

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
11/21/2022 at 05:53:01 PM
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Deputy Clerk

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Attorneys for Cross-Defendant,
California Civil Rights Department
(Fee Exempt, Gov. Code, § 6103)

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

CALIFORNIA CIVIL RIGHTS
DEPARTMENT, an agency of the State of
California,

Plaintiff,

vs.

TESLA, INC., doing business in California as
TESLA MOTORS, INC., and **DOES ONE**
through FIFTY, inclusive,

Defendants.

TESLA, INC., a Delaware Corporation doing
business in California as **TESLA MOTORS,**
INC.,
Petitioner and Cross-Complainant,

vs.

Case No. 22CV006830

CROSS-DEFENDANT CALIFORNIA CIVIL
RIGHTS DEPARTMENT'S NOTICE OF
DEMURRER AND DEMURRER TO
AMENDED CROSS-COMPLAINT OF
CROSS-COMPLAINANT TELS A, INC.

Date: December 21, 2022
Time: 10:00 AM
Department: 21
Judge: Hon. Evelio Grillo
Reservation ID: 475859688441

Action Filed: February 9, 2022
FAC Filed: March 11, 2022
Trial Date: TBD

**CALIFORNIA CIVIL RIGHTS
DEPARTMENT**, formerly known as
DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING,

Respondent and Cross-Defendant.

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

2 **PLEASE TAKE NOTICE** that on December 21, 2022, at 10:00 a.m., or as soon thereafter as
3 the matter may be heard in Department 21 of this Court, located at 1221 Oak Street, Oakland, California
4 94612, the Honorable Evelio Grillo presiding, Plaintiff California Civil Rights Department (hereinafter
5 “CRD” [formerly Department of Fair Employment and Housing, or DFEH]) will move for an order
6 sustaining CRD’s demurrer to all causes of action alleged in Defendant Tesla, Inc.’s Amended Cross-
7 Complaint on the grounds stated below and in the papers filed concurrently herewith.

8 CRD’s request for a demurrer is made following several telephonic conferences of counsel on
9 October 17, 2022 and November 10, 2022, convened pursuant to California Code of Civil Procedure
10 section 430.41(a).

11 CRD bases its request for a demurrer on this notice; the supporting memorandum of points and
12 authorities; the declaration of Brett D. Watson; and any further evidence and argument that the Court
13 may receive.

14
15 DATED: November 21, 2022

CALIFORNIA CIVIL RIGHTS DEPARTMENT

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17 _____
SIRI THANASOMBAT
18 Associate Chief Counsel

1 **PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT’S DEMURRER TO DEFENDANT**

2 **TESLA INC.’S AMENDED CROSS-COMPLAINT**

3 **Demurrer to First Cause of Action**

4 1. The First Cause of Action for “Violations of the Administrative Procedure Act” fails
5 because the Amended Cross-Complaint does not state facts sufficient to constitute a cause of action.
6 (Code Civ. Proc., § 430.10 (e).) The Amended Cross-Complaint does not clearly allege or otherwise
7 identify any actions taken by CRD that constitute generally applicable “regulations” requiring notice and
8 comment under the Administrative Procedure Act (APA). Because CRD’s alleged actions are not rules
9 or regulations as defined by the APA, they cannot be invalid “underground regulations.”

10 2. The First Cause of Action further fails because its request for declaratory relief is
11 uncertain, ambiguous, and unintelligible. (Code Civ. Proc., § 430.10 (f).) It seeks declaratory relief
12 based on alleged past actions only. Thus, there is no actual, present controversy ripe for declaratory
13 relief.

14 3. The First Cause of Action further fails because its request for mandamus relief (*i.e.*, writ
15 of mandate) is uncertain, ambiguous, and unintelligible. (Code Civ. Proc., § 430.10 (f).) The Amended
16 Cross-Complaint does not clearly allege or otherwise identify a legally required ministerial duty that was
17 not satisfied, thus requiring enforcement. Rather, the actions alleged concern the investigative functions
18 of CRD, which are discretionary and not subject to mandamus relief. Moreover, the Amended Cross-
19 Complaint fails to state facts sufficient to establish any abuse of that discretion. (Code Civ. Proc.,
20 § 430.10 (e).)

21 **Demurrer to Second Cause of Action**

22 4. The Second Cause of Action for “Declaratory Relief” under Code of Civil Procedure,
23 Section 1060 fails because the Amended Cross-Complaint does not state facts sufficient to constitute a
24 cause of action under that statute. (Code Civ. Proc., § 430.10 (e).) The Amended Cross-Complaint
25 alleges facts concerning CRD’s past actions only. Thus, it fails to allege facts stating an actual, present
26 controversy ripe for declaratory relief.

27 5. The Second Cause of Action further fails because its request for relief is uncertain,
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1 ambiguous, and unintelligible. (Code Civ. Proc., § 430.10 (f).) California rules require an actual
2 controversy that is currently active for declaratory relief to be granted. Absent allegations of ongoing
3 conduct that may be conformed to an order of the Court, the requested relief would be plainly advisory,
4 and thus unnecessary and improper under Code of Civil Procedure, Section 1061.

5
6 Dated: November 21, 2022

CALIFORNIA CIVIL RIGHTS DEPARTMENT

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8 SIRI THANASOMBAT
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10 JAMIE CROOK
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11 ALEXIS MCKENNA
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13 BRETT D. WATSON
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Court Reservation Receipt

Reservation	
Reservation ID: 475859688441	Status: RESERVED
Reservation Type: Demurrer - without Motion to Strike	Number of Motions: 1
Case Number: 22CV006830	Case Title: DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA vs TESLA, INC.
Filing Party: California Civil Rights Department, Formerly Known as Department of Fair Employment and Housing (Cross-Defendant)	Location: Rene C. Davidson Courthouse - Department 21
Date/Time: December 21st 2022, 10:00AM	Confirmation Code: CR-BFRWPXHFQVNQ9DLYP

Fees			
Description	Fee	Qty	Amount
Reschedule Fee	1.00	1	1.00
TOTAL			\$1.00

Payment	
Amount: \$1.00	Type: Visa
Account Number: XXXX0358	Authorization: 040179
Payment Date: 2022-11-02	

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