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11 TESLA, INC. DBA TESLA MOTORS, INC.

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 DEMETRIC DI-AZ, OWEN DIAZ AND
LAMAR PATTERSON

16 Plaintiffs,

17 v.

18 TESLA, INC. DBA TESLA MOTORS,
19 INC., CITISTAFF SOLUTIONS, INC.;
WEST VALLEY STAFFING GROUP;
20 CHARTWELL STAFFING SERVICES,
INC.; NEXTSOURCE, INC.; and
21 DOES 1-10, inclusive

22 Defendants.

Case No. 17-cv-06748-WHO

**DEFENDANT TESLA, INC.’S ANSWER TO
AMENDED COMPLAINT FOR DAMAGES**

Trial: November 18, 2019

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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Defendant Tesla, Inc. dba Tesla Motors (“Tesla”) hereby answers Plaintiffs’ DEMETRIC
3 DI-AZ (“Di-az”), OWEN DIAZ (“Diaz”) and LAMAR PATTERSON (“Patterson”) (collectively
4 referred to as “Plaintiffs”) Amended Complaint for Damages (the “FAC”) as follows:

5 1. As to paragraph 1, Tesla admits that it is a company with a factory located in
6 Fremont, California and manufactures electric vehicles. Tesla lacks sufficient knowledge or
7 information to admit or deny the remaining allegations in paragraph 1, and on that basis denies the
8 allegations.

9 2. Tesla denies each and every allegation in paragraph 2 of the FAC.

10 3. As to paragraph 3, Tesla admits that it is a publicly-traded Delaware corporation
11 whose principal executive offices are located in Palo Alto, California, and that it designs,
12 manufactures, and sells electric vehicles. Tesla admits that it has a factory located at 45500
13 Fremont Boulevard in Fremont, California. Tesla denies the remaining allegations contained in
14 paragraph 3.

15 4. Paragraphs 4, 5, 6, and 7 of the FAC are not charging as to Tesla and thus does not
16 constitute an allegation that requires a response, but to the extent necessary, Tesla denies each and
17 every allegation contained in paragraphs 4, 5, 6, and 7.

18 5. As to paragraph 8, 9, and 10, Tesla admits that Di-az was placed by West Valley
19 Staffing Group (“West Valley”) at Tesla to work at its factory in Fremont, California. Tesla
20 admits that Diaz was placed by Citistaff Solutions, Inc. (“Citistaff”) at Tesla to work at its factory
21 in Fremont, California. Tesla admits that Patterson was placed by Chartwell Staffing Services,
22 Inc. (“Chartwell”) at Tesla to work at its factory in Fremont, California. Tesla lacks sufficient
23 knowledge or information to admit or deny the remaining allegations in paragraphs 8, 9, and 10,
24 and on that basis denies the allegations.

25 6. Paragraph 11 contains legal contentions and conclusions and does not constitute
26 allegations that require a response. To the extent any part of paragraph 11 constitutes allegations
27 requiring a response, Tesla denies each and every allegation contained therein.

28 7. As to paragraphs 12 and 13, Tesla admits that jurisdiction is proper in this Court.

1 The remainder of paragraphs 12 and 13 contain statutory provisions, legal contentions and/or
2 conclusions, and do not constitute allegations that require a response.

3 8. As to paragraphs 14, Tesla admits that this Court has personal jurisdiction over
4 Tesla, Inc. The remaining allegations in paragraph 14 contain legal contentions and conclusions
5 and do not constitute allegations that require a response.

6 9. As to paragraphs 15, 16, and 17 of the FAC are not charging as to Tesla and thus
7 does not constitute an allegation that requires a response, but to the extent necessary, Tesla denies
8 each and every allegation contained in paragraphs.

9 10. As to paragraph 18, Tesla lacks sufficient knowledge or information to admit or
10 deny the allegations because the “acts and omissions” are not alleged with particularity, and on
11 that basis denies the allegations.

12 11. As to paragraphs 19 and 20, Tesla lacks sufficient knowledge or information to
13 admit or deny the allegations, and on that basis denies the allegations.

14 12. As to paragraph 21, Tesla admits that Di-Az began a work assignment through
15 West Valley with Tesla on or around August 24, 2015 as a Production Associate in Fremont,
16 California. Tesla lacks sufficient knowledge or information to admit or deny the remaining
17 allegations in paragraph 21, and on that basis denies the allegations.

18 13. As to paragraphs 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31, Tesla lacks sufficient
19 knowledge or information to admit or deny the allegations, and on that basis denies the
20 allegations. Tesla denies specifically and generally the allegations in paragraph 23 that any Tesla
21 employee used racial slurs.

22 14. Tesla denies each and every allegation in paragraphs 32 and 33 of the FAC to the
23 extent the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or
24 deny the remaining allegations in paragraph 32 and 33, and on that basis denies the allegations.

25 15. As to paragraph 34, Tesla lacks sufficient knowledge or information to admit or
26 deny the allegations that as a result of Defendants’ actions, Di-Az hired private counsel to
27 prosecute this action, and on that basis denies the allegation. The remainder of paragraph 34
28 contain statutory provisions, legal contentions and/or conclusions, and do not constitute

1 allegations that require a response.

2 16. As to paragraph 35, Tesla denies that its acts were malicious or oppressive, and
3 intended to vex, injure, annoy, humiliate, and embarrass Di-Az, and with conscious disregard of
4 the rights and safety of Di-Az and other African-American employees of West Valley. Defendant
5 denies the allegations contained in paragraph 35 to the extent they imply or allege that Tesla
6 ratified any alleged wrongful conduct of its employees. Tesla lacks sufficient knowledge or
7 information to admit or deny the remaining allegations in paragraph 35 and on that basis denies
8 the allegations.

9 17. As to paragraph 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53,
10 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, and 67, Tesla lacks sufficient knowledge or
11 information to admit or deny the allegations, and on that basis denies the allegations.

12 18. As to paragraph 68, Tesla denies that it had notice of the alleged discriminatory and
13 harassing behavior at the Tesla factory and took no steps to protect African-American employees.
14 Tesla lacks sufficient knowledge or information to admit or deny the remaining allegations in
15 paragraph 68 and on that basis denies the allegations.

16 19. As to paragraph 69, Tesla denies that it ratified and supported racially harassing
17 behavior. Tesla lacks sufficient knowledge or information to admit or deny the remaining
18 allegations in paragraph 69 and on that basis denies the allegations.

19 20. As to paragraph 70, Tesla lacks sufficient knowledge or information to admit or
20 deny the allegations, and on that basis denies the allegations.

21 21. As to paragraph 71, Tesla denies that it repeatedly refused to investigate the alleged
22 racist behavior and instead ratified the attempts at retaliation. Tesla lacks sufficient knowledge or
23 information to admit or deny the remaining allegations in paragraph 71 and on that basis denies
24 the allegations.

25 22. As to paragraphs 72 and 73, Tesla denies that Diaz has suffered, and continues to
26 suffer, emotional distress and psychological damage as the direct and proximate result of acts and
27 omissions by Tesla, and denies that Tesla's actions resulted in wage and benefit losses, and are
28 expected to lead to additional economic loss in the future. Tesla lacks sufficient knowledge or

1 information to admit or deny the remaining allegations in paragraphs 72 and 73, and on that basis
2 denies the allegation.

3 23. As to paragraph 74, Tesla lacks sufficient knowledge or information to admit or
4 deny the allegations that as a result of Defendants' actions, Diaz hired private counsel to prosecute
5 this action, and on that basis denies the allegation. The remainder of paragraph 74 contain
6 statutory provisions, legal contentions and/or conclusions, and do not constitute allegations that
7 require a response.

8 24. Tesla denies each and every allegation in paragraph 75 of the FAC to the extent the
9 allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny the
10 remaining allegations in paragraph 75, and on that basis denies the allegations.

11 25. As to paragraph 76, Tesla lacks sufficient knowledge or information to admit or
12 deny the allegations, and on that basis denies the allegations.

13 26. As to paragraph 77, Tesla denies that "both its employees and supervisors used the
14 word 'nigger' freely and frequently throughout the Tesla Factory, left racist caricatures, images,
15 and effigies around the factory for African-American employees to see, and made 'jokes' such as,
16 'Go back to Africa. We don't want you here!' Tesla lacks sufficient knowledge or information to
17 admit or deny the remaining allegations in paragraph 77 and on that basis denies the allegations.

18 27. Tesla denies the allegations contained in paragraph 78 to the extent they imply or
19 allege that Patterson complained to Tesla about the use of the word "nigger" and the hurtful
20 "jokes" and Tesla took no action. Tesla lacks sufficient knowledge or information to admit or
21 deny the remaining allegations in paragraph 78 and on that basis denies the allegations.

22 28. As to paragraphs 80 and 81, Tesla denies that Patterson has suffered, and continues
23 to suffer, emotional distress and psychological damage as the direct and proximate result of acts
24 and omissions by Tesla, and denies that Tesla's actions resulted in wage and benefit losses, and
25 are expected to lead to additional economic loss in the future. Tesla lacks sufficient knowledge or
26 information to admit or deny the remaining allegations in paragraphs 80 and 81, and on that basis
27 denies the allegation.

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1 29. As to paragraph 82, Tesla lacks sufficient knowledge or information to admit or
2 deny the allegations that as a result of Defendants' actions, Patterson hired private counsel to
3 prosecute this action, and on that basis denies the allegation. The remainder of paragraph 82
4 contain statutory provisions, legal contentions and/or conclusions, and do not constitute
5 allegations that require a response.

6 30. Tesla denies each and every allegation in paragraphs 83 of the FAC to the extent
7 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
8 the remaining allegations in paragraph 83, and on that basis denies the allegations.

9 31. Tesla lacks sufficient knowledge or information to admit or deny the remaining
10 allegations in paragraph 84 and on that basis denies the allegations.

11 32. As to paragraph 85, Tesla re-alleges and incorporates by reference its responses to
12 paragraphs 1 through 84, as though fully set forth herein.

13 33. Paragraphs 86 and 87 contain statutory provisions, legal contentions and/or
14 conclusions, and do not constitute allegations that require a response. To the extent any part of
15 paragraphs 86 and 87 constitutes an allegation requiring a response, Tesla denies each and every
16 allegation contained therein.

17 34. Tesla denies each and every allegation in paragraph 88 of the FAC as it pertains to
18 Tesla. Tesla lacks sufficient knowledge or information to admit or deny the remaining allegations
19 in paragraph 88, and on that basis denies the allegations.

20 35. Tesla denies each and every allegation in paragraph 89 of the FAC.

21 36. As to paragraph 90, Tesla denies that it failed to prevent racially harassing and
22 retaliatory behavior directed at Plaintiffs and others, that Tesla wrongfully terminated Di-az, or
23 that it constructively terminated Diaz and Patterson. Tesla lacks sufficient knowledge or
24 information to admit or deny the remaining allegations in paragraph 90 and on that basis denies
25 the allegations.

26 37. Tesla denies each and every allegation in paragraph 91 of the FAC to the extent the
27 allegations pertain to Tesla.

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1 38. Paragraphs 92 and 93 contain legal contentions and conclusions and do not
2 constitute allegations that require a response. To the extent any part of paragraphs 92 and 93
3 constitutes an allegation requiring a response, Tesla denies each and every allegation contained
4 therein.

5 39. As to paragraph 94, Tesla denies that Plaintiffs are entitled to reasonable attorney's
6 fees and litigation expenses, including expert witness fees and costs. Tesla lacks sufficient
7 knowledge or information to admit or deny the remaining allegations in paragraph 94, and on that
8 basis denies the allegations.

9 40. Tesla denies each and every allegation in paragraph 95 of the FAC to the extent the
10 allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny the
11 remaining allegations in paragraph 95, and on that basis denies the allegations.

12 41. As to paragraph 96, Tesla re-alleges and incorporates by reference its responses to
13 paragraphs 1 through 95, as though fully set forth herein.

14 42. Tesla is informed and believes and on that basis admits the allegations in paragraph
15 97.

16 43. Paragraph 98 contains statutory provisions, legal contentions and/or conclusions,
17 and do not constitute allegations that require a response. To the extent any part of paragraph 98
18 constitutes an allegation requiring a response, Tesla denies each and every allegation contained
19 therein.

20 44. Tesla denies each and every allegation in paragraph 99 of the FAC.

21 45. Paragraphs 100 and 101 contain legal contentions and conclusions and do not
22 constitute allegations that require a response. To the extent any part of paragraphs 100 and 101
23 constitute an allegation requiring a response, Tesla denies each and every allegation contained
24 therein.

25 46. As to paragraph 102, Tesla denies that Plaintiffs are entitled to reasonable
26 attorney's fees and litigation expenses, including expert witness fees and costs. Tesla lacks
27 sufficient knowledge or information to admit or deny the remaining allegations in paragraph 102,
28 and on that basis denies the allegations.

1 47. Tesla denies each and every allegation in paragraph 103 of the FAC to the extent
2 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
3 the remaining allegations in paragraph 103, and on that basis denies the allegations.

4 48. As to paragraph 104, Tesla re-alleges and incorporates by reference its responses to
5 paragraphs 1 through 103, as though fully set forth herein.

6 49. Paragraphs 105 and 106 contain statutory provisions, legal contentions and/or
7 conclusions, and do not constitute allegations that require a response. To the extent any part of
8 paragraphs 105 and 106 constitutes an allegation requiring a response, Tesla denies each and every
9 allegation contained therein.

10 50. Tesla denies each and every allegation in paragraph 107 of the FAC to the extent
11 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
12 the remaining allegations in paragraph 107, and on that basis denies the allegations.

13 51. Paragraphs 108 and 109 contain legal contentions and conclusions and do not
14 constitute allegations that require a response. To the extent any part of paragraphs 108 and 109
15 constitute an allegation requiring a response, Tesla denies each and every allegation contained
16 therein.

17 52. As to paragraph 110, Tesla denies that Plaintiffs are entitled to reasonable
18 attorney's fees and litigation expenses, including expert witness fees and costs. Tesla lacks
19 sufficient knowledge or information to admit or deny the remaining allegations in paragraph 110,
20 and on that basis denies the allegations.

21 53. Tesla denies each and every allegation in paragraph 111 of the FAC to the extent
22 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
23 the remaining allegations in paragraph 111, and on that basis denies the allegations.

24 54. As to paragraph 112, Tesla re-alleges and incorporates by reference its responses to
25 paragraphs 1 through 111, as though fully set forth herein.

26 55. As to paragraph 113, Tesla is informed and believes and on that basis admits that
27 Diaz is African American and was assigned to work at its facility in Fremont and as to the
28 remaining allegations in paragraphs 113, 114, 115, 116, and 117, Tesla lacks sufficient knowledge

1 or information to admit or deny and on that basis denies the allegations.

2 56. Tesla denies each and every allegation in paragraphs 118, 119, and 120 of the FAC.

3 57. Paragraphs 121 and 122 of the FAC are not charging as to Tesla and thus do not
4 constitute allegations that require a response, but to the extent necessary, Tesla denies each and
5 every allegation contained in paragraphs 121 and 122.

6 58. Paragraphs 123 and 124 contain legal contentions and conclusions and do not
7 constitute allegations that require a response. To the extent any part of paragraphs 123 and 124
8 constitutes an allegation requiring a response, Tesla denies each and every allegation contained
9 therein.

10 59. As to paragraph 125, Tesla denies that Plaintiffs are entitled to reasonable
11 attorney's fees and litigation expenses, including expert witness fees and costs. Tesla lacks
12 sufficient knowledge or information to admit or deny the remaining allegations in paragraph 125,
13 and on that basis denies the allegations.

14 60. Tesla denies each and every allegation in paragraph 126 of the FAC to the extent
15 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
16 the remaining allegations in paragraph 126, and on that basis denies the allegations.

17 61. As to paragraph 127, Tesla re-alleges and incorporates by reference its responses to
18 paragraphs 1 through 126, as though fully set forth herein.

19 62. As to paragraph 128, Tesla is informed and believes and on that basis admits that
20 Diaz is African American and was assigned to work at its facility in Fremont while employed by
21 Citistaff and/or nextSource. Tesla lacks sufficient knowledge or information to admit or deny the
22 remaining allegations in paragraphs 128 and all of the allegations in paragraphs 129, 130, 131, and
23 132, and on that basis denies the allegations.

24 63. Tesla denies each and every allegation in paragraphs 133, 134, and 135 of the FAC.

25 64. Paragraphs 136 and 137 of the FAC are not charging as to Tesla and thus do not
26 constitute allegations that require a response, but to the extent necessary, Tesla denies each and
27 every allegation contained in paragraphs 136 and 137.

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1 65. Paragraphs 138 and 139 contain legal contentions and conclusions, and do not
2 constitute allegations that require a response. To the extent any part of paragraphs 138 and 139
3 constitutes an allegation requiring a response, Tesla denies each and every allegation contained
4 therein.

5 66. As to paragraph 140, Tesla denies that Plaintiffs are entitled to reasonable
6 attorney's fees and litigation expenses, including expert witness fees and costs. Tesla lacks
7 sufficient knowledge or information to admit or deny the remaining allegations in paragraph 140,
8 and on that basis denies the allegations.

9 67. Tesla denies each and every allegation in paragraph 141 of the FAC to the extent
10 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
11 the remaining allegations in paragraph 141, and on that basis denies the allegations.

12 68. As to paragraph 142, Tesla re-alleges and incorporates by reference its responses to
13 paragraphs 1 through 141, as though fully set forth herein.

14 69. Tesla denies each and every allegation in paragraphs 143, 144, 145, 146, and 147 to
15 the extent the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to
16 admit or deny the remaining allegations in paragraphs 143, 144, 145, 146, and 147, and on that
17 basis denies the allegations.

18 70. As to paragraph 148, Tesla denies that Plaintiffs are entitled to reasonable
19 attorney's fees and litigation expenses, including expert witness fees and costs. Tesla lacks
20 sufficient knowledge or information to admit or deny the remaining allegations in paragraph 148,
21 and on that basis denies the allegations.

22 71. Tesla denies each and every allegation in paragraph 149 of the FAC to the extent
23 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
24 the remaining allegations in paragraph 149, and on that basis denies the allegations.

25 72. As to paragraph 150, Tesla re-alleges and incorporates by reference its responses to
26 paragraphs 1 through 149, as though fully set forth herein.

27 73. Tesla lacks sufficient knowledge or information to admit or deny the allegations in
28 paragraph 151, and on that basis denies the allegations.

1 74. As to paragraph 152, Tesla denies that Di-az was an employee of Tesla. Tesla
2 lacks sufficient knowledge or information to admit or deny the remaining allegations in paragraph
3 152 and on that basis denies the allegations.

4 75. Tesla denies each and every allegation in paragraphs 153 and 155 of the FAC to the
5 extent the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or
6 deny the remaining allegations in paragraph 153 and 155, and on that basis denies the allegations.

7 76. Tesla lacks sufficient knowledge or information to admit or deny the remaining
8 allegations in paragraph 154, and on that basis denies the allegations.

9 77. Tesla denies each and every allegation in paragraph 156 of the FAC to the extent
10 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
11 the remaining allegations in paragraph 156, and on that basis denies the allegations.

12 78. As to paragraph 157, Tesla denies that Diaz was an employee of Tesla. Tesla lacks
13 sufficient knowledge or information to admit or deny the remaining allegations in paragraph 157
14 and on that basis denies the allegations.

15 79. Tesla denies each and every allegation in paragraphs 158 and 160 of the FAC to the
16 extent the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or
17 deny the remaining allegations in paragraph 158 and 160, and on that basis denies the allegations.

18 80. Tesla lacks sufficient knowledge or information to admit or deny the remaining
19 allegations in paragraph 159, and on that basis denies the allegations.

20 81. Tesla denies each and every allegation in paragraph 161 of the FAC to the extent
21 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
22 the remaining allegations in paragraph 161, and on that basis denies the allegations.

23 82. Paragraphs 162 and 163 contain legal contentions and conclusions, and do not
24 constitute allegations that require a response. To the extent any part of paragraphs 162 and 163
25 constitutes an allegation requiring a response, Tesla denies each and every allegation contained
26 therein.

27 83. As to paragraph 164, Tesla denies that Plaintiffs are entitled to reasonable
28 attorney's fees and litigation expenses, including expert witness fees and costs. Tesla lacks

1 sufficient knowledge or information to admit or deny the remaining allegations in paragraph 164,
2 and on that basis denies the allegations.

3 84. Tesla denies each and every allegation in paragraph 165 of the FAC to the extent
4 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
5 the remaining allegations in paragraph 165, and on that basis denies the allegations.

6 85. As to paragraph 166, Tesla re-alleges and incorporates by reference its responses to
7 paragraphs 1 through 165, as though fully set forth herein.

8 86. Paragraphs 167, 168, 169, and 170 contain statutory provisions, legal contentions
9 and/or conclusions, and do not constitute allegations that require a response. To the extent any part
10 of paragraphs 167, 168, 169, and 170 constitutes an allegation requiring a response, Tesla denies
11 each and every allegation contained therein.

12 87. Tesla lacks sufficient knowledge or information to admit or deny the allegations in
13 paragraph 171, and on that basis denies the allegations.

14 88. Tesla denies each and every allegation in paragraph 172 of the FAC to the extent
15 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
16 the remaining allegations in paragraph 172, and on that basis denies the allegations.

17 89. Paragraph 173 does not constitute an allegation that requires a response. To the
18 extent any part of paragraph 173 constitutes allegations requiring a response, Tesla denies each
19 and every allegation contained therein.

20 90. As to paragraph 174, Tesla denies that Plaintiffs are entitled to reasonable
21 attorney's fees and litigation expenses, including expert witness fees and costs. Tesla lacks
22 sufficient knowledge or information to admit or deny the remaining allegations in paragraph 174,
23 and on that basis denies the allegations.

24 91. Tesla denies each and every allegation in paragraph 175 of the FAC to the extent
25 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
26 the remaining allegations in paragraph 175, and on that basis denies the allegations.

27 92. As to paragraph 176, Tesla re-alleges and incorporates by reference its responses to
28 paragraphs 1 through 175, as though fully set forth herein.

1 93. Paragraphs 177 and 178 contain statutory provisions, legal contentions and/or
2 conclusions, and do not constitute allegations that require a response. To the extent any part of
3 paragraphs 177 and 178 constitutes an allegation requiring a response, Tesla denies each and every
4 allegation contained therein.

5 94. Tesla denies each and every allegation in paragraphs 179.

6 95. Tesla denies each and every allegation in paragraph 180 of the FAC to the extent
7 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
8 the remaining allegations in paragraph 180, and on that basis denies the allegations.

9 96. Paragraph 181 contains legal contentions and conclusions and do not constitute
10 allegations that require a response. To the extent any part of paragraph 181 constitutes an
11 allegation requiring a response, Tesla denies each and every allegation contained therein.

12 97. As to paragraph 182, Tesla denies that Plaintiffs are entitled to reasonable
13 attorney's fees and litigation expenses, including expert witness fees and costs. Tesla lacks
14 sufficient knowledge or information to admit or deny the remaining allegations in paragraph 182,
15 and on that basis denies the allegations.

16 98. Tesla denies each and every allegation in paragraph 183 of the FAC to the extent
17 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
18 the remaining allegations in paragraph 183, and on that basis denies the allegations.

19 99. As to paragraph 184, Tesla re-alleges and incorporates by reference its responses to
20 paragraphs 1 through 184, as though fully set forth herein.

21 100. Tesla denies each and every allegation in paragraphs 185, 186, and 187 of the FAC
22 to the extent the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to
23 admit or deny the remaining allegations in paragraph 185, 186, and 187, and on that basis denies
24 the allegations.

25 101. Paragraph 188 does not constitute an allegation that requires a response. To the
26 extent any part of paragraph 188 constitutes allegations requiring a response, Tesla denies each
27 and every allegation contained therein.

28 102. As to paragraph 189, Tesla denies that Plaintiffs are entitled to reasonable

1 attorney's fees and litigation expenses, including expert witness fees and costs. Tesla lacks
2 sufficient knowledge or information to admit or deny the remaining allegations in paragraph 189,
3 and on that basis denies the allegations.

4 103. Tesla denies each and every allegation in paragraph 190 of the FAC to the extent
5 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
6 the remaining allegations in paragraph 190, and on that basis denies the allegations.

7 104. As to paragraph 191, Tesla re-alleges and incorporates by reference its responses to
8 paragraphs 1 through 190, as though fully set forth herein.

9 105. Tesla denies each and every allegation in paragraphs 192, 193, and 194 of the FAC
10 to the extent the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to
11 admit or deny the remaining allegations in paragraphs 192, 193, and 194, and on that basis denies
12 the allegations.

13 106. Paragraph 195 contains legal contentions and conclusions and do not constitute
14 allegations that require a response. To the extent any part of paragraph 195 constitutes an
15 allegation requiring a response, Tesla denies each and every allegation contained therein.

16 107. As to paragraph 196, Tesla denies that Plaintiffs are entitled to reasonable
17 attorney's fees and litigation expenses, including expert witness fees and costs. Tesla lacks
18 sufficient knowledge or information to admit or deny the remaining allegations in paragraph 196,
19 and on that basis denies the allegations.

20 108. Tesla denies each and every allegation in paragraph 197 of the FAC to the extent
21 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
22 the remaining allegations in paragraph 197, and on that basis denies the allegations.

23 109. As to paragraph 198, Tesla re-alleges and incorporates by reference its responses to
24 paragraphs 1 through 197, as though fully set forth herein.

25 110. Paragraphs 199, 200, 201, and 202 contain legal contentions and conclusions, and
26 do not constitute allegations that require a response. To the extent any part of paragraphs 199, 200,
27 201, and 202 constitutes an allegation requiring a response, Tesla denies each and every allegation
28 contained therein.

1 111. As to paragraph 203, Tesla denies that Plaintiffs are entitled to reasonable
2 attorney's fees and litigation expenses, including expert witness fees and costs. Tesla lacks
3 sufficient knowledge or information to admit or deny the remaining allegations in paragraph 203,
4 and on that basis denies the allegations.

5 112. Tesla denies each and every allegation in paragraph 204 of the FAC to the extent
6 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
7 the remaining allegations in paragraph 204, and on that basis denies the allegations.

8 113. As to paragraph 205, Tesla re-alleges and incorporates by reference its responses to
9 paragraphs 1 through 204, as though fully set forth herein.

10 114. Tesla denies each and every allegation in paragraphs 206, 207, and 208 of the FAC
11 to the extent the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to
12 admit or deny the remaining allegations in paragraphs 206, 207, and 208, and on that basis denies
13 the allegations.

14 115. As to paragraph 209, Tesla denies that Plaintiffs are entitled to reasonable
15 attorney's fees and litigation expenses, including expert witness fees and costs. Tesla lacks
16 sufficient knowledge or information to admit or deny the remaining allegations in paragraph 209,
17 and on that basis denies the allegations.

18 116. Tesla denies each and every allegation in paragraph 210 of the FAC to the extent
19 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
20 the remaining allegations in paragraph 210, and on that basis denies the allegations.

21 117. As to paragraph 211, Tesla re-alleges and incorporates by reference its responses to
22 paragraphs 1 through 210, as though fully set forth herein.

23 118. Paragraphs 212, 213, 214, and 215 contain legal contentions and conclusions, and
24 do not constitute allegations that require a response. To the extent any part of paragraphs 212, 213,
25 214, and 215 constitutes an allegation requiring a response, Tesla denies each and every allegation
26 contained therein.

27 119. As to paragraph 216, Tesla denies that Plaintiffs are entitled to reasonable
28 attorney's fees and litigation expenses, including expert witness fees and costs. Tesla lacks

1 sufficient knowledge or information to admit or deny the remaining allegations in paragraph 216,
2 and on that basis denies the allegations.

3 120. Tesla denies each and every allegation in paragraph 217 of the FAC to the extent
4 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
5 the remaining allegations in paragraph 217, and on that basis denies the allegations.

6 121. As to paragraph 218, Tesla re-alleges and incorporates by reference its responses to
7 paragraphs 1 through 217, as though fully set forth herein.

8 122. Tesla denies each and every allegation in paragraphs 219, 210, 221, and 222 of the
9 FAC to the extent the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information
10 to admit or deny the remaining allegations in paragraph 219, 210, 221, and 222, and on that basis
11 denies the allegations.

12 123. Paragraph 223 contains legal contentions and conclusions, and does not constitute
13 allegations that require a response. To the extent any part of paragraph 223 constitutes allegations
14 requiring a response, Tesla denies each and every allegation contained therein.

15 124. As to paragraph 224, Tesla denies that Plaintiffs are entitled to reasonable
16 attorney's fees and litigation expenses, including expert witness fees and costs. Tesla lacks
17 sufficient knowledge or information to admit or deny the remaining allegations in paragraph 224,
18 and on that basis denies the allegations.

19 125. Tesla denies each and every allegation in paragraph 225 of the FAC to the extent
20 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
21 the remaining allegations in paragraph 225, and on that basis denies the allegations.

22 126. As to paragraph 226, Tesla re-alleges and incorporates by reference its responses to
23 paragraphs 1 through 225, as though fully set forth herein.

24 127. As to paragraph 227, Tesla denies that Diaz and Patterson were employees of
25 Tesla. Tesla lacks sufficient knowledge or information to admit or deny the remaining allegations
26 in paragraph 227, and on that basis denies the allegations.

27 128. Tesla denies each and every allegation in paragraphs 228, 229, 230, 232, and 233
28 of the FAC to the extent the allegations pertain to Tesla. Tesla lacks sufficient knowledge or

1 information to admit or deny the remaining allegations in paragraph 228, 229, 230, 232, and 233,
2 and on that basis denies the allegations.

3 129. Paragraphs 231 and 234 contain legal contentions and conclusions, and do not
4 constitute allegations that require a response. To the extent any part of paragraphs 231 and 234
5 constitutes an allegation requiring a response, Tesla denies each and every allegation contained
6 therein.

7 130. As to paragraph 235, Tesla denies that Plaintiffs are entitled to reasonable
8 attorney's fees and litigation expenses, including expert witness fees and costs. Tesla lacks
9 sufficient knowledge or information to admit or deny the remaining allegations in paragraph 235,
10 and on that basis denies the allegations.

11 131. Tesla denies each and every allegation in paragraph 236 of the FAC to the extent
12 the allegations pertain to Tesla. Tesla lacks sufficient knowledge or information to admit or deny
13 the remaining allegations in paragraph 236, and on that basis denies the allegations.

14 132. Plaintiffs' prayer for relief is not an allegation and does not require a response. To
15 the extent any part of Plaintiffs' prayer for relief constitutes an allegation, Defendant denies each
16 and every allegation contained therein.

17

18

AFFIRMATIVE DEFENSES

19

FIRST AFFIRMATIVE DEFENSE

20

(Failure to State a Cause of Action)

21

22 1. As a first, separate, and affirmative defense to the FAC and every cause of action
23 set forth therein, Tesla alleges that Plaintiffs have failed to state a claim upon which relief may be
24 granted.

24

SECOND AFFIRMATIVE DEFENSE

25

(Statute of Limitations)

26

27 2. As a second, separate, and affirmative defense to the FAC and every cause of
28 action set forth therein, Tesla alleges that Plaintiffs' claims are barred, in whole or in part, by the
applicable statute of limitations including, but not limited to, California Code of Civil Procedure

1 Sections 335.1, 338, 340, 343, and 361, California Government Code Section 12965, and 28
2 U.S.C. Section 1658.

3 **THIRD AFFIRMATIVE DEFENSE**

4 (Failure to Exhaust Administrative Remedies)

5 3. As a third, separate, and affirmative defense to the FAC and every cause of action
6 set forth therein, Tesla alleges that Plaintiffs failed to comply with the applicable procedural and
7 administrative prerequisites including timely charge filing requirements and the exhaustion of all
8 administrative remedies under federal or state law.

9 **FOURTH AFFIRMATIVE DEFENSE**

10 (Legitimate Non-Discriminatory, Non-Retaliatory Reasons)

11 4. As a fourth, separate, and affirmative defense to the FAC and every cause of action
12 set forth therein, Tesla alleges, without admitting that it engaged in or made any of the acts,
13 conduct, or statements attributed to it in the FAC, that any acts, conduct or statements by Tesla or
14 anyone acting on its behalf were justified, in good faith, and for legitimate, non-discriminatory
15 reasons that were wholly unrelated to Plaintiffs' alleged race or any protected activity.

16 **FIFTH AFFIRMATIVE DEFENSE**

17 (Lack of Knowledge)

18 5. As a fifth, separate, and affirmative defense to the FAC and every cause of action
19 set forth therein, Tesla alleges that it had no knowledge of any discriminatory or otherwise
20 unlawful behavior by any of its employees, agents, or representatives.

21 **SIXTH AFFIRMATIVE DEFENSE**

22 (Reasonable Care)

23 6. As a sixth, separate, and affirmative defense to the FAC and every cause of action
24 set forth therein, Tesla alleges that it exercised reasonable care to prevent and promptly correct
25 any discriminatory or other unlawful behavior.

26 **SEVENTH AFFIRMATIVE DEFENSE**

27 (Course and Scope of Employment)

28 7. As a seventh, separate, and affirmative defense to the FAC and every cause of

1 action set forth therein, Tesla alleges that to the extent employees engaged in any discriminatory
2 or otherwise unlawful behavior, the alleged acts were committed outside the course and scope of
3 employment.

4 **EIGHTH AFFIRMATIVE DEFENSE**

5 (Exclusive Remedy of Workers' Compensation)

6 8. As an eighth, separate, and affirmative defense to the FAC and every cause of
7 action set forth therein, Tesla alleges that Plaintiffs' claims are barred by the exclusive remedy
8 provisions of the California Workers' Compensation Act.

9 **NINTH AFFIRMATIVE DEFENSE**

10 (Unclean Hands)

11 9. As a ninth, separate, and affirmative defense to the FAC and every cause of action
12 set forth therein, Tesla alleges that the FAC is barred by the doctrine of unclean hands.

13 **TENTH AFFIRMATIVE DEFENSE**

14 (Estoppel)

15 10. As a tenth, separate, and affirmative defense to the FAC and every cause of action
16 set forth therein, Tesla alleges that Plaintiffs are estopped from bringing any cause of action.

17 **ELEVENTH AFFIRMATIVE DEFENSE**

18 (Waiver)

19 11. As a eleventh, separate, and affirmative defense to the FAC and every cause of
20 action set forth therein, Tesla alleges that Plaintiffs waived some or all of the causes of action
21 asserted in the FAC.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 (Laches)

24 12. As a twelfth, separate, and affirmative defense to the FAC and every cause of
25 action set forth therein, Tesla alleges that Plaintiffs unreasonably delayed in bringing the action.

26 **THIRTEENTH AFFIRMATIVE DEFENSE**

27 (Failure to Take Advantage of Corrective Opportunities)

28 13. As a thirteenth, separate, and affirmative defense to the FAC and every cause of

1 action set forth therein, Tesla alleges that Plaintiffs' claims are barred in whole or in part, because
2 Plaintiffs failed to take advantage of any preventive or corrective opportunities provided by Tesla
3 to avoid harm or otherwise.

4 **FOURTEENTH AFFIRMATIVE DEFENSE**

5 (Same Decision/Mixed Motive)

6 14. As a fourteenth, separate, and affirmative defense to the FAC and every cause of
7 action set forth therein, Tesla alleges, without admitting that it engaged in or made any of the
8 acts, conduct, or statements attributed to it in the FAC, if it is found that Tesla's actions were
9 motivated by both discriminatory and nondiscriminatory reasons, the legitimate
10 nondiscriminatory reasons alone would have induced Defendant to make the same decision
11 regarding Plaintiffs' employment.

12 **FIFTEENTH AFFIRMATIVE DEFENSE**

13 (No Authorization or Ratification)

14 15. As a fifteenth, separate, and affirmative defense to the FAC and every cause of
15 action set forth therein, Tesla alleges that any unlawful or wrongful acts, if any, taken by its agents
16 or employees were outside the course and scope of their authority and such acts, if any, were not
17 authorized, ratified, or condoned by Tesla, nor did Tesla know nor should it have known of such
18 acts.

19 **SIXTEENTH AFFIRMATIVE DEFENSE**

20 (Avoidable Consequence)

21 16. As a sixteenth, separate, and affirmative defense to the FAC and every cause of
22 action set forth therein, Tesla alleges that Plaintiffs' claims are barred, in whole or in part because
23 of their unreasonable failure to avail themselves of their employer's measures to prevent and
24 correct discrimination, the use of which would have prevented the harm Plaintiffs allege that they
25 suffered.

26 **SEVENTEENTH AFFIRMATIVE DEFENSE**

27 (Offset)

28 17. As a seventeenth, separate, and affirmative defense to the FAC and every cause of

1 action set forth therein, if Plaintiffs sustained any damage as a result of the conduct alleged in the
2 FAC, which Tesla denies, Tesla is entitled to an offset to the extent that Plaintiffs received
3 income, benefits, or money from other sources.

4 **EIGHTEENTH AFFIRMATIVE DEFENSE**

5 (Unjust Enrichment)

6 18. As an eighteenth, separate, and affirmative defense to the FAC and every cause of
7 action set forth therein, Tesla asserts that Plaintiffs are seeking to recover more than Plaintiffs are
8 entitled to recover in this case, and an award of the judgment sought by Plaintiffs would unjustly
9 enrich Plaintiffs.

10 **NINETEENTH AFFIRMATIVE DEFENSE**

11 (After-Acquired Evidence)

12 19. As a nineteenth, separate, and affirmative defense to the FAC and every cause of
13 action set forth therein, Tesla alleges that Plaintiffs' claims are barred, in whole or in part, or in the
14 alternative, Plaintiffs' claims for relief, including economic damages, should be denied and/or
15 limited, pursuant to the doctrine of "after-acquired evidence."

16 **TWENTIETH AFFIRMATIVE DEFENSE**

17 (Release)

18 20. As a twentieth, separate, and affirmative defense to the FAC and every cause of
19 action set forth therein, Tesla alleges that Plaintiffs' claims are barred in whole or in part to the
20 extent they entered into any agreement discharging or waiving their right to assert the claims
21 against Tesla pleaded in the FAC.

22 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

23 (Arbitration Agreement)

24 21. As a twenty-first, separate, and affirmative defense to the FAC and every cause of
25 action set forth therein, Tesla alleges that Plaintiff Patterson's claims are barred in whole or in part
26 to the extent that Plaintiffs are subject to binding arbitration of their claims and they have waived
27 bringing such claims.

28

1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 (Failure to Mitigate)

3 22. As a twenty-second, separate, and affirmative defense to the FAC and every cause
4 of action set forth therein, Tesla alleges that Plaintiffs are not entitled to damages to the extent
5 they failed to take reasonable steps to mitigate their damages, if any; or alternatively, Plaintiffs
6 have mitigated their damages, and therefore, are barred from recovering any damages in this
7 action.

8 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

9 (No Entitlement to Punitive Damages)

10 23. As a twenty-third, separate, and affirmative defense to the FAC and every cause of
11 action set forth therein, Tesla alleges that Plaintiffs are not entitled to recover punitive or
12 exemplary damages because the FAC fails to state sufficient facts to maintain any claim for
13 punitive or exemplary damages and because Defendant did not act willfully, wantonly or with
14 malice with respect to Plaintiffs' employment. Defendant maintained a suitable anti-
15 discrimination policy in effect at all material times.

16 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

17 (Punitive Damages Unconstitutional)

18 24. As a twenty-fourth, separate, and affirmative defense to the FAC and every cause
19 of action set forth therein, Plaintiffs are not entitled to recover any punitive or exemplary
20 damages as prayed for in the FAC on the grounds that any award of punitive or exemplary
21 damages in general and/or any such award as applied to the facts of this specific action would
22 violate Defendant's constitutional rights under the provisions of the United States and California
23 Constitutions, including but not limited to the due process clauses of the Fifth and Fourteenth
24 Amendments of the United States Constitution and the excessive fines and cruel and unusual
25 punishment clauses of the Eighth Amendment of the United States Constitution.

26 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

27 (Bane, Ralph and Unruh Act Unconstitutional)

28 25. As a twenty-fifth, separate, and affirmative defense to the FAC and every cause of

1 action set forth therein, Plaintiffs' claims are barred to the extent they infringe on Tesla's
2 constitutional rights under the provisions of the United States and California Constitutions.

3 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

4 (Third Party Liability)

5 26. As a twenty-sixth, separate, and affirmative defense to the FAC and every cause of
6 action set forth therein, Tesla alleges that to the extent that any of the alleged wrongs were
7 committed by others, any and all such claims are barred as against Tesla in their entirety.

8 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

9 (Unruh Act Inapplicable to Employment Discrimination)

10 27. As a twenty-seventh, separate, and affirmative defense to the FAC and every cause
11 of action set forth therein, Tesla alleges that Plaintiffs' claims of employment discrimination are
12 not cognizable under the Unruh Act.

13 **REQUEST FOR RELIEF**

14 WHEREFORE, Tesla prays for judgment as follows:

- 15 1. That the FAC be dismissed with prejudice in its entirety;
- 16 2. That Plaintiffs take nothing by reason of the FAC;
- 17 3. That Tesla be awarded its costs of suit and reasonable attorneys' fees to the extent
18 provided by law; and
- 19 4. For such other and further relief as the Court may deem just and proper.

20
21 Dated: January 14, 2019

22 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

23
24 By



 TRACEY A. KENNEDY,
 PATRICIA M. JENG
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25
26
27 Attorneys for Defendant
TESLA, INC. dba TESLA MOTORS, INC.

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