

FILED

Superior Court of California
County of Alameda

05/17/2024

Clad Flake, Executive Officer / Clerk of the Court

By: Nicole Hall Deputy
N. Hall

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

MARCUS VAUGHN, et al,

No. RG17-882082

Plaintiffs/Petitioners,

ORDER GRANTING IN PART MOTION OF
PLAINTIFFS FOR CLASS
CERTIFICATION.

v.

Hearing Date: April 15, 2024

TESLA, INC, et al,

Time: 9:30 AM

Dept.: 21

Defendants/Respondents.

TRIAL DATE: OCTOBER 14, 2024

The Motion of plaintiffs for class certification came on for hearing on March 1, 2024, and April 15, 2024, in Department 21 of this Court, the Honorable Noël Wise presiding. Counsel appeared on behalf of plaintiffs and on behalf of defendant. After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED: The Motion of plaintiffs for class certification is GRANTED IN PART.

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1. Was there a pattern or practice of pervasive race harassment at the Tesla factory? [If yes, identify the time period or periods by month/year, then go to #2]
2. For each of the time periods identified in response to #1, did Tesla know or should have known of the pattern or practice of pervasive race harassment at the factory? [If yes, for any time period, then go to #3]
3. If Tesla knew or should have known that there was a pattern or practice of pervasive race harassment at the factory for a time period in which you answered “yes” in question #2, did Tesla fail to take immediate and appropriate corrective action? (Govt Code 12940(j)(1).)

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1 After the fact-finding is concluded regarding the particular common fact issues, and Tesla
2 workers have filed individual cases, the court will oversee the cases utilizing case management
3 that resembles a coordinated proceeding. If hundreds of Tesla workers had filed individual cases
4 in Alameda and other counties, then the court or the parties might have sought the creation of a
5 coordinated proceeding as a mechanism to manage those cases. (CCP 404; CRC 3.501 et seq.)
6 That did not happen. Instead, plaintiffs filed this class action, and hundreds of Tesla workers
7 have apparently delayed filing individual cases in reliance on the possibility that this class action
8 might be a more effective and efficient procedural vehicle to resolve their claims. This order
9 clarifies that each individual Tesla worker must file an individual case, but also certifies a class
10 for determining common particular fact issues so that the Tesla workers and Tesla itself (as well
11 as the court) will receive some of the efficiency benefits of a coordinated proceeding.
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13 The court finds that class certification is also appropriate for injunctive relief. (*Capitol*
14 *People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676, 689-696
15 [directing trial court to order certification for injunctive relief].) There can be a class trial on the
16 issue of “If Tesla currently knows or should have known of that there was, or is, pervasive race
17 harassment at the factory, is Tesla currently taking immediate and appropriate corrective action.”
18 (Govt Code 12940(j)(1)).
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20 Class certification on injunctive relief is superior to individuals seeking injunctive relief
21 because the class representatives and the class counsel will be responsible for seeking relief for
22 the benefit of the class as a whole. A class trial on injunctive relief will ensure that Tesla is not
23 subjected to potentially inconsistent injunctions in separate individual cases. Class certification
24 on injunctive relief is superior to the Civil Rights Department (“CRD”)’s parallel case because
25 the class case is significantly more developed. In addition, Tesla alleges that the CRD failed to
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1 comply with its pre-filing responsibilities. If Tesla is correct, then the CRD's case might be
2 narrowed or dismissed before it reaches the merits. Class certification on injunctive relief is also
3 superior to the Equal Employment Opportunity Commission ("EEOC")'s parallel case because
4 the class case is significantly more developed.

5 Class certification on injunctive relief is conditioned on plaintiffs timely amending their
6 complaint to include a plaintiff who is typical and adequate. The current plaintiffs do not include
7 a person who is currently employed at Tesla.
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10 OVERVIEW OF PURPOSE OF CLASS ACTION PROCEDURE

11 Class certification is a procedural device for managing the claims of numerous allegedly
12 injured persons. A motion for class certification does not concern the merits. (*Linder v. Thrifty*
13 *Oil Co.* (2000) 23 Cal.4th 429, 437-444.)

14 Class actions are creatures of equity. (*Estrada v. Royalty Carpet Mills, Inc.* (2024) 15
15 Cal.5th 582, 611; *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1084.) "The class suit
16 was an invention of equity to enable it to proceed to a decree in suits where the number of those
17 interested in the subject of litigation is so great that their joinder as parties in conformity to the
18 usual rules of procedure is impracticable." (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, fn 14
19 [quoting *Hansberry v. Lee* (1940) 311 U.S. 32, 41-42].)

20 The class mechanism should be used when "substantial benefits accrue both to the
21 litigants and the courts." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) A class action
22 is a procedural mechanism for the resolution of numerous claims in a single lawsuit with all the
23 attendant savings of time and energy for the parties and the court. "[T]he class suit both
24 eliminates the possibility of repetitious litigation and provides small claimants with a method of
25 obtaining redress." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435-436.) "If a class suit is
26 not permitted ..., a multiplicity of legal actions dealing with identical basic issues will be

1 required in order to permit recovery by each [plaintiff]. The result would be multiple burdens
2 upon the plaintiffs, the defendant and the court.” (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695,
3 714-715.)

4 A class action must be “superior to alternate means for a fair and efficient adjudication of
5 the litigation.” (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 332.) In
6 determining whether a class is appropriate, “[t]he relevant comparison lies between the costs and
7 benefits of adjudicating plaintiffs’ claims in a class action and the costs and benefits of
8 proceeding by numerous separate actions—not between the complexity of a class suit that must
9 accommodate some individualized inquiries and the absence of any remedial proceeding
10 whatsoever.” (*Sav-on*, 34 Cal.4th at 339 fn 10.)

11 Therefore, the court must consider all the other tools available for the effective and
12 efficient judicial management of the claims that would be asserted and resolved in a class action.
13 This complex department has the court’s authority to manage cases generally (CCP 128(a)(3)), to
14 manage complex cases specifically (CRC 3.400; Std. Jud. Admin. Standard 3.10), to manage
15 related cases (CRC 3.300), to join multiple plaintiffs in a single case (CCP 378), to consolidate
16 cases for pretrial or trial purposes (CCP 1048, CRC 3.350), to manage the claims of numerous
17 persons using the class action mechanism (CCP 384), and to manage the claims of numerous
18 persons as a coordinated proceeding (CCP 404; CRC 3.501. (See generally *Volkswagen of*
19 *America, Inc. v. Superior Court* (2001) 94 Cal.App.4th 695, 704-705 [complex]; *McGhan*
20 *Medical Corp. v. Superior Court* (1992) 11 Cal.App.4th 804, 805 [coordination].)

21 22 OVERVIEW OF RELATED CASES

23 As noted above, a class action must be “superior to alternate means for a fair and efficient
24 adjudication of the litigation.” (*Sav-on*, 34 Cal.4th at 332.) This is a situation where the
25 “alternate means” are actual and current alternatives and not theoretical possibilities. The court
26 does not consider the motion for class certification in a vacuum.

1 This trial court is managing three related categories of cases that concern allegations of
2 race or sex harassment against Tesla.¹ Each category is focused on race harassment at the
3 Fremont factory, but the CRD case includes statewide claims, and the individual cases include
4 sex harassment, disability accommodation, and other claims. The court's goal is to manage the
5 claims effectively, efficiently, and to avoid inconsistent orders. (CRC 3.400; Std Jud Admin
6 3.10; *Volkswagen of America, Inc. v. Superior Court* (2001) 94 Cal.App.4th 695, 704-705.)

7 Category 1 is this putative class action. *Vaughn v. Tesla*, RG17882082, was filed on
8 November 13, 2017, and alleges claims for race harassment at the Tesla Fremont manufacturing
9 factory. The temporal scope of the putative class action is from November 9, 2016, through the
10 present. The case has taken two trips to the court of appeal. (*Vaughn v. Tesla, Inc.* (2019) 2019
11 WL 2181391 [arbitration re plaintiff Vaughn]; *Vaughn v. Tesla, Inc.* (2023) 87 Cal.App.5th 208
12 [arbitration re plaintiffs Chatman and Hall/public injunction].)

13 Category 2 is a law enforcement action. *Civil Rights Department v. Tesla*, 22CV006830,
14 was filed on February 9, 2022, by the Civil Rights Department, which is part of the Business,
15 Consumer Services and Housing Agency of the State of California. (Govt Code 12804.) The law
16 enforcement action alleges claims for race harassment and discrimination at the Tesla Fremont
17 manufacturing factory and throughout California.² The case concerns claims that arise from June
18 18, 2018, through the present. (*Dept. of Fair Employment and Housing v. Tesla, Inc.* (Superior
19 Court 2022) 2022 WL 17549760 at *5.)

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22 ¹ Plaintiffs assert claims for both race harassment and race discrimination, but at oral
23 argument clarified that the claims for discrimination were for discriminatory treatment that has
24 the effect of harassment and not discrimination in the sense of being paid less than similarly
25 situated employees or being denied promotions. In the class action, the court will refer to both
26 claims collectively as claims for "harassment."

² On September 28, 2023, the EEOC filed a parallel federal EEOC law enforcement
action. (*EEOC v Tesla, Inc.*, Case No. 4:23-cv-04984.) (Evid Code 452(d) [judicial notice of
court records in *EEOC v. Tesla*].) The court invited the EEOC to offer its thoughts on the
interrelationship of the various cases. (Order of 4/8/24, Issue #12 and footnote 1.) The EEOC
declined the opportunity to submit an amicus brief. (EEOC letter filed 4/12/24.)

1 Category 3 is approximately 15 cases brought by individual plaintiffs. The individual
2 cases allege claims for race or sex harassment and discrimination at the Tesla Fremont factory
3 and potentially elsewhere in California. In January 2024 the court reassigned all the identified
4 individual plaintiff cases to Judge Wise in Dept 21 to obtain the efficiencies of consistent case
5 management and avoid inconsistent orders. (CRC 3.300 [related cases].) Counsel for plaintiffs
6 asserts that if the claims of Tesla workers are not managed as a class, then over 200 Tesla
7 workers will file individual cases. (pltf supp brief filed 2/29/24 at 1:6 [“hundreds or thousands
8 of repetitive individual actions”] and at 2:7:7-8 [“hundreds or even thousands of others would
9 later file claims”]; pltf supp brief filed 3/15/24 at 5:11-15 [suggesting 500 cases might be filed];
10 pltf second supp brief filed 4/12/24 at 1:24 [“thousands” of separate lawsuits]; TR on 4/15/24 at
11 12:7.) Tesla has opined that it expects the number of individual cases that Tesla workers actually
12 file to be much smaller.

13 The three categories of cases are interrelated. The management of one category affects
14 the management of the others. Each of the three categories of cases asserts that individual
15 persons were subject to harassment and that those persons should recover damages. Similarly,
16 each of the three categories concern the issue of whether there was a pattern or practice of race
17 harassment, whether Tesla knew or should have known of that race harassment, and whether
18 Tesla failed to take immediate and appropriate corrective action. (Govt Code 12940(j)(1) and
19 (k)).

20 The class action could arguably address both pattern or practice and individual claims in
21 a single action using the two-phase approach described in *Teamsters v. United States* (1977) 431
22 U.S. 324, and *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 35-37. The CRD and
23 EEOC law enforcement actions could likewise address both types of claims in a single action
24 using the same two-phase approach.³ The individual cases focus on the actions that affected the
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26 ³ The CRD states that in the law enforcement case it will ask the court to follow the
Teamsters model and have a two-phase trial. (CRD brief filed 3/15/24 at 5:10-12.)

1 individual plaintiffs, but in each case the plaintiff could present evidence of a pattern or practice
2 of failing to prevent or address race discrimination and harassment as evidence of Tesla's
3 motive, intent, or knowledge. (*Pantoja v. Anton* (2011) 198 Cal.App.4th 87, 109-118.) Thus,
4 the court is not considering the abstract issue of whether a class action is a mechanism that
5 would be superior to hypothetical alternatives but the immediate real-life issue of whether class
6 treatment of claims or particular fact issues would be superior to the alternatives.

7 8 PROCEDURAL BACKGROUND

9 The Second Amended Complaint filed July 7, 2021, in this class action asserts claims for
10 Race-Based Discrimination in Violation of the Fair Employment and Housing Act ("FEHA")
11 (Govt Code 12940(a), Race-Based Harassment in Violation of FEHA (Govt Code 12940(j)(1))
12 and Failure to Prevent Discrimination and Harassment in Violation of FEHA (Govt Code
13 12940(k)) at Tesla's production factory in Fremont, California. Plaintiffs assert that because
14 Tesla failed to comply with the FEHA, the members of the class were exposed to harassment as a
15 result of their race and suffered emotional distress damages.

16 17 FACTUAL BACKGROUND

18 TESLA POLICIES

19 Tesla had common written policies. Since May 2010, Tesla has had a written Code of
20 Business Conduct and Ethics. (Hart Dec filed 10/16/23, Exh A). Since October 2011, Tesla has
21 had a written Anti-Harassment and Discrimination Policy (Hart Dec Exh B.) In December
22 2016, Tesla revised its written Anti-Harassment and Discrimination Policy (Hart Dec Exh C.) In
23 December 2017, Tesla revised its written Code of Business Conduct and Ethics. (Hart Dec, Exh
24 D). In July 2018, Tesla issued its Policy Against Discrimination & Harassment in the Workplace
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1 (Hart Dec Exh E), which Tesla revised in November 2018 (Hart Dec Exh F), and again in March
2 2021 (Hart Dec Exh G). These are common, formal written policies.

3 Tiffany Hart, Senior ER (Employee Relations) Partner at Tesla testified that the use of
4 the n-word has been prohibited at the Tesla Fremont factory since at least 2010. (Hart Depo
5 [Helland Dec filed 12/22/23, Exh G] at 80, 87-89, 99-100.)⁴

6 Tesla also had “policies” that were not formal. For example, on May 31, 2017, Tesla
7 CEO Elon Musk sent an email to all employees. (Hart Depo at 155-156.) Musk’s email included
8 a prior April 21, 2013, email when he wrote: “Tesla has a strict no a* policy”⁵ and then stated:

10 Part of not being a huge jerk is considering how someone might feel who is part of
11 an historically less represented group. They have endured difficulties that someone
12 born or raised in a more privileged situation did not. This doesn’t mean that there
13 is a different standard of performance or that you can’t give critical feedback. You
14 should – doing anything else would be an insult to the hard work it took to get there
15 – but don’t ever intentionally allow someone to feel excluded, uncomfortable or
16 unfairly treated. Sometimes these things happen unintentionally, in which case you
17 should apologize.

18 In fairness, if someone is a jerk to you, but sincerely apologizes, it is important to
19 be thick-skinned and accept that apology. If you are part of a less represented group,
20 you don’t get a free pass on being a jerk yourself. We have had a few cases at Tesla
21 where someone in a less represented group was actually given a job or promoted
22 over more qualified highly represented candidates and then decided to sue Tesla for
23 millions of dollars because they felt they weren’t promoted enough. That is
24 obviously not cool.

25 (Organ Dec. filed 6/5/23, Exh. 2.)

26 ⁴ The n-word is highly charged, provocative, and, depending on the circumstances,
abhorrent. The court recognizes that witnesses and counsel are reluctant to use the complete
word because they are uncomfortable saying it and do not want to cause offense. (*People v. Ware*
(2022) 14 Cal.5th 151 fn 1; *McGinest v. GTE Service Corp.* (9th Cir. 2004) 360 F.3d 1103, 1116;
Monteiro v. Tempe Union High School Dist. (9th Cir. 1998) 158 F.3d 1022, 1030, fn. 12.)

⁵ Neither Musk’s April 21, 2013 email, nor his May 31, 2017 email, explicitly states what
a “a strict no a* policy,” means, but the reference speaks for itself.

1 In February 2020 (Evid Code 452), Tesla issued its Anti-Handbook Handbook. (Organ
2 Dec. filed 6/5/23, Exh. 1.) The Anti-Handbook Handbook states: "If you do something stupid,
3 depending on the circumstances you may be coached and given another chance or may be asked
4 to leave. ...here are some examples of stupid things people do ...Harassing or bullying others."

6 TESLA PROCEDURES

7 Tesla had common procedures for training managerial and non-managerial employees.
8 From 2015 through the present Tesla had a procedure under which it trained workers on anti-
9 harassment and anti-discrimination. (Hart Dec. para 19.) From 2015 through the present Tesla
10 required training regarding discrimination and harassment. (Hart Dec. para 20-21.) These are
11 common procedures.
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13 In approximately 2017, Tesla launched a graffiti remediation program. Under this
14 program, if someone reported graffiti to HR, then HR was supposed to conduct an investigation
15 and partner with security to determine who created the graffiti and when they did it. If HR could
16 not determine who created the graffiti, then HR was supposed to reach out to the supervisors or
17 managers of the impacted area to remind them to watch for violations. (Hart Dec. filed 10/16 at
18 para 25.) (Hart Depo at 169-171.) This procedure is common to the class.
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20 EMPLOYEE COMPLAINTS

21 In 2017, "Tesla created a centralized internal tracking system to document complaints
22 and investigations." (Hart Dec filed 10/16 at para 24.) This is common evidence of who made
23 what formal complaints.
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1 Plaintiffs provided declarations from 240 witnesses who stated that they observed
2 harassment at the Tesla Fremont factory; some complained about it.⁶ Of the 240 declarations
3 submitted by plaintiffs, all stated that they heard the n-word at the Tesla Fremont factory (Sadat
4 Dec, para 3; Helland Reply Dec filed 12/22/23, para 2, Exh A), 112 stated that they complained
5 to a supervisor, lead, manager or HR about harassment, and 16 made written complaints.
6 (Cardozo Dec. filed 10/16/23 para 7.) The number of declarations demonstrates that the sample
7 is sufficiently large. (*Duran*, 59 Cal.4th at 42 [sample must be sufficiently large].)⁷ The
8 selection by plaintiffs' counsel of which declarations to present to the court suggest that the
9 sample was not random. (*Duran*, 59 Cal.4th at 43-45 [sample must be random].)

11 In opposing this motion, Tesla provided declarations from 228 witnesses who generally
12 stated that they did not observe harassment at the Tesla Fremont factory or that if they observed
13 it then Tesla took "immediate and appropriate corrective action." Of the 228 declarations
14 submitted by Tesla, 99 heard the n-word at the Tesla Fremont factory. (Helland Supp Dec filed
15 12/22/23, para 2, Exh A.) Of the defendant declarations, several workers state they made
16 complaints, and several supervisors or managers state that they received complaints. (E.g.
17 Robert Brown, Philip Buchannan.) Like the declarations submitted by plaintiffs, the number of
18 declarations demonstrates that the sample is sufficiently large but the selection by defendant's
19 counsel suggests that the sample was not random. (*Duran*, 59 Cal.4th at 42-45.)

22 ⁶ The parties disagree on whether there are 236 or 240 declarations. The specific number
23 is not material to the court's analysis.

24 ⁷ *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 38-49, explains that
25 presentation of a representative sample of witnesses is an appropriate way to present evidence.
26 The sample must be of an appropriate size and must be random so that the trier of fact can make
reasonable inferences and extrapolate from the sample to the population as a whole. A non-
representative sample has the risk of misleading the jury. A representative sample avoids the
undue consumption of time that would result if all percipient witnesses testified. (Evid Code
352.)

1 In opposing this motion, Tesla reviewed the declarations filed by plaintiffs and prepared a
2 table that provides information on (1) “Did the declarant allege that he or she complained to a
3 supervisor, lead, manager, or HR about harassment or discrimination? and (2) “Did the declarant
4 allege that he or she made a written complaint to a supervisor, lead, manager, or HR about
5 harassment or discrimination?” (Cardozo Dec. filed 10/16/23, Exh D, Right hand column.) The
6 table indicates that many of the declarants made complaints but that few made formal written
7 complaints.
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9 Like plaintiffs’ underlying declarations, this table is a summary of anecdotal information
10 and suffers from the same deficiencies as the underlying declarations themselves. Without some
11 assurance that the declarations are representative of the experiences of the workers at the Tesla
12 Fremont factory, a jury could not reasonably extrapolate from the evidence presented to the class
13 as a whole. (*Duran*, 59 Cal.4th at 39; *Dunbar v. Albertson's, Inc.* (2006) 141 Cal.App.4th 1422,
14 1433 fn 2.) The declarations and the table summarizing the declarations are common evidence
15 of who made what complaints, but the evidence is of diminished value because it is anecdotal.
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17 TESLA RESPONSE TO EMPLOYEE COMPLAINTS 18

19 In 2017, “Tesla created a centralized internal tracking system to document complaints
20 and investigations.” (Hart Dec filed 10/16/23 at para 24) Plaintiffs state they will rely on
21 information in this database to demonstrate that Tesla was aware of complaints about race
22 harassment and how (if at all) Tesla responded to the complaints. (Pltf trial plan at 3:18-19,
23 11:6.) Tesla indicates that it will rely on the existence of the database, and the information
24 within it, to demonstrate that it took complaints seriously and that Tesla responded appropriately
25 to complaints. (Oppo at 12:13-14.) Tesla’s “centralized internal tracking system” is common
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1 evidence that would be directly relevant to whether Tesla had a pattern or practice of failing to
2 respond to complaints of race harassment.

3 Tiffany Hart, Senior ER (Employee Relations) Partner at Tesla testified about Tesla's
4 response to complaints. Hart testified that when she was an HR business partner, she did twenty
5 investigations per year and that since becoming a Senior ER Partner in June 2022, she has done
6 an average of eight per month. (Hart Depo [Helland Dec filed 12/22/23, Exh G] at 27.) Hart did
7 about fifteen investigations at the Fremont factory. (Hart Depo at 28.)

8 The court has reviewed the declarations provided by plaintiffs and by Tesla and they
9 indicate that when workers complained, different things happened on different
10 occasions. Declarations submitted by plaintiffs suggest that Tesla failed to take "immediate and
11 appropriate corrective action." (Govt Code 12940(j)(1).) Plaintiff declarant Adrianna Leaks
12 states that she complained to a supervisor, the supervisor was terminated, and there was no
13 change in the racist behaviors. (Leaks para 11, 12.) Plaintiff declarant Albert Blakes asserts he
14 complained to HR, and there was no change in the racist behaviors. (Blakes, para 12.) Plaintiff
15 declarant Alvin Patterson states he complained to leads and supervisors, and they denied that
16 racism was a factor in promotions. Alvin Patterson also contends that he complained about his
17 supervisor to his supervisor, was referred to HR, then received more harassment from his
18 supervisor, and was then warned by HR about his own workplace conduct. (Patterson para 9,
19 14.) Tatiana Smith testified that she was subject to race harassment, she complained verbally to
20 her supervisor, and her supervisor advised her to not go to HR. On Tatiana Smith's last day of
21 work, she states she sent an email to HR describing the race harassment and HR never responded
22 to her email. (Tatiana Smith Dec at 8, 9, 10, Exh A.) Marcus Vaughn testified that when he
23 reported that someone said "These niggas is lazy and they're hella slow" that the person taking
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1 the complaint “just kind of like giggled and laughed and then just, you know, told me to not
2 worry about it, and that’s where we left it at, to not worry about it and that everything would be
3 okay, I guess.” (Vaughn Depo at 150-151.) Perry Wiley testified that he was the subject of
4 racist incidents, and made complaints to his supervisor twice. Perry Wiley asserts he was
5 threatened with retaliation the first time he complained and was retaliated against the second
6 time. (Perry Wiley at para 9, 18.) Many declarants stated that they did not report things to
7 Human Resources because they thought that if managers or supervisors were harassing, that
8 Human Resources already knew about it, and Human Resources had already demonstrated Tesla
9 would not take appropriate action.

11 Declarations submitted by Tesla suggest that if Tesla was informed about racist incidents,
12 it took “immediate and appropriate corrective action” (Govt Code 12940(j)(1).) Tesla Declarant
13 Robert Brown is a supervisor and states that he has counseled workers who use the term “nigga,”
14 that in 2017 or 2018 he observed an incident involving the term and reported it to HR, and that in
15 2019 he counseled his team that music with the word was not appropriate for the workplace.
16 (Brown Dec, para 13-16.) Tesla Declarant Philip Buchannan is a supervisor and states that an
17 employee reported to HR that a coworker called him monkey, that HR promptly investigated,
18 and that Tesla terminated the employee who used the inappropriate language. (Buchannan Dec,
19 para 13) Tesla Declarant Jeremiah Clark states “I personally have seen graffiti using racial slurs.
20 When I see it, I see that it is removed quickly by the building facilities team.” (Clark Dec., para
21 21.) Tesla Declarant Macey Harrison states: “On a few occasions I have heard the ”N” word
22 stated during an argument. And the employees who were arguing were counseled that having a
23 public altercation was not acceptable, nor was using the “N” word.” (Harrison Dec, para 19.)
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1 Like the declarations and summary table about whether workers complained, the
2 declarations about whether and how Tesla responded are a statistically significant number of
3 witnesses who are arguably non-representative. The court gives the declarations diminished
4 weight other than to demonstrate that there is a substantial number of witnesses with highly
5 relevant and probative information, and that the parties could create a *Duran* compliant sample
6 of witness who could testify in a manageable class trial.
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8 It is important to further explain why the court finds the over 500 declarations submitted
9 by plaintiffs and by Tesla to be of diminished value at this point in the litigation. In a regular,
10 single plaintiff case, the claim concerns what happened to a specific individual and counsel has
11 the discretion to select which witnesses to present to make that showing. In a class action,
12 however, the trier of fact's focus is often on whether there was a policy, pattern, or practice that
13 applied to the class as a whole.

14 Supervisors, leads, managers, and persons with similar responsibilities can often testify
15 regarding their experience as to a policy, pattern, or practice at the relevant facility or in the
16 relevant department, division, or work area. (E.g. Hart dec filed 10/16/23; Hart Depo [Helland
17 Dec filed 12/22/23, Exh G].) Non-managerial employees can typically testify only about their
18 individual experiences. Based on the declarations the parties have already filed, there will likely
19 be a bell curve of individual experiences at the Tesla factory, and the bell curve might be
20 weighted to one side or the other. If there is testimony from non-managerial individuals, then the
21 court or jury must hear from a representative sample of sufficient size. Without that
22 requirement, the trier of fact will hear from "disgruntled employees" selected by counsel for
23 plaintiffs and "happy campers" selected by counsel for defendant, each of which might be
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1 witnesses from the extremes of the bell curve.⁸ If counsel selects their witnesses, then the trier of
2 fact will have no meaningful information about the shape of the bell curve and thus no reliable
3 information about the alleged pattern or practice. As a result, the trier of fact cannot reliably
4 extrapolate from the evidence presented to the class as a whole. (*Duran*, 59 Cal.4th at 39;
5 *Dunbar*, 141 Cal.App.4th at 1433 fn 2.)

6 The issue on class certification is not whether the alleged pattern or practice exists, but
7 whether plaintiffs can present the claim with common evidence. Tesla's formal written policies,
8 informal written policies, common procedures for training managerial and non-managerial
9 employees, graffiti remediation program, and "centralized internal tracking system" are common
10 evidence. The declarations submitted by plaintiffs and by Tesla about Tesla's response to
11 complaints appear to be statistically significant in number, but they are of diminished value
12 because there is no assurance they are a representative sample.
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14 COURT DISCRETION IN CLASS CERTIFICATION

15 The California Supreme Court has provided guidance to trial courts regarding class action
16 management. "[T]he trial court has an obligation to consider the use of ... innovative procedural
17 tools proposed by a party to certify a manageable class." (*Sav-on*, 34 Cal.4th at 339.)
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19 Plaintiffs seek to certify a class to pursue FEHA claims, to prove a pattern and practice,
20 to prove injury to individual members of the class, and to obtain damages and injunctive relief.
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24 ⁸ Employers on occasion suggest that witnesses offered by plaintiffs are not credible
25 because they are merely "disgruntled employees." In return, plaintiffs suggest that witnesses
26 offered by an employer are not credible because they are current employees who are "happy
campers." (*Transnational Management Systems, LLC v. Pegasus Elite Aviation, Inc.* (Cal.
Superior (2021) 2021 WL 7707368 at *24 [disgruntled employees]; *Corinthian Intern. Wage and
Hour Cases* (Cal. Superior 2019) 2019 WL 13463508 fn 5 [happy campers].)

1 The court has the option of the *Teamsters* two-phase trial. (Moving at 17-18.) Plaintiffs also
2 suggest the court could certify a class for common particular issues. (Moving at 18-19.) The
3 court has this option. (CRC 3.765(b).) Plaintiffs also suggest that the court could certify a class
4 for the limited remedy of injunctive and declaratory relief. (Moving at 18-19.) The court also
5 has this option. (*Capitol People First v. State Dept. of Developmental Services* (2007) 155
6 Cal.App.4th 676, 689-696.)

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8 The court considered the alternatives and requested supplemental briefing on those
9 options. Before turning to the traditional class certification analysis, the court will generally
10 summarize its class certification and trial structure options.

11
12 MODEL A. SINGLE TRIAL TO RESOLVE LIABILITY, DAMAGES, AND INJUNCTIVE
13 RELIEF.

14 The first model involves a class that is certified to pursue defined claims where liability
15 and damages are resolved in a single trial and result in a single judgment. This is the most
16 common model.

17 At the class trial the trier of fact determines both the defendant's liability and the
18 aggregate damages owed to the class. The defendant does not assert individual defenses and
19 affirmative defenses against each individual member of the class, but it can demonstrate that it
20 would prevail against a percentage of the class and that would be taken into account in
21 determining the amount of damages.⁹ "The allocation of the total sum of damages among the
22

23
24 ⁹ *Duran* states "any procedure to determine the defendant's liability to the class must still
25 permit the defendant to introduce its own evidence, both to challenge the plaintiffs' showing *and*
26 *to reduce overall damages*" and also "[i]f trial proceeds with a statistical model of proof, a
defendant ... must be given a chance to impeach that model *or otherwise show that its liability is*
reduced because some plaintiffs were properly classified as exempt." (59 Cal.4th at 37-38
[emphasis added].)

1 individual class members is an internal accounting question that does not directly concern the
2 defendant.” (*In re Cipro Cases I & II* (2004) 121 Cal. App. 4th 402, 417.)

3 In a previous court this court described this one-phase model and compared it to the
4 *Teamsters* two-phase model. (*Vaughn v. Tesla, Inc* (Cal. Superior 2021) 2021 WL 2182408 at
5 *11-12.) The court later referred the parties to *Bennett v. Regents* (2005) 133 Cal.App.4th 347
6 and its holding that this model was not appropriate where the members of the class seek
7 aggregate emotional distress damages. The case law is consistent that this model is generally not
8 appropriate even if there is allegedly widespread harassment and numerous persons have claims
9 for harassment. (*Howard v. Cook County Sheriff's Office* (7th Cir. 2021) 989 F.3d 587, 600-605.)
10 Plaintiffs do not propose this model. The court does not address this option further.
11

12 MODEL B. TWO-PHASE TRIAL (*TEAMSTERS*).

13 The second model (*Teamsters*) involves a two-phase trial where the trial is bifurcated into
14 phases. (*Int'l Bhd. of Teamsters v. United States* (1977) 431 U.S. 324.) The court's tentative
15 decision (filed on February 27, 2024) at pp 10:9-16:5 identified and discussed this model.
16

17 In the first *Teamsters* phase, a jury typically determines whether the workplace was a
18 hostile workplace environment. If the defendant prevails in Phase I, then judgment is entered in
19 favor of the defendant against all members of the class because the defendant has demonstrated
20 on a classwide basis that there was not a hostile work environment. If the plaintiffs prevail in
21 Phase I, the case moves to Phase II hearings (or trials) on individualized issues where the burden
22 of proof is flipped and the defendant has the burden of demonstrating that it is not liable to each
23 member of the class, and the defendant can assert its individual affirmative defenses against each
24 individual member of the class.

25 The United States Supreme Court set out this model in *Int'l Bhd. of Teamsters v. United*
26 *States* (1977) 431 U.S. 324, 360-361, and more recently referred to this model with approval in
Wal-Mart v. Dukes (2011) 564 U.S. 338, 367. (See also *Serrano v. Cintas Corp.* (6th Cir., 2012)

1 699 F.3d 884, 893; *Thiessen v. GE Capital Corp.* (10th Cir. 2001) 267 F.3d 1095; *Allison v. Citgo*
2 *Petroleum Corp.* (5th Cir. 1998) 151 F.3d 402, 409.) The California Supreme Court has
3 recognized this model as appropriate in certain circumstances. (*Duran v. U.S. Bank National*
4 *Assn.* (2014) 59 Cal.4th 1, 35-37.)¹⁰

5 The *Teamsters* model is generally appropriate when at Phase I the trier of fact can
6 determine whether a common official policy was lawful, and at Phase II the individual hearings
7 can focus on whether the common unlawful policy caused damage to the members of the class.
8 The *Teamsters* model is less appropriate when the issue is whether there was an unlawful pattern
9 or practice rather than whether there was an unlawful official policy. (*O'Hailpin v. Hawaiian*
10 *Airlines Inc.* (D.Hi., 2023) 2023 WL 8600498 at *7.)

11 Following a Phase I trial on common issues, the *Teamsters* model anticipates individual
12 Phase II hearings. Plaintiffs in this case recognize that the Phase II hearings would need to be
13 jury trials. “A trial procedure that had individual hearings on the amount of damages would
14 result in what amounts to a series of individual trials on damages, thus arguably destroying much
15 of the superiority of the class procedure.” (*Vaughn v. Tesla, Inc* (Cal. Superior 2021) 2021 WL
16 2182408 at 11.) In *McCleery v. Allstate Ins. Co.* (2019) 37 Cal.App.5th 434, 456, the court of
17 appeal raised the same issue of whether a procedure where “class members could submit claims
18 by answering a questionnaire, and any dispute could be resolved in “streamlined trials” ... would
19 be materially superior to individual trials.”

20 Federal trial courts that have considered the *Teamsters* model on claims for harassment
21 have held that it must be modified to take into account the inherently individual nature of claims
22 for harassment. *EEOC v. Mitsubishi Motors* (C.D. Ill. 1998) 990 F.Supp. 1059, 1077, states:
23 “The *Teamsters* presumption of liability, however, does not work at the individual relief phase of
24 a sexual harassment case. ... Shifting a burden of proof does not work in a pattern or practice
25

26 ¹⁰ A decade earlier, the Court of Appeal suggested that the model would be appropriate in
certain circumstances. (*Alch v. Super. Ct.* (2004) 122 Cal.App.4th 339, 378-80.)

1 action for sexual harassment, because individual relief for sexual harassment, even if the
2 harassment for which a plaintiff recovers is based on a pattern or practice of tolerance by an
3 employer, still requires a plaintiff to prove that she was subjectively harmed by the harassing
4 conduct.” *E.E.O.C. v. International Profit Associates, Inc.* (N.D. Ill., 2007) 2007 WL 3120069,
5 at *15 states: “the *Teamsters* framework cannot be applied in a straightforward fashion to a
6 hostile work environment case.” *O’Hailpin v. Hawaiian Airlines Inc.* (D.Hi., 2023) 2023 WL
7 8600498 at *7 states “in addressing pattern and practice claims based on a hostile work
8 environment—where liability depends on a showing that an individual claimant’s work
9 environment is both objectively and subjectively hostile—district courts have acknowledged the
10 awkward fit of the *Teamsters* framework.”

11 If the court were to grant certification under the *Teamsters* model and were to manage the
12 claims of an estimated 100 to 300 members of the class who submitted claims in this class
13 action, then, following a Phase I trial on common issues, there would be the need for 100 to 300
14 Phase II jury trials in this class action. The case would cease to be a typical class action where
15 the class functions as a collective whole and would become a case where 100 to 300 individual
16 Tesla workers prosecuted their claims in a single case. The joinder of perhaps hundreds of
17 plaintiffs in a single case might be permissible because the claims of the Tesla workers arise “out
18 of the same transaction, occurrence, or series of transactions or occurrences” (CCP 378), but the
19 joinder of so many different plaintiffs who were allegedly harassed by different persons at
20 different times or locations might not be “in the interests of justice” (CCP 379.5). (See *In re*
21 *Ranitidine Cases* (Superior Court 2021) 2021 WL 9749384 [discussing joinder of more than 50
22 plaintiffs in single case].)

23 Plaintiffs argue that the *Teamsters* model of managing all the claims of all of the
24 individual Tesla workers in a single case is superior because requiring each Tesla worker to file a
25 separate case “would be a recipe for chaos and injustice” and “impose serious financial and
26 logistical burdens on the class.” (pltf second supp brief filed 4/12/24 at 2:23 and 14:20.)

1 Plaintiffs state that “if the Court does not certify a class for both common and individual phases,
2 every putative class member would have the legal right to file a separate lawsuit, at any time
3 within the remaining limitations period (and thus likely on varying timelines), with counsel of
4 their choice, in any court (state or federal) with jurisdiction as to which venue is proper, with
5 separate C.C.P. §170.6 rights, etc.” (pltf second supp brief filed 4/12/24 at 3:26-4:3.)

6 There is nothing inherently unusual about requiring each person who alleges an injury to
7 file a separate case and prove their claims. The class mechanism is the exception to the standard
8 litigation procedure that injured persons file their own cases. The issue on class certification is
9 whether that mechanism can be used to generate efficiencies for the court and the parties, which
10 would result in savings of court time, witness time, litigation costs, and attorneys’ fees, while at
11 the same time ensuring that the parties are afforded their rights, including the rights to select
12 counsel of their choice, to file CCP 170.6 challenges, and to have jury trials.

13 This court’s tentative decision (filed on February 27, 2024) contains a more detailed
14 discussion of the *Teamsters* model. The court finds that class certification with the *Teamsters*
15 mechanism in this case is not a “superior alternative.” The court does not address this option
16 further.

17 Tesla argued that there should be no class certification of any type, but that certification
18 for the resolution of common particular fact issues and certification for purposes of injunctive
19 relief “are less problematic than” the *Teamsters* model because the parts of those models “that
20 would follow the proposed common trial [are] subject to well-defined rules of civil procedure
21 and abundant California case law.” (Tesla brief filed 2/29/24 at p10:27-11:7.) The court turns
22 to those models.

23 ///

24 ///

25 ///

26 ///

1 MODEL C. TRIAL ON PARTICULAR ISSUES, WITH SEPARATE CASES FOR
2 DAMAGES.

3 The third model is certification of particular issues for class adjudication, and then
4 separate individual cases by persons who want to pursue individual cases. The court's tentative
5 decision (filed on February 27, 2024) at pp 16:7-19:15 identified and discussed this model.
6 Certification of particular issues is expressly permissible under California law. (CRC 3.765(b)
7 ["When appropriate, an action may be maintained as a class action limited to particular issues"].)
8 In *Sarun v. Dignity Health* (2019) 41 Cal.App.5th 1119, 1136-1137, the Court of Appeal reversed
9 a trial court order denying class certification in its entirety and remanded with instructions to
10 certify a class on particular issues. *Sarun*, 41 Cal.App.5th at 1136-1137, states that although
11 "answering the open-price-term question would not fully resolve class members' ultimate
12 liability to Dignity Health [there is] utility in deciding this threshold issue. ... settling this issue
13 could significantly expedite final determination of any outstanding billing disputes." *Sarun*, 41
14 Cal.App.5th at 1137, later states: "requiring class members to individually pursue the contract
15 interpretation question, aside from its potential economic infeasibility, would create an
16 unacceptable risk of inconsistent outcomes."

17 In *Hefczyc v. Rady Children's Hospital-San Diego* (2017) 17 Cal.App.5th 518, 545, the
18 Court of Appeal affirmed the trial court's denial of single-issue class certification on the facts of
19 that case. *Hefczyc*, 17 Cal.App.5th at 545, states: "That inquiry presents individualized and
20 complicated issues unique to each class member, each of whom received different bills based on
21 different services. Accordingly, the single issue that Hefczyc has identified is not appropriate for
22 class certification."

23 In *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 339-340, the
24 Supreme Court stated that trial courts have substantial discretion in evaluating whether to certify
25 a class and in devising innovative procedures to manage class actions to obtain the benefits of the
26 class action mechanism while protecting the rights of the parties. Pursuant to *Sav-On Drug*

1 Stores, this court views particular issue certification as one of several options that it should
2 properly consider when managing a class action for certification.

3 Certification of particular issues is also expressly permissible under Federal law. (FRCP
4 23(c)(4) [“When appropriate, an action may be brought or maintained as a class action with
5 respect to particular issues”].) Addressing single issue certification, *Mejdrech v. Met-Coil Sys.*
6 *Corp.* (7th Cir. 2003) 319 F.3d 910, 911, states, “If there are genuinely common issues, issues
7 identical across all the claimants, issues moreover the accuracy of the resolution of which is
8 unlikely to be enhanced by repeated proceedings, then it makes good sense, especially when the
9 class is large, to resolve those issues in one fell swoop while leaving the remaining, claimant-
10 specific issues to individual follow-on proceedings.”

11 Particular issue certification under FRCP 23(c)(4) has been used in federal courts in
12 various circumstances. In *Hernandez v. Motor Vessel Skyward* (S.D. Fla. 1973) 61 F.R.D. 558,
13 561, over 600 passengers fell sick on an ocean cruise and the court granted class certification on
14 the single issue of “Whether the defendants were negligent in preparing either the drinking water
15 or food that was available for consumption by the passengers.” In *In re Honda Am. Motor Co.*
16 *Dealership Rels. Litig.* (D. Md. 1997) 979 F. Supp. 365, plaintiffs alleged a conspiracy in
17 violation of RICO and the Court certified a class for the limited purpose of determining whether
18 the conspiracy existed, with damages to be decided in subsequent individual actions. In *In re*
19 *Chiang* (3rd Cir. 2004) 385 F.3d 256, 267, the court approved class certification on two issues
20 related to whether a business practice discriminated unlawfully but left other issues for
21 individual determination.

22 A variant of particular issue certification is to certify a common fact issue or issues for
23 class treatment and to postpone the issues of individual causation and damages for resolution in
24 other proceedings in the same case. In *In re Deepwater Horizon* (5th Cir., 2014) 739 F.3d 790,
25 815-816, the court certified a class on common issues such as “BP’s involvement in the well
26 design, explosion, discharge of oil, and cleanup efforts” while deferring issues of individual

1 causation and damages to later proceedings in the same case. In *Butler v. Sears, Roebuck and*
2 *Co.* (7th Cir., 2013) 727 F.3d 796, 801-802, the court affirmed certification of a class on the
3 common issue of “whether the Sears washing machine was defective” and remanded for the trial
4 court to consider to consider the “Complications [that] arise from the design changes and from
5 separate state warranty laws, but can be handled by the creation of subclasses.” In *Dawson v.*
6 *Great Lakes Educational Loan Services, Inc.* (W.D. Wis. 2018) 327 F.R.D. 637, 648-649, the
7 court approved class certification on the common issue of liability where it was alleged that
8 defendants fraudulently and negligently inflated the amount owed on student loans while leaving
9 issues of causation and damages for later proceedings in that case.

10 Particular issue certification must be tailored to the facts of each case to ensure there are
11 significant benefits to the parties and the court. The court should certify particular issues for
12 class treatment only if they can be cleanly separated from other issues so that a jury deciding
13 individual issues will not need to revisit the issues that were decided on a class basis. “[T]he
14 judge must not divide issues between separate trials in such a way that the same issue is
15 reexamined by different juries.” (*In re Rhone-Poulenc Rorer Inc.* (7th Cir. 1995) 51 F.3d 1293,
16 1303.) (See also *Mejdrech*, 319 F.3d at 911.) In the colorful language of *In re Rhone-Poulenc*,
17 51 F.3d at 1302, the court “must carve at the joint.” (See also *Rink v. Cheminova, Inc.* (M.D. Fla
18 2001) 203 F.R.D. 648, 652 [rejecting particular issue certification because “even if a jury
19 answered this question in the plaintiffs’ favor, any subsequent mini-trial involving the issue of
20 whether the delivery of the defective product caused injury and damage to a particular plaintiff
21 would necessarily have to involve all of the facts and circumstances surrounding the delivery of
22 the product”].)

23 When there is particular issue certification of a common issue in a mass tort, there is the
24 legitimate concern that there might be undue risk of error when there are enormous consequences
25 [that] turn on the correct resolution of a complex factual question” and it might be preferable to
26 have the issue decided repeatedly in multiple trials and “letting a consensus emerge from several

1 trials.” (*Mejdrech*, 319 F.3d at 912.) (See also *In re Rhone-Poulenc*, 51 F.3d at 1299, 1304
2 [noting risk of entrusting significant issue to a single jury].) That risk is mitigated because “The
3 individual class members will still have to prove the fact and extent of their individual injuries.
4 The need for such proof will act as a backstop to the class-wide determinations.” (*Mejdrech*, 319
5 F.3d at 912.)

6 On the facts of this case, certification of a class is appropriate to determine the common
7 particular fact issues of whether there was a pattern or practice of pervasive harassment during a
8 particular time frame, whether Tesla knew of the pervasive harassment, and whether Tesla failed
9 to take immediate and appropriate corrective action. The jury’s verdict will function as a class
10 wide resolution of the common particular issues. The members of the class can then elect
11 whether to pursue their claims for damages in individual civil cases. This is consistent with
12 Tesla’s argument that the claims for damages should be asserted in individual civil cases. (*Oppo*
13 at 35-36.)

14 This model is similar to, but different from, the *Teamsters* two-phase trial. It is similar
15 because the court and the parties will have the benefit of a single resolution of the common
16 particular issues, and then the individual workers will prosecute their individual claims in jury
17 trials. It will be different because instead of the claims being resolved in a single case, the claims
18 of the individuals will be presented in separately filed cases that will then be resolved in jury
19 trials. The court will grant class certification for resolution of common particular fact issues
20 under this model.

21 The court orders that the equitable tolling effect of this putative class action ends ten days
22 after notice is given to the class of the limited issues class certification. (*In re Honda Am. Motor*
23 *Co. Dealership Rels. Litig.* (D. Md. 1997) 979 F. Supp. 365, 371 and fn5.) The parties should
24 anticipate that any case alleging race harassment at the Tesla Fremont factory will likely be
25 related and assigned to a single judge for management as related cases. (CRC 3.300.) It may
26

1 also be appropriate for the court to manage the cases as a coordinated proceeding. (CCP 404 et
2 seq; CRC 3.501 et seq.)

3 4 MODEL D. TRIAL LIMITED TO SEEKING INJUNCTIVE RELIEF

5 The fourth model involves a single trial but with the remedy limited to injunctive relief.
6 The court's tentative decision (filed on February 27, 2024) at pp 19:17-22:15 identified and
7 discussed this model. California law and federal law take different analytical approaches on this
8 issue.

9 California has a single standard for class certification under CCP 382. The development
10 of class certification law has been guided by equity. (*Estrada v. Royalty Carpet Mills, Inc.*
11 (2024) 15 Cal.5th 582, 611.) (See also *Hefczyc v. Rady Children's Hospital-San Diego* (2017) 17
12 Cal.App.5th 518, 528.)

13 Federal law, in contrast, has different requirements for different types of claims. All class
14 actions must meet the general set of requirements in FRCP 23(a). Claims for "final injunctive
15 relief or corresponding declaratory relief" must meet the requirements of FRCP 23(b)(2). Claims
16 for damages and other monetary relief must meet the requirements of FRCP 23(b)(3).

17 No California Court of Appeal has held that the federal FRCP 23(b)(2) standard can, or
18 must, be used in California. "No California authority supports the contention that
19 ascertainability, predominance and superiority are not required when a proposed class action
20 would be certified under Federal Rules of Civil Procedure, rule 23(b)(1)(A) or (b)(2) (28 U.S.C.)
21 if it were proceeding in federal court." (*Hefczyc v. Rady Children's Hospital-San Diego* (2017)
22 17 Cal.App.5th 518, 533.) (See also *Kendall v. Scripps Health* (2017) 16 Cal.App.5th 553, 577-
23 578; *Capitol People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676,
24 691 fn 12.) This trial court must follow the Court of Appeal decisions. (*Auto Equity Sales, Inc.*
25 *v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450, 455.)
26

1 A plaintiff in a California court can, however, define the claims and elect to seek
2 declaratory and injunctive relief rather than damages and thereby focus the class certification
3 analysis on policies and procedures, and alleged systemwide violations, rather than on the effects
4 of those alleged systemwide violations on the individual member of the class. *Hefczyc* states,
5 “California courts have never adopted Rule 23 as ‘a procedural strait jacket.’ To the contrary,
6 trial courts [are] urged to exercise pragmatism and flexibility in dealing with class actions.”
7 (*Hefczyc*, 17 Cal.App.5th at 531.)

8 In *Capitol People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th
9 676, the Court of Appeal reversed the trial’s denial of class certification and directed the trial
10 court to certify the class. In *Capitol People* the plaintiffs sought only declaratory and injunctive
11 relief. (155 Cal.App.4th at 686.) The trial court denied class certification. The Court of Appeal
12 found that the trial court failed to focus on the allegedly unlawful systemwide policies and
13 practices and the theory of recovery in the commonality inquiry. (155 Cal.App.4th at 693.) The
14 Court of Appeal held that the trial court had turned pattern and practice “upside down” by
15 improperly focusing on the individualized effects of the alleged practice to determine whether
16 there was a pattern rather than the common evidence that could be presented to demonstrate the
17 existence of an alleged common practice or policy. (155 Cal.App.4th at 696.) The Court of
18 Appeal held that the trial court failed to differentiate between classwide injunctive relief and the
19 existing statutory fair hearing procedure that adjudicates *individual* claims and grievances (155
20 Cal.App.4th at 701-702).

21 *Capitol People* is noteworthy because it reversed a trial court decision and directed the
22 trial court to certify the class. *Hefczyc v. Rady Children's Hospital-San Diego* (2017) 17
23 Cal.App.5th 518, and *Kendall v. Scripps Health* (2017) 16 Cal.App.5th 553, provide less
24 guidance because the appellate court affirmed trial court orders that denied class certification.
25 Rather than standing for the proposition that a trial court must reach a particular conclusion, the
26 court reads *Hefczyc* and *Kendall* collectively for the more modest proposition that trial courts are

1 vested with discretion in evaluating whether to grant or deny class certification and that the
2 Court of Appeal will affirm if there is no abuse of discretion. (*Kaldenbach v. Mutual of Omaha*
3 *Mutual Life Ins. Co.* (2009) 178 Cal.App.4th 830, 844 [“Any valid pertinent reason stated will be
4 sufficient to uphold the order.”]; *Cohen v. DirecTV* (2009) 178 Cal.App.4th 966, 981 [“because
5 the trial court stated at least one valid reason for denying the motion for class certification, we
6 decline to reverse the trial court’s order.”].)

7 In *Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, the court discussed class
8 certification in the context of whether it was appropriate to approve a class settlement. In that
9 context, the court quoted *Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338, 362-363, for the
10 proposition that “When a class seeks an indivisible injunction benefitting all its members at once,
11 there is no reason to undertake a case-specific inquiry into whether class issues predominate or
12 whether class action is a superior method of adjudicating the dispute. Predominance and
13 superiority are self-evident.” (*Carter*, 224 Cal.App.4th at 824.)

14 In this case, certification of a class for injunctive relief will ensure that class counsel has
15 a fiduciary duty not just to the named plaintiffs but also to all the persons who might be affected
16 by an injunction. (*Allen v. Int’l Truck & Engine Corp.* (7th Cir. 2004) 358 F.3d 469, 471.) As a
17 matter of law, any plaintiff could seek a public injunction to prevent harassment. (*Vaughn v.*
18 *Tesla, Inc.* (2023) 87 Cal.App.5th 208, 227-232.) Certification of a class for injunctive relief
19 will also ensure that if the jury finds the alleged pattern or practice, and if a court finds that an
20 injunction is appropriate, then there will be a single directive court order, and Tesla will not be
21 subject to inconsistent injunctions. If the situation at Tesla changes, then the parties in the class
22 case can seek to modify the injunction accordingly. (CCP 533.)

23 On the facts of this case, certification of a class to assert the claims alleged by plaintiffs
24 in the Second Amended Complaint, and to seek the limited remedy of injunctive relief, is
25 appropriate. If there is currently pervasive harassment at the Fremont factory, and Tesla knows
26 or should know of that harassment, and Tesla has a pattern or practice of failing to take

1 immediate and appropriate corrective action, then these findings will affect all Black/African-
2 American persons currently at the Tesla Fremont factory. Under these circumstances, a class
3 wide injunction would be appropriate to compel Tesla to take appropriate action prospectively.
4 The court will grant class certification under this model.

5
6 MODEL E – NO CLASS CERTIFICATION, FOLLOWED BY SEPARATE INDIVIDUAL
7 ACTIONS
8

9 The fifth model is the denial of the motion for class certification in its entirety.

10 If the court denied class certification, then the members of the putative class would need
11 to file individual actions, which may number in the hundreds. If the court followed its usual
12 procedure and distributed the cases randomly to be managed in different civil departments, then
13 there would be duplicative discovery, multiple hearings in multiple departments with no
14 coordinated schedule, and potentially inconsistent orders, all of which would be inefficient and a
15 burden on the parties and the court. If the court managed the cases in a single department as
16 related cases in the same manner as a coordinated proceeding, then the court could obtain some
17 of the benefits of a class action or coordinated proceeding. (CRC 3.300; CCP 404; CRC 3.501 et
18 seq.)
19

20 If the court denied class certification the court would need to address certain common and
21 recurring fact issues in each and every trial – specifically, whether in the relevant time frame
22 Tesla’s motive, intent, or knowledge could be established by evidence that Tesla knew or should
23 have known of pervasive race harassment and whether it took immediate and appropriate
24 corrective action. (*Pantoja v. Anton* (2011) 198 Cal.App.4th 87, 109-118.) While counsel for
25 plaintiffs suggests hundreds of cases might be filed, Tesla argues that perhaps 50 or fewer cases
26

1 will actually be filed. Even if Tesla is correct, juries would need to hear evidence on the
2 common fact issues many times.

3 If the court denied class certification, then each member of the putative class who is
4 currently a worker at Tesla could arguably seek a public injunction. (*Vaughn v. Tesla, Inc.*
5 (2023) 87 Cal.App.5th 208, 227-232) The individual plaintiffs would not be in privity with each
6 other, so the court would arguably need to address certain common and recurring fact issues
7 related to Tesla's current practices in each and every trial. The parties would then face the
8 possibility of inconsistent injunctive relief as different plaintiffs may seek different outcomes
9 based on different evidence. If Tesla were found liable in even a small number of the cases that
10 are tried, different trial judges will craft different injunctions as appropriate to the evidence that
11 is presented in each case.

12
13 The court finds that denial of class certification and permitting individual plaintiffs to file
14 individual cases seeking damages and injunctive relief is not a "superior alternative." The court
15 does not address this option further.

16 17 18 EFFECT OF *WAL-MART V. DUKES*.

19 Tesla argues that *Wal-Mart v. Dukes* (2011) 564 U.S. 338, changed the class certification
20 landscape. *Wal-Mart* addressed "whether the certification of the plaintiff class was consistent
21 with Federal Rules of Civil Procedure 23(a) and (b)(2)." (564 U.S. at 342.) Of significance,
22 FRCP 23(b)(2) concerns class actions for injunctive relief and FRCP 23(b)(3) concerns class
23 actions for monetary relief.

24 Regarding FRCP 23(a)(2) and the requirement that "there are questions of law or fact
25 common to the class," the Supreme Court held that on the issue of liability there must be a
26 "common contention ... of such a nature that it is capable of classwide resolution—which means

1 that determination of its truth or falsity will resolve an issue that is central to the validity of each
2 one of the claims in one stroke.” (*Wal-Mart*, 564 US at 350.) Class certification must consider
3 “the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution
4 of the litigation.” (*Wal-Mart*, 564 US at 350.)

5 Regarding damages, the Supreme Court held that a court may not certify a class under
6 FRCP 23(b)(2) where “the monetary relief is not incidental to the injunctive or declaratory
7 relief.” (564 U.S. at 360.) Assuming that the class could seek damages in a FRCP 23(b)(2)
8 class, the Court held that the lower court erred in its plan that a special master would have
9 hearings with a sample set of the class members: the percentage of claims determined to be valid
10 would then be applied to the entire remaining class; and the number of (presumptively) valid
11 claims would be multiplied by the average backpay award in the sample set to arrive at the entire
12 class recovery—without further individualized proceedings. (*Wal-Mart*, 564 US at 367.) The
13 Supreme Court indicated that even where there is a finding of an unlawful pattern or practice the
14 defendant is still “entitled to litigate its statutory defenses to individual claims.” (*Wal-Mart*, 564
15 US at 367.)

16 As a matter of procedure, *Wal-Mart* is a federal case about “whether the certification of
17 the plaintiff class was consistent with Federal Rules of Civil Procedure 23(a) and (b)(2).” (564
18 U.S. at 342.) California’s statute authorizing class certification is CCP 382, and the development
19 of class certification law has been guided by equity. (*Estrada v. Royalty Carpet Mills, Inc.*
20 (2024) 15 Cal.5th 582, 611.) *Walmart* did not address California class action standards.

21 As a matter of substance, *Wal-Mart*’s analysis of the commonality requirement under
22 FRCP 23(a) is consistent with established California law in holding that common issues of law
23 or fact must predominate, and that the class mechanism should be used when “substantial
24 benefits accrue both to the litigants and the courts.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th
25 429, 435.) Further, *Wal-Mart*’s analysis of the availability of damages under FRCP 23(b)(2) is
26 immaterial because the plaintiffs in this case are clearly seeking damages. Plaintiffs proposed

1 the *Teamsters* model with jury trials for individual claims so Tesla would have the opportunity
2 for a jury trial with each member of the class. Under the particular issues model, Tesla will
3 similarly have the opportunity for a jury trial with each member of the class.

4 5 STANDARD FOR CLASS CERTIFICATION

6 The court will grant the motion for class certification for both (1) the determination of
7 common particular fact issues and (2) injunctive relief. The court will consider them separately
8 because in evaluating class certification, the court considers the causes of action alleged and the
9 plaintiffs' theory of recovery. (*Brinker*, 53 Cal.4th at 1024; *Capitol People First*, 155 Cal.App.4th
10 690, 695-696.) For each, the court considers the established factors of numerosity,
11 ascertainability, predominance of common questions, typicality, adequacy of representation, and
12 superiority. (*Brinker*, 53 Cal.4th at 1021.)

13 14 CLASS CERTIFICATION FOR PARTICULAR FACT ISSUES

15 16 PARTICULAR ISSUE CERTIFICATION – NUMEROSITY

17 The statutory touchstone for numerosity is whether there are so many class members that
18 “it is impracticable to bring them all before the court.” (CCP 382.) Although “[n]o set number
19 is required as a matter of law for the maintenance of a class action,” classes of more than 30 to
20 40 class members generally satisfy the numerosity requirement because at that point, joinder is
21 not practical. (*Hendershot v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213,
22 1222; *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.)

23 Plaintiffs assert the proposed class of members within the relevant time period through
24 mid-2021 is approximately 5,977 persons at the Fremont factory who self-identified as
25 Black/African-American. (Moving at fn 25 and fn 26.) The parties have submitted the
26

1 declarations of over 500 Tesla workers who experienced or observed what could be described as
2 race harassment.

3 Tesla Senior HR Partner Hart stated that in her declaration that “In 2016, Tesla employed
4 more than 6,000 workers at the Fremont factory. By 2022, Tesla employed more than 22,000
5 workers at the Fremont factory. ... , 11 % identify as Black or African American.” (Hart Dec
6 filed 10/16/23 at para 3, 6) Assuming an unrealistic zero turnover and an average of 14,000
7 workers, there were approximately 1,540 Tesla workers between 2016 and 2022 who identified
8 as Black or African American.

9 Plaintiffs have presented evidence demonstrative the proposed class is numerous.
10

11 PARTICULAR ISSUE CERTIFICATION – ASCERTAINABILITY

12 Ascertainability requires a class that is defined “in terms of objective characteristics and
13 common transactional facts” that make “the ultimate identification of class members possible
14 when that identification becomes necessary.” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th
15 955, 961, 967, 974.) For purposes of ascertainability, the parties and the court do not need to
16 identify by name the persons in the proposed class or any potential subclass. (*Daar v. Yellow*
17 *Cab Co.* (1967) 67 Cal.2d 695.) “If necessary to preserve the case as a class action, a court may
18 redefine the class to reduce or eliminate an ascertainability or manageability problem.” (*Sarun v.*
19 *Dignity Health* (2019) 41 Cal.App.5th 1119, 1137-1138; *Cohen v. DIRECTV* (2009) 178
20 Cal.App.4th 966, 979.) The trial courts can also consider and create subclasses. (*Martinez v.*
21 *Joe’s Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 376-377.)

22 Plaintiffs seek to certify a class defined as: “Black/African-Americans who were
23 employed on the production floor at the Tesla factory in Fremont at any time from November 9,
24 2016 to the final disposition of this action, who were not subject to an arbitration agreement for
25 all relief sought for the entire period of their employment at Tesla.” (Moving at 2:5-7.)
26

1 The court has two concerns regarding plaintiffs’ proposed definition of the class. First,
2 plaintiffs’ proposed class definition has no fixed end date. For purposes of the particular fact
3 issues class, the court defines the end date of the class as the date this order is filed. Second, the
4 court is troubled by defining a class of “Black/African-Americans” without more information or
5 clarification.

6 For purposes of the particular issues class, the court defines the class as the persons at the
7 Fremont factory who self-identified to the parties as Black/African-American. (*Sarun*, 41
8 Cal.App.5th at 1137-1138 [court may redefine a class].) As of the last briefing, plaintiffs
9 identified approximately 5,977 persons at the Fremont factory who, as of mid-2021, self-
10 identified as Black/African-American. (Pltf opening filed 6/5/23 at p5, fn 25 and fn 26.)

11 The court ORDERS that the parties meet and confer (using a process similar or identical
12 to the process described in the Order of June 5, 2020), to identify persons who worked at the
13 Tesla Fremont Factory through the date of this order and who self-identify as Black/African-
14 American and to provide a composite list of these individuals to the court promptly.¹¹ If the
15 parties cannot reach an agreement, then the court ORDERS that plaintiffs may file a motion on
16 shortened time and the court will hear the motion at the next regularly scheduled case
17 management conference and hearing date. The court will then define the common particular fact
18 issues class as the persons who self-identify to the parties as Black/African-American and who
19 are on the resulting composite list.

20 ///

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24
25 ¹¹ The order of June 5, 2020, concerned an interrogatory that asked Tesla to “Please
26 identify all black individuals who worked at the Tesla Factory during the statutory period.” The
court limited the response to persons who self-identified as Black in the EEOC-1 Forms or in a
response to a *Belaire-West* notice. (*Vaughn v. Tesla, Inc.* (2020) 2020 WL 7223000 at *2.)

1 PARTICULAR ISSUE CERTIFICATION – LAW ON PREDOMINANCE IN CONTEXT OF A
2 PATTERN OR PRACTICE

3 Plaintiff's burden on moving for class certification is not merely to show that some
4 common issues exist, but, rather, to place substantial evidence in the record that common issues
5 predominate. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal. 4th 1096, 1108.) The
6 determination of how much commonality is enough to warrant use of the class mechanism
7 requires a fact specific evaluation of the claims, the common evidence, and the anticipated
8 conduct of the trial.

9 In a claim alleging an unlawful pattern or practice, the issue for determination at trial is
10 whether there was the alleged pattern or practice and not whether or how it affected any specific
11 individual. *Duran*, 59 Cal.5th at 36, states: "In a pattern and practice case, the employer's
12 actions must be examined in the aggregate to determine whether the employer is liable to any
13 particular plaintiff for discrimination." *Sav-On*, 34 Cal. 4th 319, addresses the issue of a policy,
14 pattern or practice in several places, stating, "[p]redominance is a comparative concept," (34 Cal.
15 4th at 334), that the community of interest requirement does not mandate that class members'
16 claims be uniform or identical, (34 Cal.4th at 338), and that the "logic of predominance" does not
17 require a plaintiff to prove that a defendant's policy was "either right as to all members of the
18 class or wrong as to all members of the class" (34 Cal. 4th at 338). *Williams v. Superior*
19 *Court* (2013) 221 Cal.App.4th 1353, 1370, states: "An unlawful practice may create
20 commonality even if the practice affects class members differently."

21 When a class claim concerns an aggregate practice, the plaintiffs are not required to
22 prove that every member of the proposed class was exposed to the allegedly wrongful practice,
23 or the practice was uniformly unlawful as to all members of the class. *Bell v. Farmers Inc.*
24 *Exchange* (2004) 115 Cal.App.4th 715, 744, holds that class certification is appropriate even if
25 some individual members of the class cannot, or do not, prove that they were damaged. (See
26 also *Hofer v. Southwest Airlines Co* (Superior Court 2022) 2022 WL 1296952 at *6 [discussion

1 of “practice”]; *Naranjo v. General Nutrition Corp.* (Cal Superior 2018) 2018 WL 8058761 at *6-
2 7 [discussion of “practice” and suggestion that it requires a plaintiff to prove a “standard
3 operating procedure”].) The corollary suggests that on issues where the defendant has the
4 burden, such as showing that it took “immediate and appropriate corrective action,” the
5 defendant is presumably required to show that it had a pattern or practice of taking immediate
6 and appropriate corrective action and not that it always took immediate and appropriate
7 corrective action.

8 The class certification inquiry of whether common issues predominate and permit a
9 plaintiff to represent a class is different from the merits inquiry of whether at trial the class can
10 prove the alleged unlawful pattern or practice. The class certification hurdle requires that a
11 plaintiff establish that common issues predominate, not that the plaintiff can prove the defendant
12 had an unlawful pattern or practice on the merits. (*Linder*, 23 Cal.4th at 437-444.) The court can
13 therefore grant a motion for class certification because common issues predominate, and a
14 defendant can prevail at trial if the class cannot prove the alleged unlawful pattern or practice.

15 16 PARTICULAR ISSUE CERTIFICATION – PREDOMINANCE IN THIS CASE

17 In this case, the court finds common issues of fact will predominate on certain common
18 particular fact issues. (CRC 3.765(b) [“When appropriate, an action may be maintained as a class
19 action limited to particular issues”].) The common particular fact issues¹² are:

- 20 1. Was there a pattern or practice of pervasive race harassment at the Tesla factory? [If
21 yes, identify the time period or periods by month/year, then go to #2]
22
23
24

25 ¹² The court identifies the common particular fact issues for purposes of this order on
26 class certification. The court may modify the specific text of the issues, including to take into
account burden of proof, factual or legal concerns, or to clarify the verdict form.

- 1 2. For each of the time periods identified in response to #1, did Tesla know or should
2 have known of the pattern or practice of pervasive race harassment at the factory? [If
3 yes, for any time period, then go to #3]
4 3. If Tesla knew or should have known that there was a pattern or practice of pervasive
5 race harassment at the factory for a time period in which you answered “yes” in
6 question #2, did Tesla fail to take immediate and appropriate corrective action? (Govt
7 Code 12940(j)(1).)
8

9 The first common fact issue is whether there was a pattern or practice of pervasive race
10 harassment at the Tesla factory during a specific time frame or time frames as found by the jury.
11 The existence of “harassment” is central to the claim of any member of the class. (Govt Code
12 12940(j)(1).) “Pervasive race harassment” is defined by case law. (*Lyle v. Warner Brothers*
13 *Television Productions* (2006) 38 Cal.4th 264, 283 [pervasive harassment is “a concerted pattern
14 of harassment of a repeated, routine, or a generalized nature”].) (See also *Cornell v. Berkeley*
15 *Tennis Club* (2017) 18 Cal.App.5th 908, 940.) The determination would be whether there was a
16 “pattern or practice” regarding the class; the court discussed the nature of “pattern or practice”
17 above. The individual or subjective experience of any given worker is not relevant because
18 whether there was a pattern or practice of pervasive race harassment will be “assessed from the
19 perspective of a reasonable person belonging to [same protected class as] the plaintiff [class].”
20 (*Cornell*, 18 Cal.App.5th at 940.)¹³
21

22
23
24 ¹³ If an individual Tesla worker files a separate action seeking damages, then in that action
25 the worker will need to prove (among other things) that they were subjected to race harassment
26 at the Tesla Fremont factory, the objective severity of the harassment from the perspective of a
 reasonable person in the plaintiff's position, and that the worker subjectively perceived the work
 environment to be hostile. (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 462;
 Galvan v. Dameron Hospital Assn. (2019) 37 Cal.App.5th 549, 564.) (See also CACI 2521A.)

1 The parties can present common evidence so the jury can determine this fact issue on a
2 common basis. Common evidence will include reports of graffiti to the graffiti remediation
3 program (Hart Dec para 25) and reports of harassment to the “centralized internal tracking
4 system” (Hart Dec para 24). Common evidence may include testimony from HR staff,
5 managers, leads, and supervisors about reports of harassment that they received from workers
6 and whether they observed or experienced harassment. Common evidence may include
7 testimony from workers about whether they observed or experienced harassment. At trial the
8 parties and the court will need to address how to ensure that testimony from workers is from a
9 statistically significant number of randomly selected witnesses. (*Duran*, supra.)

11 The second common fact issue is whether, for each of the time periods identified in
12 response to common issue one, Tesla knew or should have known of the pattern or practice of
13 pervasive race harassment at the factory. (Govt Code 12940(j)(1).) Whether Tesla management
14 knew or should have known about any pattern or practice of pervasive harassment at the Fremont
15 factory is central to whether Tesla’s subsequent action or inaction is probative evidence of Tesla’s
16 motive, intent, or knowledge. (*Pantoja v. Anton* (2011) 198 Cal.App.4th 87, 109-118 [me-too
17 evidence]; *Johnson v. United Cerebral Palsy/Spastic Children's Foundation of Los Angeles and*
18 *Ventura Counties* (2009) 173 Cal.App.4th 740, 763-767 [same].)

20 Tesla argues that this not a common issue because individuals have knowledge and
21 because “Motive, intent or knowledge are concepts usually applied to an individual’s state of
22 mind.” (Tesla Supp Brief filed 4/12/24 at 3:18-26.) It is well established that corporations act
23 through their agents and that notice to a corporate agent can be notice to a corporation. (*Moore v.*
24 *Phillips* (1959) 176 Cal.App.3d 702, 709.) For purposes of punitive damages, advance notice to
25 a corporation is notice to “an officer, director, or managing agent.” (Civil Code 3294(b).) A
26

1 corporation can have a motive or intent based on the motives or intent of the corporation's
2 employees. "California corporations can form intent, be reckless and commit acts through their
3 agents." (*Granite Construction Co. v. Superior Court* (1983) 149 Cal.App.3d 465, 472.) (See
4 also *Cruz v. Homebase* (2000) 83 Cal.App.4th 160, 167 [corporate intent in context of punitive
5 damages].)

6 The parties can present common evidence so the jury can determine, on a common basis,
7 whether Tesla knew or should have known of the pattern or practice of pervasive race harassment
8 at the factory. This evidence will likely focus on what was observed by or reported to Tesla's
9 supervisors, leads, managers, and HR through informal and formal lines of communication.
10

11 The third common fact issue is, if Tesla knew or should have known that there was a
12 pattern or practice of pervasive race harassment at the factory for a time period identified by the
13 jury, did Tesla fail to take immediate and appropriate corrective action. (Govt Code 12940(j)(1).)
14 Tesla's action or inaction after it was aware of a pattern or practice of pervasive harassment is
15 probative evidence of Tesla's motive, intent, or knowledge. (*Panjota*, supra; *Johnson*, supra.)
16

17 Common evidence will likely focus on Tesla's response and reaction when it knew or
18 should have known about a pattern or practice of pervasive race harassment at the Tesla factory.
19 Tesla's formal written policies, informal written policies, common procedures for training
20 managerial and non-managerial employees, graffiti remediation program, and "centralized
21 internal tracking system" are common evidence. The declarations submitted by plaintiffs and by
22 Tesla regarding Tesla's response to complaints appear to be a statistically significant number of
23 declarations, but, as noted above, there is no assurance those declarations reflect a representative
24 sample.
25
26

1 PARTICULAR ISSUE CERTIFICATION – PREDOMINANCE - ARBITRATION
2 AGREEMENTS

3 The court finds common issues of fact will NOT predominate on the issue of whether any
4 member of the class must arbitrate some or all of their claims. Tesla may raise issues regarding
5 arbitration when Tesla workers file civil actions.

6 Tesla has stated: “Tesla would agree that the filing of this action tolled the time for
7 individuals to file any non-arbitrable administrative charges with DFEH and to file complaints
8 with the court.” (Tesla Supp Brief filed 2/29/24 at 9:15-17.) Tesla then states that it does not
9 agree that claims that are subject to arbitration are within the scope of such tolling. (Tesla Supp
10 Brief filed 2/29/24 at 9:17-21.)

11 The court expressly does not address or decide whether this formerly putative and now
12 certified class action has the effect of tolling the statute of limitations for any claims that Tesla
13 workers seek or are compelled to pursue in arbitration. The statute of limitations is an
14 affirmative defense that Tesla would need to assert in any arbitration; if Tesla asserts that
15 affirmative defense, then the Tesla worker could assert tolling, and the arbitrator would need to
16 resolve that issue. The court should not, and will not, decide substantive issues at class
17 certification, including substantive issues that must be presented to an arbitrator. (*Linder*, 23
18 Cal.4th at 437-444.)

19
20 PARTICULAR ISSUE CERTIFICATION – PREDOMINANCE - STATUS AS EMPLOYEE
21 OF TESLA

22 The court finds common issues of fact might predominate on the issue of whether any
23 individual class member was an “employee” of Tesla under the FEHA, but the court will not
24 certify this issue for class treatment for the reasons set forth below.

25 The law is that the FEHA makes it unlawful for an employer to harass or retaliate against
26 an employee, but that to be entitled to relief for allegations of harassment and retaliation, a

1 FEHA claimant must first demonstrate an employment relationship with his or her alleged
2 employer. (*Jimenez v. U.S. Cont'l Mktg.* (2019) 41 Cal.App.5th 189, 196.) The relationship need
3 not be direct, and a worker can prove an employment relationship through proof of the
4 employer's exercise of direction and control over the employee. (*Jiminez*, 41 Cal.App.5th at 197.)

5 The evidence is that the members of the putative class were formally employed by many
6 different staffing agencies while assigned to work at Tesla, and worked in many different
7 locations in the Fremont factory under various supervisors and managers. The evidence
8 indicates that after every staffing agency assigned a worker to work at the Tesla factory, Tesla
9 consistently exercised direction and control over the worker.

10 Tesla appears to acknowledge that class certification would be appropriate on this issue
11 but does not concede the issue on the merits. That noted, this issue is unrelated to the central
12 common fact issues of whether there was pervasive harassment, whether Tesla knew of that
13 harassment, and whether Tesla had a practice of failing to address that harassment. Furthermore,
14 it appears that presentation of the relevant evidence on this issue in any individual trial would
15 likely be brief (perhaps no more than 15-30 minutes) and could be tailored to whether Tesla
16 exercised direction and control over the specific worker who was asserting the claim. The court
17 will not certify this issue for class treatment in the interest of having a manageable trial on
18 common particular issues.

19 20 TYPICALITY - PARTICULAR ISSUE CERTIFICATION

21 “The typicality requirement’s purpose “ ‘is to assure that the interest of the named
22 representative aligns with the interests of the class. ... Typicality refers to the nature of the claim
23 or defense of the class representative, and not to the specific facts from which it arose or the
24 relief sought. ... The test of typicality is whether other members have the same or similar injury,
25 whether the action is based on conduct which is not unique to the named plaintiffs, and whether
26 other class members have been injured by the same course of conduct. ... A class representative

1 who does not have a claim against the defendants cannot satisfy the typicality requirement's "

2 (*Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 375.) (See also *Medraza*

3 *v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 99; *Daniels v. Centennial Group, Inc.*

4 (1993) 16 Cal. App. 4th 467, 473.)

5 Plaintiff Marcus Vaughn is typical of the members of the class for purposes of seeking

6 retrospective relief. Vaughn worked at the Tesla Fremont factory from April 23, 2017, through

7 October 31, 2017. During that time, Vaughn worked entirely through the staffing agency

8 Balance Staffing. Vaughn alleged he observed race harassment and graffiti, complained in

9 writing to HR, was not interviewed by HR, and is not aware if Tesla ever investigated his

10 complaint. (Vaughn Dec.)

11 Plaintiff Monica Chatman is typical of the members of the class for purposes of seeking

12 retrospective relief. Chatman worked at the Tesla Fremont factory from November 16, 2016,

13 through September 11, 2019. Chatman initially worked through the staffing agency West Valley

14 Staffing and became a direct Tesla employee on August 2, 2017. Chatman alleges she observed

15 race harassment and graffiti, complained to HR in 2018, and is not aware if Tesla ever

16 investigated her complaint. (Chatman Dec.)

17 Plaintiff Titus McCaleb is typical of the members of the class for purposes of seeking

18 retrospective relief. McCaleb worked at the Tesla Fremont factory from October 2016 through

19 June 2017. McCaleb worked through the staffing agency West Valley Staffing. McCaleb

20 alleged he observed race harassment, complained to his leads and supervisors, and they took no

21 action to stop harassment. McCaleb stated he saw racial graffiti on the bathroom walls and

22 written on employee announcements and elsewhere in the factory, and stated that Tesla did not

23 appear to be removing or addressing it in any meaningful way. (McCaleb Dec.)

24 Plaintiff Evie Hall has dismissed her claims.

25 ///

26 ///

1 ADEQUACY- PARTICULAR ISSUE CERTIFICATION

2 The responsibilities of a class representative fall into three categories: (1) to have no
3 interests adverse to the class; (2) to protect the interests of the class, and (3) to select and monitor
4 competent class counsel. (*J. P. Morgan & Co., Inc. v. Superior Court* (2003) 113 Cal.App.4th
5 195, 212 [no adverse interests]; *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450
6 [“whether the plaintiff’s attorney is qualified to conduct the proposed litigation”]; *Sharp v. Next*
7 *Entertainment, Inc.* (2008) 163 Cal.App.4th 410, 432 [“vigorously and tenaciously protecting the
8 class members’ interests”].) (See also *Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224,
9 238.)

10 The court finds that Marcus Vaughn, Monica Chatman, and Titus McCaleb have no
11 interests adverse to the class. Tesla does not dispute this point. The court finds that Marcus
12 Vaughn, Monica Chatman, and Titus McCaleb are adequately motivated to protect the interests
13 of the class and to prosecute the claims of the class both for retrospective relief in the form of
14 damages and in the form of prospective injunctive relief. The court finds that Marcus Vaughn,
15 Monica Chatman, and Titus McCaleb have retained competent counsel.

16 The court finds that class counsel does not have a conflict with the members of the class
17 regarding whether claims are resolved in court or in arbitration because the class specifically
18 excludes claims that are subject to an arbitration agreement. This is also not an issue in this case
19 because the members of the class who decide to prosecute individual claims against Tesla may
20 choose class counsel or any other counsel to represent them in the individual cases.

21
22 DETERRING WRONGDOING AND ALTERNATIVE PROCEDURES - PARTICULAR
23 ISSUE CERTIFICATION

24 The trial courts have “the obligation to consider “the role of the class action in deterring
25 and redressing wrongdoing.” (*Linder*, 23 Cal.4th at 445-446.) “The problems which arise in the
26 management of a class action involving numerous small claims do not justify a judicial policy

1 that would permit the defendant to retain the benefits of its wrongful conduct and to continue that
2 conduct with impunity.” (*Linder*, 23 Cal.4th at 446.) “[T]ermination of a defendant's alleged
3 wrongdoing is a factor to be considered.” (*Blue Chip*, 18 Cal.3d at 386.)

4 On the facts of this case, there are significant incentives for individual persons to file civil
5 actions to recover damages suffered from the alleged harassment. Looking at the law, the FEHA
6 states that a prevailing plaintiff can recover damages, plus attorneys’ fees and costs. (Govt Code
7 12965(c)(6).) The fee shifting provision in the FEHA is designed to encourage the filing of
8 meritorious civil actions. (*Williams v. Chino Valley Independent Fire Dist.* (2015) 61 Cal.4th 97,
9 114.) During oral argument, counsel for the putative class stated to the court that if the court
10 were to deny class certification, then counsel expected to file a significant number of individual
11 cases alleging harassment based on the facts that are presented in the putative class action. This
12 suggests that class counsel believes there is sufficient incentive for individuals to file meritorious
13 individual cases.

14 As part of evaluating whether it was superior to manage the claims as a class or as
15 individual actions, the court asked Tesla to state on the record whether it agrees that the filing of
16 this putative class action tolled the time for the members of the putative class to file
17 administrative charges with the DFEH and to file complaints with the court. (*Morris v. AGFA*
18 (2006) 144 Cal.App.4th 1452, 1464 [trial court asked if defendants would assert the statute of
19 limitations as a defense in Texas before finding that Texas was a “suitable alternative forum” for
20 the claims].) Tesla stated that it agrees that the filing of this class action tolled the statute of
21 limitations for Tesla workers to file administrative claims with the DFEH and to file lawsuits in
22 court. (Tesla supp brief filed 2/29/24 at 9:14-10:2.) This is a part of the superiority analysis
23 because it ensures that Tesla workers have an adequate remedy. Tesla workers who delayed
24 filing individual cases because they thought that their claims would be resolved in this class
25 action are not prejudiced by their decisions to defer filing individual cases. (*Bernuy v. Bridge*
26 *Property Management Co.* (2023) 89 Cal.App.5th 1174, 1187-1192 [tolling factors]; *Hildebrandt*

1 v. *Staples the Office Superstore, LLC* (2020) 58 Cal.App.5th 128 [tolling factors].) The tolling
2 will end ten days after notice is given to the class of the limited issues class certification. (*In re*
3 *Honda Am. Motor Co. Dealership Rels. Litig.* (D. Md. 1997) 979 F. Supp. 365, 371 [“I am ruling
4 that the tolling period ceases only after I have rendered my decision to certify the class solely as
5 to liability issues and *not* to certify it as to damages issues”].)

6 This class action is not the only civil case in which a plaintiff is alleging there is
7 harassment at the Tesla Fremont factory and seeking damages. The court can deny class
8 certification if a class action would be duplicative of another case that is pursuing the same
9 relief. (*Caro v. Procter & Gamble Co.* (1993) 18 Cal. App. 4th 644, 660 [class certification
10 denied in part because defendant had already entered into consent decrees with public law
11 enforcement entities].) The CRD has filed and is pursuing a parallel law enforcement action.
12 The EEOC has filed a similar action.

13 It is unclear as of the date of this order whether the CRD will be able to pursue the same
14 relief that is the subject of the particular issues class. Tesla is asserting that the CRD case must
15 be dismissed entirely, or narrowed significantly, because the CRD failed to comply with the
16 CRD’s pre-filing responsibilities. The CRD’s claims are also subject to a different statute of
17 limitations. Given the current uncertainty about whether the CRD case will proceed on the
18 merits, the court cannot find that the putative class action is redundant of the CRD’s law
19 enforcement action. The EEOC case was not filed until September 28, 2023, so the court cannot
20 find that the putative class action is redundant of the EEOC’s relatively new law enforcement
21 action.

22
23 MANAGEABILITY/TRIAL PLAN FOR CLASS TRIAL - PARTICULAR ISSUE
24 CERTIFICATION

25 The trial court is ultimately required to manage any class trial so that the trial provides
26 due process to both the absent class members and to the defendant. (*Kight v. CashCall* (2014)

1 231 Cal.App.4th 112, 127.) When a plaintiff files a motion for class certification, then “It is not
2 sufficient ... simply to mention a procedural tool; the party seeking class certification must
3 explain how the procedure will effectively manage the issues in question.” (*Dunbar v.*
4 *Albertson's, Inc.* (2006) 141 Cal.App.4th 1422, 1432-1433.)

5 The court is confident that the court and the parties can manage a trial where the jury will
6 make findings on the common particular fact issues. The court has defined the fact issues that the
7 jury will decide. The common evidence is Tesla’s formal written policies, informal written
8 policies, common procedures for training managerial and non-managerial employees, graffiti
9 remediation program, and “centralized internal tracking system.” In addition, plaintiffs and
10 Tesla may present (1) the testimony of a *Duran* compliant sample of workers, supervisors, leads,
11 and managers about the existence of the alleged pattern or practice of race harassment; (2) the
12 testimony of workers, supervisors, leads, managers, and Human Resources personnel about
13 whether Tesla knew of the alleged harassment; and (3) the testimony of workers, supervisors,
14 leads, managers, and Human Resources personnel about whether Tesla took immediate and
15 appropriate action.

16 The court must address the issue that the findings on the common particular fact issues
17 may be different for different time frames. The approximately 500 declarations in support of and
18 in opposition to this motion suggest that over a period of approximately eight years Tesla
19 workers in the Fremont factory heard the n-word and otherwise experienced conditions that
20 might reasonably be characterized as race harassment. It is unclear whether Tesla was aware at
21 all times or became aware of the alleged pervasive race harassment at a certain time; whether
22 Tesla changed the number of HR personnel responsible for responding to complaints of race
23 harassment at a certain time; whether Tesla changed how seriously it took complaints of race
24 harassment at a certain time; etc.

25 There are two different ways the court can permit the jury to make findings on the
26 common particular fact issues for different time frames. First, the court could now, or closer to

1 trial, order the creation of subclasses for the purpose of permitting the jury to make factual
2 findings about particular time frames. (CRC 3.764(a)((3) [court may amend or modify an order
3 certifying a class].) (See also *Vasquez v. Superior Court* (1971 4 Cal.3d 800, 821; *Lazar v. Hertz*
4 (1983) 143 Cal.App.3d 128, 144.) Second, the court could at trial provide the jury with a
5 special verdict form and require the jury to make fact findings on the time frames when Tesla did
6 (or did not) have pervasive race harassment at the factory, was (or was not) aware of any such
7 harassment, and did (or did not) take immediate and appropriate action.

8 The court is currently inclined to provide the jury with a special verdict form. “[A]
9 special verdict is that by which the jury find the facts only, leaving the judgment to the Court.”
10 (CCP 624.) (See also *Rodriguez v. Parivar, Inc.* (2022) 83 Cal.App.5th 739, 750-751 [discussing
11 special verdict forms].) As applied in this case, the jury will be required to consider the evidence
12 and to make findings of fact that include whether there was a pattern or practice of pervasive
13 race harassment at the Tesla factory, and if so, defining the relevant time periods when the
14 pattern or practice of pervasive race harassment occurred. The jury will then need to determine
15 whether Tesla knew, or should have known of the harassment, and if it did, whether Tesla took
16 immediate and appropriate corrective action during the time periods identified by the jury.

17 Plaintiffs may argue that the allegedly unlawful pattern and practice was consistent
18 throughout the class period. (TR on 4/15/24 at 28-34.) Plaintiff’s April 12, 2024 brief at p 10
19 argued that there is no evidence that Tesla’s policies changed, but then states: “In principle,
20 Plaintiffs would not object if the Court later determined in response to a compelling evidentiary
21 showing that there is a need for subclasses based on particular time periods (or that the jury
22 should have the option for time-period differentiation on the verdict form.” Similarly, Tesla may
23 argue that it followed its written policies at all times and there was no unlawful pattern and
24 practice at any time during the class period. Tesla’s April 12, 2024 brief at p 8 argued that the
25 court “must break the class into periods of time of no more than 1 year” because “Tesla’s
26

1 policies and systems, the individuals who worked there, arbitration and staffing agency
2 agreements, and everything else continuously changed.”

3 The jury should have the ability to find that the allegedly unlawful pattern and practice
4 existed for some, but not all, portions of the class period. Furthermore, as a matter of due
5 process, Tesla should have the opportunity to minimize the effect of a potential adverse
6 judgment by arguing that any alleged unlawful action or inaction was confined to a limited time
7 frame. (*Duran v. U.S. Bank National Assn* (2014) 59 Cal.4th 1, 37-38 [defendant must be
8 permitted to make showing to reduce overall damages].)

9 As explained above, the court is currently inclined to find that the superior approach is to
10 leave the issue of defining the time periods to the jury. The parties suggested periods of one or
11 two years. (Stip filed 4/22/24.) The court finds that time periods of January through December
12 are arbitrary regarding the start and end dates. As part of the motion for class certification, the
13 court on April 15, 2024, asked the parties to meet and confer on what time periods and/or
14 intervals should be submitted to the jury to make its findings. Plaintiffs stated, “that the jury
15 will be best positioned to identify the time periods” whereas Tesla stated, “Tesla believes it
16 needs to be addressed on a year-by-year basis.” (Filing on 4/22/24.) Currently, the parties have
17 been unable to agree to relevant time periods for the jury to consider.

18 The court is wary about independently setting the relevant time frames because the
19 setting of the time frames is intertwined with factual findings about what Tesla knew, when it
20 knew it, and when, if ever, Tesla changed how it addressed reports of race harassment. (*Linder*,
21 23 Cal.4th at 437-444 [court should not decide merits at class certification].)¹⁴

22
23 ¹⁴ The record at class certification suggests dates such as (1) the date in 2017 when Tesla
24 implemented its graffiti program; (2) the date in 2017 when Tesla implemented its “centralized
25 internal tracking system”; (3) the May 31, 2017, date that Elon Musk, Tesla’s CEO, distributed
26 an email reminding employees of the “no a* policy”; (4) the date on February 2020 when Tesla
distributed the anti-handbook handbook; (5) any date or dates that Tesla hired additional
members of Human Resources to investigate complaints of harassment or, conversely, decided to
not expand the investigative capacity of Human Resources; etc.

1 The court acknowledges that with a special verdict there is “the possibility of a defective
2 or incomplete special verdict, or possibly no verdict at all.” (*Trujillo v. North County Transit*
3 *Dist.* (1998) 63 Cal.App.4th 280, 285.) The court is persuaded that the jury can determine the
4 relevant dates and time periods, if any, that are appropriate for answering the questions in the
5 verdict form; juries regularly make discrete factual findings in special verdict forms and the court
6 has no reason to think that the jury will be unable to do so here.

7 Further, the special verdict in the class trial on the common particular fact issues is not
8 intended to result in a judgement in the sense of a “final determination of the rights of the parties
9 in an action.” (Civil Code 577.) Rather, the special verdict is intended to result in factual
10 findings on common issues that can be used as evidence in subsequent cases. In *Sarun*, 41
11 Cal.App.5th at 1136-1137, the court referred to the anticipated judgement on common fact issues
12 as a “declaratory judgement” while anticipating subsequent individual claims to resolve the
13 individual issues.

14
15 **MANAGEABILITY/TRIAL PLAN FOR ANTICIPATED INDIVIDUAL CASES -**
16 **PARTICULAR ISSUE CERTIFICATION**

17 The class judgment on the common particular issues is only the beginning of the process
18 of managing the potential claims that are implicit in the over 500 declarations describing what is
19 alleged to be race harassment at Tesla’s Fremont factory. The trial on common particular fact
20 issues will not result in a money judgment in favor of any member of the class. The members of
21 the class will need to file separate individual lawsuits against Tesla if they want to pursue claims
22 for race harassment.

23 The court intends to manage the separate lawsuits in the manner of related cases (CRC
24 3.300) or a coordinated proceeding (CCP 404 et seq; CRC 3.501 et seq.). Specifically, the
25 following aspects of case management will permit the court to manage the claims efficiently with
26 benefits for both the parties and the court:

- 1 1. The statutes of limitation for pre-filing charges and for filing lawsuits were tolled as
2 of November 13, 2016, for all the claims not subject to arbitration. Defendant has
3 agreed that this is the law. (TR from 3/1/24 at 95:11-22)
- 4 2. The cases will proceed in a single department to limit the possibility of inconsistent
5 orders. (Tesla Supp Brief 4/12/24 at 1:4-12; Pltf Supp Brief 4/12/24 at 4:6-17.)
- 6 3. The court can order the use of standardized discovery.
- 7 4. The court's orders on common issues in the related cases will serve as guidance to all
8 the related cases in the manner of orders in a coordinated proceeding. (Tesla Supp
9 Brief 4/12/24 at 1:4-12; Pltf Supp Brief 4/12/24 at 4:6-17.)
- 10 5. There can be a common repository for all discovery so that all parties have access to
11 the discovery that was produced in each of the cases. (*Raymond Handling Concepts*
12 *Corp. v. Superior Court* (1995) 39 Cal.App.4th 584, 589.)
- 13 6. When it is time for trial, the court can order that members of the class have individual
14 trials or may group the plaintiffs as might be appropriate for trial. (CCP 1048.)

15 At trial, each Tesla worker who is seeking damages must prove that they personally
16 experienced severe or pervasive conduct. (CACI 2521A; *Caldera v. Department of Corrections*
17 *and Rehabilitation* (2018) 25 Cal.App.5th 31, 38.) (See also *Howard*, 989 F.3d at 600-605.) If
18 plaintiffs prove in the class trial that during the relevant time period there was a pattern or
19 practice of race harassment, that Tesla know of the harassment, and that Tesla failed to take
20 appropriate action, then an individual Tesla worker must still prove that they personally
21 experienced harassment. Stated otherwise, Tesla may present and argue that although there was
22 a finding of the pattern or practice in the Fremont factory generally, that this particular individual
23 plaintiff did not suffer harassment. Conversely, if Tesla proves in the class trial that there was no
24 pattern or practice of race harassment or that Tesla took appropriate action, then an individual
25

1 Tesla worker could still prove that they personally experienced harassment. (See also TR on
2 4/15/24 at 36:14-37:11 [comments of court] and 46:16-25 [comments of Tesla].) The result of
3 the trial on common particular fact issues would be a finding of fact or facts that would have the
4 same effect as a declaratory judgment. (*Sarun v. Dignity Health* (2019) 41 Cal.App.5th 1119,
5 1136-1137 [referring to result of particular issue certification as a “declaratory judgment”].)

6 In any lawsuit by an individual Tesla worker who is a member of the class seeking
7 damages, the judgment from the trial on the common particular fact issues could be offered as
8 evidence of Tesla’s motive, intent, or knowledge (Evid Code 1101(b) but could not be offered as
9 evidence of Tesla’s character (Evid Code 1101(a)). (*Panjota v. Anton* (2011) 198 Cal.App.4th
10 87, 109-122.) Members of the class and/or Tesla could present the judgment on the common
11 facts to the jury as evidence in the same manner that parties can use a stipulation about facts.
12 (CACI 106 [“the attorneys for both sides can agree that certain facts are true. This agreement is
13 called a “stipulation.” No other proof is needed and you must accept those facts as true in this
14 trial.”].)

15 The court in this class certification order does not decide what evidence trial judges
16 should admit or exclude in the anticipated individual cases. The court does grant certification for
17 the common particular fact issues with the expectation that resolution of those fact issues on a
18 common basis will permit trial judges to manage the trials more efficiently because a jury will
19 have already decided certain common fact issues.

20 21 CLASS CERTIFICATION FOR INJUNCTIVE RELIEF

22 23 NUMEROSITY – CLASS FOR INJUNCTIVE RELIEF

24 The number of people who currently work at the Fremont factory and have self-identified
25 as Black/African-American can be reasonably estimated at over 500 workers. Tesla Senior HR
26 Partner Hart stated that in her declaration that “By 2022, Tesla employed more than 22,000

workers at the Fremont factory. ... , 11 % identify as Black or African American.” (Hart Dec filed 10/16/23 at para 3, 6) Assuming an unrealistic zero turnover and an average of 14,000 workers, there were approximately 1,540 Tesla workers between 2016 and 2022 who identified as Black or African American. This is numerous.

ASCERTAINABILITY– CLASS FOR INJUNCTIVE RELIEF

Plaintiff seeks to certify a plaintiff class defined as: “Black/African-Americans who were employed on the production floor at the Tesla factory in Fremont at any time from November 9, 2016 to the final disposition of this action, who were not subject to an arbitration agreement for all relief sought for the entire period of their employment at Tesla.” (Moving at 2:5-7.)

Plaintiffs’ proposed class definition has no fixed end date. For purposes of an injunctive relief only class, there is no need for a temporal scope because the class is seeking only prospective relief. (*Capitol People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676, 684-685 [injunctive relief class defined without temporal scope].)

The definition of the proposed class is less significant for purposes of the proposed injunctive relief class, because any injunction would have a common effect on all persons. The court orders that the class for injunctive relief is defined as: “All persons who self-identify as Black/African-American, who were employed on the production floor at the Tesla factory in Fremont at any time from November 9, 2016 through entry of judgment in this action, who were not subject to an arbitration agreement for all relief sought for the entire period of their employment at Tesla.”

PREDOMINANCE – CLASS FOR INJUNCTIVE RELIEF

The court finds common issues of fact will predominate on a claim for injunctive relief. The court can certify a class for the limited purpose of seeking injunctive relief. (*Capitol People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676.)

1 Common evidence will likely include much of the same evidence relevant to whether
2 there was a pattern or practice of pervasive race harassment at the Tesla factory, but the evidence
3 will be focused on Tesla's action or inaction in the recent past because the claim for injunctive
4 relief will concern whether the court should award prospective relief.

5
6 TYPICALITY – CLASS FOR INJUNCTIVE RELIEF

7 None of the named plaintiffs have worked at Tesla since Chatman stopped working on
8 September 11, 2019. This raises the issue of whether the named plaintiffs are typical of the
9 members of the class for purposes of seeking injunctive relief.

10 The law is clear that “Where a petitioner seeks declaratory or injunctive relief, it is
11 insufficient that he has been injured in the past; “he must instead show a very significant
12 possibility of future harm in order to have standing.” (*Coral Construction, Inc. v. City and*
13 *County of San Francisco* (2004) 116 Cal.App.4th 6, 17.) The law is also clear that if a class
14 representative lacks standing to seek injunctive relief, then the class representative is not typical
15 of the members of the class who are able to seek injunctive relief for purposes of seeking
16 injunctive relief. (*Estrada v. FedEx Ground Package Sys., Inc.* (2007) 154 Cal.App.4th 1, 17
17 [plaintiff “lacked standing to pursue his claims for prospective equitable relief” because, inter
18 alia, “his relationship with FedEx ended before this lawsuit”]; *Price v. Starbucks Corp.* (2011)
19 192 Cal.App.4th 1136, 1142 fn. 5 [similar].) The trial court must follow this case law. (*Auto*
20 *Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450, 455.) The
21 court finds that none of the named plaintiffs has individual standing to seek injunctive relief, and
22 therefore, the named plaintiffs are not typical of the members of the class for purposes of seeking
23 injunctive relief.

24 The court set out its concerns with this result in the tentative decision filed on February
25 27, 2024 at pp 42-44. (*City of Oakland v. Public Employees' Retirement System* (2002) 95
26 Cal.App.4th 29, 55-56 [trial court may set out its concerns].) While plaintiffs make a reasonable

1 argument that it is peculiar to require workers to remain at a job where they are subject to
2 harassment so that they have standing to stop the alleged harassment, current employment is
3 nevertheless necessary to have standing to seek injunctive relief. (Plaintiff filing on 3/15/24 at
4 10-12.)

5 Plaintiffs may file a motion to amend the complaint to add a plaintiff(s) who is a current
6 Tesla employee, and a motion to establish that the new plaintiff(s) is an adequate and typical
7 class representative(s) to seek injunctive relief. (*Jaimez v. Daiohs USA, Inc.* (2010) 181
8 Cal.App.4th 1286, 1308; *Medraza v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89,
9 99.) Plaintiffs may file those motions concurrently so that the issue of whether any new
10 plaintiff(s) is an adequate class representative for purposes of seeking injunctive relief is decided
11 promptly. Plaintiffs must make any proposed new class representative available for deposition
12 immediately after filing a motion to establish that the new plaintiff(s) is an adequate and typical
13 class representative(s). Plaintiffs may file those motions at any time but not later than 30 days
14 from the date of this order.

15 16 ADEQUACY– CLASS FOR INJUNCTIVE RELIEF

17 The court does not address whether Marcus Vaughn, Monica Chatman, and Titus
18 McCaleb are adequate class representatives for seeking injunctive relief. As noted, they are not
19 typical of the class for purposes of seeking injunctive relief. Plaintiffs must amend the complaint
20 to add plaintiffs who might be typical and adequate.

21 22 DETERRING WRONGDOING AND ALTERNATIVE PROCEDURES – CLASS FOR 23 INJUNCTIVE RELIEF

24 There are several procedural vehicles to obtain an injunction to address the alleged
25 pattern or practice of race harassment.
26

1 Lawsuits by individual current Tesla workers are potential vehicles for injunctive relief.
2 Any individual plaintiff currently employed at Tesla could seek a public injunction. (*Vaughn v.*
3 *Tesla, Inc.* (2023) 87 Cal.App.5th 208, 227-232) That would, however result in the possibility of
4 inconsistent injunctions in individual cases.

5 This class action is also a potential vehicle for injunctive relief. A class action for
6 injunctive relief is superior to individual lawsuits because class counsel have a fiduciary duty to
7 the entire class and not just to their individual clients. (*Allen v. Int'l Truck & Engine Corp.* (7th
8 Cir. 2004) 358 F.3d 469, 471.) Addressing the benefits of a class action for injunctive relief, the
9 court in *Capitol People First*, 155 Cal.App.4th at 702 states: “without class treatment there could
10 be multiple actions that would burden the litigants and the courts with cumulative and excessive
11 expenses, discovery efforts and evidence.”

12 The CRD’s law enforcement action is another a potential vehicle for injunctive relief.
13 (See Court order dated 4/8/24 at Issue #10.) “[I]n the area of employment discrimination, the
14 Legislature has allowed both for affected employees to enforce the law ..., and for an
15 administrative agency—the Department of Fair Employment and Housing—to do so as well.
16 That structure promotes robust enforcement.” (*DFEH v. Cisco Systems, Inc.* (2022) 82
17 Cal.App.5th 93, 100.) (See also (See Gov. Code 12920.5, 12965.) The CRD can
18 “independently seek non-monetary preventative remedies” to address a failure “to take all
19 reasonable steps necessary to prevent discrimination and harassment from occurring” “whether
20 or not the Department prevails on an underlying claim of discrimination, harassment, or
21 retaliation.” (2 CCR 11023(a)(3); Govt Code 12940(k).)

22 The CRD’s action is broader than the class action in that it seeks recovery for Tesla
23 workers throughout California (not just the Fremont factory) and is not limited by individual
24 workers’ arbitration agreements. The CRD’s action is also narrower than the class action in that
25 the CRD’s case is limited to recovery for workers after June 18, 2018. (CRD brief filed 4/12/24
26 at 5-6.) As discussed previously in this order, the CRD case might never reach the merits due to

1 Tesla's affirmative defense that the CRD failed in whole or in part to comply with its pre-filing
2 requirements. Tesla asserts "This inevitably will result in substantial evisceration if not
3 elimination of the CRD's action before any injunctive relief trial." (Tesla brief filed 4/12/24 at
4 9.)¹⁵

5 The EEOC's law enforcement action is yet another potential vehicle for injunctive relief.
6 (See Court order dated 4/8/24 at Issue #12.) The EEOC has the ability to assert claims on behalf
7 of individuals under section 706 of the Civil Rights Act of 1964, which permits the EEOC to file
8 actions on behalf of persons claiming to be aggrieved (42 U.S.C. 2000e-5(b)) and section 707 of
9 the Civil Rights Act of 1964, which permits the EEOC to file law enforcement actions (42
10 U.S.C. 2000e-6(a)). There are, however, "possible differences between the public and private
11 interests involved." (*EEOC v. General Tel. Co. of Northwest, Inc.* (9th Cir. 1979) 599 F.2d 322,
12 333.) The EEOC case was filed on September 28, 2023, and appears to still be in the pleading
13 stage.

14 The court finds that at this point in time, this class action is the superior procedural
15 vehicle for seeking injunctive relief related to the alleged race harassment at the Fremont factory.

16 17 MANAGEABILITY/TRIAL PLAN– CLASS FOR INJUNCTIVE RELIEF

18 The court is confident that the court and the parties can manage a trial on injunctive
19 relief. Common evidence will likely include much of the same evidence relevant to whether
20 there was a pattern or practice of pervasive race harassment at the Tesla factory, but the evidence
21 will be focused on alleged harassment in recent years, and Tesla's recent and current action, or
22
23

24 ¹⁵ This is not a situation where a law enforcement action has already proceeded to
25 conclusion and a class action for injunctive relief would be duplicative. (Compare *Caro v.*
26 *Procter & Gamble Co.* (1993) 18 Cal. App. 4th 644, 660 [class certification denied in part
because defendant had already entered in to consent decrees with public law enforcement
entities].)

1 inaction, in taking immediate and appropriate corrective action when informed of race
2 harassment.

3 4 CONCLUSION AND FURTHER PROCEEDINGS

5 The motion of plaintiffs for class certification is GRANTED IN PART.

6 The court ORDERS that the motion for class certification regarding common particular
7 fact issues is GRANTED. (CRC 3.765(b); *Sarun*, supra.) The common particular fact issues are
8 identified above. The class will be defined as the persons on the list (to be developed by the
9 parties) who worked at the Tesla Fremont factory from November 9, 2016, through the date of
10 this order and have self-identified as Black/African-American. Following the class trial on the
11 common particular fact issues, the members of the class may prosecute their individual claims
12 for damages, and they and Tesla may offer the judgment on the common particular fact issues
13 from the class trial as evidence in the individual trials.

14 The court ORDERS that the motion for class certification regarding injunctive relief is
15 CONDITIONALLY GRANTED. The class for injunctive relief is dependent on plaintiffs
16 adding a plaintiff or plaintiffs to the complaint and plaintiffs demonstrating that that the new
17 plaintiff(s) meet the requirements of typicality and adequacy. The court does not require a
18 complete re-briefing of a motion for class certification on a claim for injunctive relief. Plaintiffs
19 may file those motions at any time, but not later than 30 days from the date of this order.
20 Following the class trial, the court will order injunctive relief if appropriate.

21 The court further ORDERS that the parties meet and confer about class notice to the
22 members of the common particular fact issues class, including the content of the class notice, the
23 means of distribution, and the cost. (CRC 3.766.) The court is inclined to find that plaintiffs are
24 required to provide class notice, and the opportunity to opt-out, to the persons who would be
25 bound by the class findings on the common particular fact issues, because those findings may
26 affect their individual claims for damages. The court ORDERS that the class notice on the

1 common particular fact issues must state that the tolling effect of the class action will end ten
2 days after notice is given to the class pursuant to this order. (*In re Honda Am. Motor Co.*
3 *Dealership Rels. Litig.* (D. Md. 1997) 979 F. Supp. 365, 371 and fn5.) The court ORDERS that
4 the class notice on the common particular fact issues must clearly inform the members of the
5 class that they will need to file separate lawsuits if they want to pursue a claim against Tesla for
6 damages.

7 The court is inclined to find that class notice is appropriate, even if not required, to the
8 members of the injunctive relief class. Class notice is appropriate because the class trial on
9 injunctive relief might affect those persons. Class notice is not required because any injunctive
10 relief would by definition apply to Tesla and all Tesla workers. (*Capitol People First*, 155
11 Cal.App.4th at 700 [observing “the trial court was particularly concerned with the reality that
12 interveners could not opt out because the relief sought was systemwide injunctive relief which, if
13 provided, everyone would have to live with”].)

14 If the parties are unable to stipulate on class notice for either or both classes, then the
15 court ORDERS that plaintiffs may file a motion for approval of a plan of class notice and have it
16 heard at the next regularly scheduled case management conference and hearing date. The court
17 will be inclined to grant any reasonable request to shorten time so that the notice can be
18 distributed to the members of the class promptly.

19 Regarding case management, the court sets the class trial on the common particular fact
20 issues and injunctive relief for October 14, 2024. The court will, by separate order in the CRD
21 law enforcement case, continue the trial in that case now set for that date. The court has
22 determined that although it is permissible to consolidate a private class action lawsuit with a
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1 public law enforcement lawsuit¹⁶, for the reasons addressed in this order the court does not do so
2 in this instance.¹⁷

3
4 EVIDENCE

5 The Court has considered all the declarations submitted, as well as the attached exhibits.
6 The Court's consideration of the evidence is limited to the motion for certification and should
7 not be construed as an indication of admissibility in future motions or at trial.

8
9 Dated: May 17, 2024



10 Noël Wise
11 Judge of the Superior Court
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21 ¹⁶ (*Serrano v. Cintas Corp.* (6th Cir., 2012) 699 F.3d 884, 890 fn 1 [EEOC intervened in
22 class action]; *E.E.O.C. v. Von Maur, Inc.* (S.D. Iowa, 2006) 237 F.R.D. 195 [EEOC and private
23 plaintiff cases consolidated for pre-trial purposes]; *Estate of Ward v. Von Maur, Inc.* (S.D. Iowa,
24 2008) 2008 WL 11336227 [EEOC and private plaintiff cases consolidated for trial].)

25 ¹⁷ The class plaintiffs, the CRD, and Tesla have each argued in various contexts that
26 private parties and public law enforcement have different interests, that the results in one case
might not have claim or issue preclusion in the other case, and that a consolidated trial would be
hampered by uncertainty about whether the communications between the lawyers for the class
and for the CRD are joint communications for a common interest (*Meza v. H. Muehlstein & Co.*
(2009)176 Cal. App. 4th 969, 981-983; *OXY Resources California LLC v. Superior Court* (2004)
115 Cal.App.4th 874, 887-891).

<p align="center">SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA</p>		<p align="center">Reserved for Clerk's File Stamp</p>
<p>COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612</p>		<p align="center">FILED Superior Court of California County of Alameda 05/17/2024 Chad Finke, Executive Officer / Clerk of the Court By: <u>Nicole Hall</u> Deputy N. Hall</p>
<p>PLAINTIFF/PETITIONER: Marcus Vaughn et al</p>		
<p>DEFENDANT/RESPONDENT: Tesla, Inc. et al</p>		
<p align="center">CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6</p>		<p>CASE NUMBER: RG17882082</p>

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order Granting in Part Motion of Plaintiffs for Class Certification entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

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Chad Finke, Executive Officer / Clerk of the Court

Dated: 05/17/2024

By:

Nicole Hall

N. Hall, Deputy Clerk

SHORT TITLE: Vaughn VS Tesla, Inc.	CASE NUMBER: RG17882082
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<p align="center">SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA</p>		<p align="center">Reserved for Clerk's File Stamp</p>
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<p>PLAINTIFF/PETITIONER: Marcus Vaughn et al</p>		
<p>DEFENDANT/RESPONDENT: Tesla, Inc. et al</p>		
<p align="center">CERTIFICATE OF MAILING</p>		<p>CASE NUMBER: RG17882082</p>

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the attached document upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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Chad Finke, Executive Officer / Clerk of the Court

Dated: 05/17/2024

By:

Nicole Hall

N. Hall, Deputy Clerk

CERTIFICATE OF MAILING