flight of stairs from working
5 areas.”

6 58. Defendants failed to provide places of employment that were safe and healthful for the
7 employees therein, in violation of the Cal/OSHA requirements found within Title 8 of the California
8 Code of Regulations and the aforementioned California Labor Code sections, by not providing toilet
9 facilities that are accessible to employees at all times.

10 59. Additionally IWC Order 15 requires facilities to be kept at safe temperatures.
11 Defendants have and do fail to maintain safe temperatures at their distribution center warehouses and
12 assembly facilities.

13 **Wage Statements**

14 60. Because of Defendants’ failure to record all hours worked and failure to pay all wages
15 and premiums owed, the wage statements it issues to employees are incorrect.

16 61. The wage statements also do not accurately state the name and address of the employer.

17 **Termination of Employment**

18 62. When Plaintiffs’ employment with Defendants ended, respectively, Defendants failed
19 to pay each of them all money that they were owed, as a result of not paying them for off-the-clock
20 work, not paying wages at legally required rates and not paying meal and rest break premiums as
21 alleged above.

22 63. Plaintiffs are informed and believe that the above practices they experienced were not
23 unique to them but rather were companywide policies and practices at all distribution facilities in the
24 State of California and were suffered by all non-exempt employees.

25 64. Plaintiffs are informed and believe that the unlawful wage and hour policies described
26 in this action are set centrally and are applicable through-out California.

27 65. Plaintiffs are informed and believe that the unlawful wage and hour policies described
28 in this action are still ongoing.

FIRST CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(Against All Defendants)
[Cal. Labor Code §§ 2698-2699.5]

66. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

67. Plaintiffs are “aggrieved employees” within the meaning of California Labor Code § 2699(c), and proper representatives to bring a civil action on behalf of the State of California and all other current and former employees of Defendants pursuant to the procedures specified in California Labor Code §2699.3, because Plaintiffs were employed by Defendants and the alleged violations of the California Labor Code were committed against Plaintiffs.

68. Pursuant to the PAGA, Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to penalties under California Labor Code §§ 2699, 203, 210, 248.5, 558, 1197.1 and the applicable IWC Wage Order, from Defendant for the violations set forth above that only other aggrieved employees were subject to, including but not limited to violations of California Labor Code §§ 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245-249, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2101-2104, 2802, 6400, 6402 and 6404.

69. Plaintiffs seek civil penalties pursuant to the PAGA for violations of the Labor Code, including:

- a. Failure to pay regular and overtime wages for all hours worked (Labor Code §§ 200, 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1 and 1198, and the applicable IWC Wage Order);
- b. Failure to calculate a legally sufficient regular rate, and therefore:
 - i. Failure to pay overtime premium wages at legally sufficient rates (Labor Code § 510; *Alvarado v Dart Container*, (2018), 4 Cal.5th 542);
 - ii. Failure to pay vacation pay at legally sufficient rates (Labor Code § 227.3);
 - iii. Failure to pay sick leave and COVID-19 supplemental sick leave at legally

sufficient rates (Labor Code §§ 246(l)(1)-(2) and 248.5); and

iv. Failure to pay rest and meal break premium wages at legally sufficient rates (Labor Code §§ 226.7, 512(a), 558, 1198; *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858).

- c. Failure to pay sick leave and COVID-19 supplemental sick leave and to provide notice of accrued sick leave available (Labor Code §§ 246(l)(1)-(2) and 248.5);
- d. Failure to provide meal breaks (Labor Code §§ 226.7, 512, 558 and the applicable IWC Wage Order);
- e. Failure to authorize and permit rest breaks (Labor Code §§ 226.7, 558 and the applicable IWC Wage Order);
- f. Failure to reimburse business expenses (Labor Code § 2802);
- g. Failure to comply with California quota laws (Labor Code §§ 2101-2104);
- h. Failure to provide a safe and healthful workplace (Labor Code §§ 6400- 6404 and California Code of Regulations, Title 8 § 3364 (b));
- i. Failure to pay wages in a timely fashion (Labor Code §§ 204, and 210);
- j. Failure to provide accurate wage statements (Labor Code §§ 226(a), 226(e)(1), 226.3, 1174, 1174.5, and the applicable IWC Wage Order); and
- k. Failure to pay all wages due upon termination of the employment relationship (Labor Code §§ 201, 202, 203, 204, 1198, 2699 et seq., and the “Minimum Wages” Section of the applicable IWC Wage Order).

70. Plaintiffs are also entitled to an award of reasonable attorneys’ fees and costs pursuant to California Labor Code § 2699(g)(1).

71. Plaintiffs have satisfied the requirements of Labor Code § 2699.3. On December 29, 2023, Plaintiffs sent notice to the California Labor and Workforce Development Agency (LWDA) and Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) notifying them of the specific violations and the facts and theories supporting those violations. Plaintiffs also provided Defendants notice of this “PAGA Letter” by certified mail. Sixty-five days have elapsed since Plaintiffs notified the LWDA and Cal/OSHA, and neither the LWDA nor

1 Cal/OSHA has provided notice that it intends to investigate the claims.

2 72. Further, for certain violations, Labor Code § 2699.3 provides that “the employer may
3 cure the alleged violation within 33 calendar days of the postmark date of the notice sent by the
4 aggrieved employee or representative. The employer shall give written notice within that period of
5 time by certified mail to the aggrieved employee or representative and by online filing with the
6 agency if the alleged violation is cured, including a description of actions taken, and no civil action
7 pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day
8 period, the employee may commence a civil action pursuant to Section 2699.” Lab. Code, §
9 2699.3(c)(2)(A). Labor Code § 2699(d) states that “[f]or purposes of this part, ‘cure’ means that the
10 employer abates each violation alleged by any aggrieved employee, the employer is in compliance
11 with the underlying statutes as specified in the notice required by this part, and any aggrieved
12 employee is made whole. A violation of paragraph (6) or (8) of subdivision (a) of Section 226 shall
13 only be considered cured upon a showing that the employer has provided a fully compliant,
14 itemized wage statement to each aggrieved employee for each pay period for the three-year period
15 prior to the date of the written notice sent pursuant to paragraph (1) of subdivision (c) of Section
16 2699.3.” Lab. Code, § 2699(d). Plaintiffs have not received notice from Defendants that any of the
17 alleged violations were cured within the statutory period. Plaintiffs have, therefore, exhausted their
18 administrative remedies as required by Labor Code §2699.3.

19 73. Attached as Exhibit 1 to this Complaint is Plaintiffs’ PAGA Letter.
20

21 **WHEREFORE** Plaintiffs pray for the following relief:

- 22 1. For civil penalties pursuant to the PAGA (Labor Code 2698 et seq.), only for
23 violations that other aggrieved employees were subject to;
- 24 2. For costs of suit and attorneys’ fees as permitted by law, including those available
25 pursuant to Labor Code section 2699(g);
- 26 3. For an award of interest, including prejudgment interest, at the legal rate as permitted
27 by law;
- 28 4. For such other and further relief as the Court deems proper and just under all the

1 circumstances.

2
3 DATED: July 22, 2024

BEN TRAVIS LAW, APC

HEWGILL COBB & LOCKARD, APC

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Justin Hewgill, Esq.
Attorneys for Plaintiff

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EXHIBIT 1



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December 29, 2023

Via LWDA Website:

Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Via Email:

Department of Industrial Relations
Division of Occupational Safety and Health
39141 Civic Center Dr. Suite 310
Fremont, CA 94538
DOSHfremont@dir.ca.gov

Re: Shannon Brown & Tommi Okada v. Tesla
Written Notice Under Labor Code § 2699.3

Dear PAGA Administrator:

We represent Shannon Brown (“Brown”) and Tommi Okada (“Okada”) (collectively “Claimants”), who are former non-exempt employees of Tesla, Inc. d/b/a Tesla Motors, Inc. (“Tesla”) and Does 1-25 (collectively referred to as “Defendants”).

This letter shall serve as our clients’ written notice to the Labor and Workforce Development Agency and the Division of Occupational Safety and Health of the Labor Code violations they claim Defendants committed against them and all other current and former non-exempt employees of Defendants who worked in California. Our clients provide this written notice in accordance with the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, et seq. Our clients desire to file a civil action to enforce their rights under the Labor Code and seek compensation accordingly. Pursuant to Labor Code § 2699, and by way of this letter, our clients also intend to represent all other current and former non-exempt employees of Defendants in California who have suffered at least one of the violations described herein during the relevant period.

A copy of this letter, along with the \$75.00 filing fee is being uploaded on the

LWDA's website for this purpose contemporaneously with the certified mailing of this letter to Defendants.

FACTUAL BACKGROUND

Tesla operates warehouse facilities throughout the state of California and employs numerous employees at those facilities. Upon information and belief, the operations of all warehouses in California are subject to the same employment policies, practices, and procedures.

Claimant Brown worked as a non-exempt material handler at Defendants' Fremont Boulevard warehouse in Fremont, California from in or around November 2022 through in or around February 2023. Claimant Okada worked as a non-exempt production associate at Defendants' Page Avenue and Fremont Boulevard warehouses in Fremont, California from in or around February 2022 through in or around March 2023. Defendants compensated Claimants at an hourly rate of pay. Defendants also compensated Claimants on a regular basis with bonuses. Claimants worked five days a week during most weeks. Claimants regularly worked more than eight hours a day and more than 40 hours a week.

Defendants denied Claimants and other non-exempt employees in California specific rights afforded to them under the California Labor Code, and the applicable Industrial Welfare Commission Wage Order ("IWC Wage Order").

Defendants failed to provide full timely uninterrupted meal breaks, and failed to provide a second meal break when Claimants and similarly situated employees worked shifts of 10 or more hours. Claimants and other aggrieved employees were required to clock out on time clocks for meal breaks but it took approximately 10 minutes to go each way to and from the cafeteria after clocking out. Accordingly, Claimants and other aggrieved employees were provided with meal breaks of less than 30 minutes.

Defendants failed to authorize and permit Claimants and other aggrieved employees legally adequate rest breaks. They did this by failing to provide sufficient break time to allow Claimants and other aggrieved employees to travel from the time clock to a break area or restroom (and return) and still have a full ten minute uninterrupted break relieved of all duty. Furthermore, Claimants and other aggrieved employees were required to complete their processes, put their tools away, plug in their tuggers and make sure

nothing was in the car they were working on before they could go on break. If they were in the middle of a process, they would need to finish it before going on break. This resulted in Claimants and other aggrieved employees not taking full rest breaks, as all employees were required to take their rest breaks at the same time.

Furthermore, despite Claimants and other aggrieved employees regularly earning bonuses, Defendants did not properly include all those bonuses in the calculation of their regular rates of pay. Therefore, Defendants did not pay Claimants and other aggrieved employees overtime pay, sick and vacation pay and meal and rest break premiums at the correct hourly rates.

Additionally, Defendants required Claimants and other aggrieved employees to work off-the-clock, including but not limited to, working through meal breaks or meal breaks being interrupted, working before their shifts including the time spent before shifts conducting checks on their equipment and replacing batteries to be ready on time. In addition, Claimants and other aggrieved employees when they arrived at the warehouse, were required to badge in, then go to a security desk where their badge was then checked, then badge in at another door, then walk through part of the warehouse, then badge through another door and then finally they reached reached a time clock where they would need to wait for others to clock in ahead of them. It took them approximately 15 minutes just to get to the time clock from when they entered the facility. At the end of their shifts, Claimants and other aggrieved employees needed to go through this process again after clocking out. Defendants did not pay Claimants and other aggrieved employees for these hours worked.

Defendants also required Claimants and other aggrieved employees to purchase steel-toed boots for work purposes and did not reimburse them for those business expenses.

Derivatively, Defendants failed to pay Claimants and similarly situated employees all wages owed timely during employment and upon termination of employment and failed to and continues to fail to provide accurate wage statements and maintain accurate records as required by California law.

Defendants also violated the California quota laws by failing to provide employees with written descriptions of each quota and any potential adverse employment action that could result from failure to meet the quota. Defendants also violated the quota laws by

requiring employees to meet quotas that prevented compliance with meal and rest periods and use of bathroom facilities, including reasonable travel time to and from bathroom facilities, and by taking adverse employment actions against employees, including termination, for failure to meet a quota that did not allow them to take meal and rest periods and use the bathroom facilities, including reasonable travel time to and from bathroom facilities, and for failure to meet a quota that had never been disclosed to them.

Finally, Defendants failed to provide places of employment that were safe and healthful, by forcing employees to work in the heat without air conditioning.

FACTUAL BASES & LEGAL THEORIES

SUPPORTING ALLEGED VIOLATIONS OF THE LABOR CODE

Claimants allege that Defendants' policies, procedures and workplace culture caused various and wide-ranging labor code provision violations, including but not limited to Labor Code §§ 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245-249, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2101-2103, 2802, 6400, 6402 and 6404.

- 1. Defendants failed to pay Claimants and similarly situated employees paid sick leave and COVID-19 supplemental paid sick leave at the correct legal rate; and failed to properly notice Claimants and similarly situated employees of the sick leave they had and have accrued. (Violation of Labor Code §§ 246 through 248.6).**

California Healthy Workplaces Healthy Families Act, ARTICLE 1.5. 'Paid Sick Days' [sections §§ 245-249] requires employers to provide paid sick leave and COVID-19 supplemental paid sick leave to employees. Labor Code § 246(l)(1)-(2) mandates that sick leave be calculated in the same fashion that overtime base rates are calculated for the pay period sick leave is used, or in a 90-day period in which the sick leave is used. In either case, the rate should be calculated by dividing the sum of all wages by total hours. Labor Code § 248.6 mandates the same calculations for COVID-19 supplemental paid sick leave.

When Defendants provided paid sick leave, Defendants refused to include all wages earned (including bonuses) in the calculations, and instead paid sick leave at the

employees' simple hourly rates. Claimants and similarly situated employees are therefore owed compensation for these improperly paid sick time hours.

In failing to pay the proper sick leave rate, Defendants also violated the requirement under Labor Code § 246(i) to provide with the employee wage statements the number of hours earned and used at the appropriate and accurate rates.

Claimants will seek all available remedies, including PAGA penalties as provided for by California law.

2. Defendants failed to pay Claimants and similarly situated employees overtime premium wages at the correct legal rate (Violation of Labor Code §§ 200, 204, 210, 510, 1194, 1194.2, 1197, 1197.1 and 1198).

The fundamental right of an employee in the state of California to be paid wages in a timely manner for their work is established by Labor Code § 204, while Labor Code § 1197 requires employers to pay their employees the fixed minimum wage as set by the commission. Pursuant to Labor Code § 1198, it is unlawful to employ persons for more than eight hours per day or forty hours per workweek without compensating them at the rate of pay either time and one half or two times that person's regular rate of pay depending on the number of hours worked. Pursuant to Labor Code § 200(a), wages includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. An employee is permitted to recover any unpaid balance of the minimum wage or overtime compensation not paid for all hours worked under Labor Code § 1194. As required by Labor Code § 1197.1, an employer must pay a civil penalty if it causes an employee to be paid a wage lower than that of the fixed minimum. *See also* the applicable IWC Wage Order, item 20. Labor Code § 210 provides for an additional civil penalty, independent and apart from any other penalty.

An employee's "regular rate of pay" for purposes of Labor Code § 510 and the IWC wage orders is not the same as the employee's straight time rate (i.e., his or her normal hourly wage rate). Regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any non-hourly compensation the employee has

earned. *Alvarado v Dart* (2019) 4 Cal 5th 542. Defendants, however, do not comply with the law by including bonuses in the calculation of the regular rate of pay. Rather, Defendants paid Claimants and other aggrieved employees overtime pay based on their basic hourly rates. Claimants and similarly situated employees are owed unpaid overtime premiums.

Labor Code § 558 states: “(a) Any employer or other person acting on behalf of an employer who violates, 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.”

Claimants will seek all available remedies, including PAGA penalties as provided for by California law.

3. Defendants failed to pay Claimants and similarly situated employees vacation pay at the correct and legal “regular rate of pay.” (Violation of Labor Code § 227.3).

Labor Code § 227.3 provides that “Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.”

Claimants and certain other Aggrieved Employees have either resigned from Defendants' employ or had their employment terminated by Defendants. At all relevant times, Defendants have had an established written policy, practice, or agreement to provide paid vacation to their employees employed in the State of California wherein employees receive additional compensation in the form of vacation time, which they can use to take time off from work with compensation. Upon resignation or termination, Defendants paid Claimants and the other Aggrieved Employees vested vacation time at an hourly rate of pay that was lower than their final regular hourly rates of pay, because Defendants failed to include earned bonuses when calculating the regular rate of pay, in violation of Labor Code § 227.3.

Claimants and other aggrieved employees are entitled to civil penalties pursuant to Labor Code § 2699(f)(2) for Defendants' failure to pay such vested, but unused vacation time compensation at the correct rate upon resignation or termination, as set forth above, in violation of Labor Code § 227.3.

Claimants will seek all available remedies, including PAGA penalties as provided for by California law.

4. Defendants failed to pay Claimants and similarly situated employees missed meal and rest break premiums at the correct legal "regular rate of pay."

Labor Code § 512(a) states, "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

Section (A) of the "Meal Period" provision of the applicable IWC Wage Order states, "No employer shall employ any person for a work period of more than five (5)

hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked.'" Section (D) states "If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided."

Labor Code §1198 states "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code § 226.7 states: "(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health."

On July 15, 2021, the California Supreme Court held in *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, that the term "regular rate of compensation" under § 226.7(c) is equivalent to the term "regular rate of pay" under Labor code § 510(a). Accordingly, the meal and rest break premiums owed must be paid at the same rate as would be required under Labor Code § 510(a). On the rare occasions that Defendants actually paid meal or rest break premiums, those premiums were only

paid at the basic hourly rate and did not account for any bonuses paid. Accordingly, Defendants violated Labor Code § 226.7(c).

Labor Code § 558 states: “(a) Any employer or other person acting on behalf of an employer who violates, 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.”

Claimants will seek all available remedies, including PAGA penalties as provided for by California law.

5. Defendants failed to pay all Regular and Overtime Wages (Off-the-Clock Work). (Labor Code §§ 200, 204, 510, 1194 & 1198)

Labor Code section 1194(a) states “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit.” Liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon are provided for under Labor Code section 1194.2.

Labor Code section 1197 states “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

Labor Code section 1197.1 (a) states “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or

local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Labor Code §203...”

As provided for in Section 1197.1(a)(1), for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Labor Code section 1198 states “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Section (B) of the “Minimum Wages” provision of the applicable IWC Wage Order states “Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission or otherwise.”

As set forth above, Defendants required Claimants and other aggrieved employees to work off-the-clock before and after their shifts. Claimants and other aggrieved employees regularly worked more than eight hours a day and more than 40 hours a week, however, Defendants did not compensate Claimants and other aggrieved employees for the time spent working for Defendants before they clocked in and after clocking out.

As such, Claimants and other aggrieved employees are owed unpaid hours. Claimants will seek all available remedies, including PAGA penalties as provided for by California law.

6. Defendants refused and failed to provide legally compliant meal periods or compensation in lieu thereof (Violation of Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order).

Pursuant to Labor Code § 512, no employer shall employ any person for a work period in excess of five (5) hours without providing a meal period of at least thirty (30) minutes. *See also* the applicable IWC Wage Order, item 11. During this meal period of no less than thirty (30) minutes, the employer must completely relinquish any and all control over the employee and the employee must not engage in any work-related activity for the employer. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040. If the employee performs any work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. *Id.* Additionally, California law does not permit an employer to employ an individual for a work period in excess of ten (10) hours without providing a second meal period of at least thirty (30) minutes. Labor Code § 512; the applicable IWC Wage Order, item 11. If the employer fails to provide an employee with a legally compliant meal period, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided. Labor Code § 226.7; the applicable IWC Wage Order, item 11.

Claimants contend that as a policy, practice, guideline and/or procedure, Defendants failed to provide meal breaks to their employees. Specifically, Defendants made it impossible for employees to take full meal breaks due to the distance that Claimants and other aggrieved employees had to travel once clocked out for meal breaks to get to an appropriate rest area, along with the necessary time to travel (by foot) back to the clock in area, all during their alleged meal periods, made it such that Claimants and similarly situated employees were not afforded adequate meal periods. Furthermore, when meal periods were provided, they were often after the end of the fifth hour of work. As such, Claimants and similarly situated employees were not relieved of duty and not provided legally adequate meal breaks. Consequently, Claimants are entitled to receive one additional hour of pay at their regular rate of compensation for each day a compliant rest or meal period was not provided.

Labor Code § 558 states: “(a) Any employer or other person acting on behalf of an employer who violates, 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.”

Claimants will seek all available remedies, including PAGA penalties as provided for by California law.

7. Defendants refused and failed to authorize and permit legally compliant rest periods or compensation in lieu thereof (Violation of Labor Code § 226.7 and the applicable IWC Wage Order).

The applicable IWC Wage Order, item 12 requires employers to authorize and permit off-duty rest periods during which an employee must be relieved of any and all work-related duties. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269. Additionally, a lawful off-duty rest period is not provided where an employer fails to relinquish control over how employees spend their time. *Id.* Under Labor Code § 226.7, an employer is required to pay an employee one (1) additional hour of pay at the employee’s regular rate of pay for each workday in which a lawful rest period was not provided. *See also* the applicable IWC Wage Order.

Defendants consistently provided employees with rest periods that were less than 10 minutes. Claimants and similarly situated employees of Defendants have and are being denied legally sufficient rest breaks.

Labor Code section 558 states: “(a) Any employer or other person acting on behalf of an employer who violates, 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.”

Claimants will seek all available remedies, including PAGA penalties as provided for by California law.

8. Defendants failed to reimburse business expenses. (Labor Code § 2802)

Labor Code section 2802(a) provides in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

Labor Code section 2802(b) states, “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.”

Furthermore, Labor Code section 2802(c) states “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

Defendants required Claimants and other aggrieved employees to purchase steel-toed boots for use in the workplace. While Defendants provided boots, they were unusable, requiring Claimants and other aggrieved employees to purchase their own. Claimants and other aggrieved employees were not reimbursed for this necessary expense which was required for the benefit of their employer.

Defendants did not and do not compensate Claimants and other aggrieved employees for these costs incurred in the discharge of their duties and they are entitled to recover these expenses. Claimants will seek all available remedies, including PAGA

penalties as provided for by California law.

9. Defendants failed to timely pay wages. (Labor Code §§ 204 and 210 and the “Minimum Wages” section of the applicable IWC Wage Order)

Labor Code § 204 subsection (a) states in relevant part “All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

Labor Code § 204 subsection (b)(1) states: “Notwithstanding any other provision of this section, 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.”

The “Minimum Wages” section of the applicable IWC Wage Order provides every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.

Labor Code § 210(a) imposes a civil penalty for violation of Labor Code § 204 of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred dollars (\$200) for each subsequent violation, or willful and intentional violation, plus 25 percent of the amount unlawfully withheld.

Due to Defendants not paying correct legal rates as alleged above, Defendants do not pay all wages. In addition, Defendants failed to pay meal and rest break premiums, Defendants failed to pay Claimants all minimum, regular, overtime, and meal and rest period wages due and owing either on the regular paydays or the payday for the next payroll period. Defendants willfully failed to pay all wages when required by § 204 of the Labor Code. Therefore, Defendants owe penalties to all affected employees including Claimants. Claimants will pursue all remedies for Defendants’ failure to pay timely

wages on behalf of themselves and other current and former aggrieved employees, including recovery of wages, attorney's fees, costs, and penalties to the extent allowed by law.

10. Defendants failed to provide accurate wage statements and maintain accurate records. (Labor Code §§ 226(a), 226(e)(1), 226.3, 1174, 1174.5, and the "Records" Section of the applicable IWC Wage Order)

Labor Code § 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (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 the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer...; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code § 226.3 provides that “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

In addition, Labor Code § 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimants are entitled to an award of costs and reasonable

attorney's fees.

Section (B) of the “Records” provision of the applicable IWC Wage Order states that “Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee’s social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.”

Labor Code § 1174(d) provides that an employer must 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, employees employed at the respective establishments. These records shall be kept on file for not less than three years. Labor Code § 1174.5 provides for a civil penalty of five hundred dollars (\$500) for an employer who willfully fails to maintain the records pursuant to Labor Code section 1174(d).

Sections (7)(A)(4) and (5) of the “Records” provision of the applicable IWC Wage Order provides that employers shall keep accurate information with respect to each employee, including total wages paid each payroll period, total hours worked during the payroll period, and applicable rates of pay, as well as time records showing when each employee begins and ends each work period. The time records must also show meal periods, split shift intervals, and total daily hours worked.

Defendants failed to maintain records as set forth in § 1174 of the Labor Code and the “Records” section of the applicable IWC Wage Order including but not limited to, accurately recording applicable rates of pay.

Defendants also failed to provide accurate itemized wage statements as required by Labor Code §226.

Due to Defendants not paying for all hours worked, not paying at legally required rates and not paying meal and rest period premiums, Defendants do not record proper hours and wages, and do not provide legally compliant wage statements accurately

accounting for hours, wages, deductions, etc.. Nor do the wage statements properly state the name and address of the legal entity that is the employer.

Claimants will seek all available remedies, including PAGA penalties as provided for by California law.

11. Defendants failed to pay all wages due on termination. (Labor Code §§ 201, 202, 203, 204, 1198, 2699 et seq., and the “Minimum Wages” Section of the applicable IWC Wage Order)

Labor Code § 201 states “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code § 202 states “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code § 203(a) states, in relevant part; “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.”

Labor Code § 204(a) states in pertinent part “All wages... earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”

Labor Code § 210(a) imposes a civil penalty for violation of Labor Code § 204 of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred dollars (\$200) for each subsequent violation, plus 25 percent of the amount unlawfully withheld.

The “Minimum Wages” section of the applicable IWC Wage Order provides that every employer shall pay to each employee, on the established payday for the period

involved, not less than the applicable minimum wage for all hours worked in the payroll period.

Due to Defendants not paying correct legal rates as alleged above, Defendants do not pay all wages. In addition, Defendants failed to pay meal and rest break premiums. In addition, Defendants failed to pay Claimants all minimum, regular, overtime, and meal and rest period wages due and owing during and upon termination of employment. Defendants willfully failed to pay all wages when required by §§ 201 and 202 of the Labor Code. Therefore, Defendants owe waiting time penalties to all affected employees including Claimants. Claimants will pursue all remedies for Defendants' failure to pay timely wages on behalf of themselves and other current and former aggrieved employees, including recovery of wages, attorney's fees, costs, and penalties to the extent allowed by law.

12. Defendants violated warehouse quota laws (Labor Code § 2100 et seq.)

Labor Code § 2101 provides that each employer that employs 100 or more employees at a single warehouse distribution center in California, or 1,000 employees at one or more warehouse distribution centers in California, shall provide upon hire or within 30 days of the effective date of this part, a written description of each quota to which the employee is subject, including the quantified number of tasks to be performed or materials to be produced or handled, within the defined time period, and any potential adverse employment action that could result from failure to meet the quota.

Labor Code § 2102 provides that an employee shall not be required to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the Labor Code or division standards. An employer shall not take adverse employment action against an employee for failure to meet a quota that does not allow a worker to comply with meal and rest periods, or occupational health and safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been disclosed to the employee pursuant to Section 2101.

Labor Code § 2103 provides:

(a) Any actions taken by an employee to comply with occupational health and safety laws in the Labor Code or division standards shall be considered time on task and productive time for purposes of any quota or monitoring system.

(b) Notwithstanding subdivision (a), consistent with existing law, meal and rest breaks are not considered productive time unless the employee is required to remain on call.

Defendants failed to provide employees with a written description of applicable quotas and any potential adverse employment action that could result from failure to meet the quota. Defendants also required Claimants and other aggrieved employees to meet quotas that prevented compliance with meal and rest periods and use of bathroom facilities, including reasonable travel time to and from bathroom facilities. Similarly, the quota system prevented Claimants and similarly situated employees from taking breaks because it failed to account for or treat time traveling to and from break areas as productive in the quota such that Claimants and similarly situated employees were penalized under the quota for taking breaks.

Defendants took adverse employment actions against Claimants and other aggrieved employees, including termination, for failure to meet a quota that did not allow them to take meal and rest periods and use the bathroom facilities, including reasonable travel time to and from bathroom facilities, and for failure to meet a quota that had never been disclosed to them as required by § 2101.

Claimants will seek all available remedies, including PAGA penalties as provided for by California law.

13. Defendants failed to provide a place of employment that is safe and healthful for the employees therein. (Labor Code §§ 6400, 6402, 6404; Applicable Wage Order subsection 15 (A)-(C))

Labor Code section 6400 states “(a) Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.”

Labor Code section 6402 states “No employer shall require, or permit any

employee to go or be in any employment or place of employment which is not safe and healthful.”

Labor Code Section 6404 states “No employer shall occupy or maintain any place of employment that is not safe and healthful.”

Labor Code section 2699(f) provides for penalties of \$100 “for each aggrieved employee per pay period for [an] initial violation” and \$200 “for each aggrieved employee per pay period for each subsequent violation.”

Here, Defendants operates using a quota system, which is illegal and can and should be enjoined under Labor Code seq. § 2100. This quota, because it denies proper access to rest breaks and bathroom time, causes employees to have to work at speeds beyond those which are safe and without proper periods of rest, causing unnecessary injuries.

Additionally, the applicable Wage Order subsection 15, requires warehouses to be kept at safe temperatures with adequate ventilation. Defendants failed to do so. The workplace was regularly dangerously hot.

Defendants failed to provide places of employment that were safe and healthful for the employees therein, in violation of Cal/OSHA requirements, by forcing employees to work in hot warehouses and not providing working air conditioning.

Claimants will seek all available remedies, including PAGA penalties as provided for by California law.

CONCLUSION

The facts and claims contained herein are based on the information available at the time of this writing. If Claimants becomes aware of additional claims, additional compensation owed or other violations to them or any other current and former employee of Defendants, they reserve the right to revise these facts and/or add any new claims by amending this written notice.

If you have any questions or concerns regarding the above, do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to be 'Ben Travis', with a stylized 'B' and a long horizontal stroke.

Ben Travis
Ben Travis Law, APC

A handwritten signature in black ink, appearing to be 'Justin Hewgill', with a stylized 'J' and a long horizontal stroke.

Justin Hewgill
HEWGILL, COBB & LOCKARD, APC

cc (by certified mail):

Tesla, Inc.
1 Tesla Road
Austin, TX 78725

Tesla Motors, Inc.
C/O CT CORPORATION SYSTEM
330 N Brand Blvd, Ste 700
Glendale, CA 91203