Superior Court of California, JAMIE CROOK, Chief Counsel (#245757) 1 Jamie.Crook@dfeh.ca.gov County of Alameda ALEXIS MCKENNA, Deputy Chief Counsel (#197120) 11/21/2022 at 05:53:01 PM 2 Alexis.McKenna@dfeh.ca.gov By: Darmekia Oliver, SIRI THANASOMBAT, Associate Chief Counsel (#270201) 3 Deputy Clerk Siri.Thanasombat@dfeh.ca.gov BRETT D. WATSON, Senior FEH Counsel (#327669) 4 Brett.Watson@dfeh.ca.gov CALIFORNIA CIVIL RIGHTS DEPARTMENT 2218 Kausen Drive, Suite 100 6 Elk Grove, CA 95758 Telephone: (916) 478-7251 7 Facsimile: (888) 382-5293 8 Attorneys for Cross-Defendant, 9 California Civil Rights Department (Fee Exempt, Gov. Code, § 6103) 10 11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA 12 IN AND FOR THE COUNTY OF ALAMEDA 13 14 CALIFORNIA CIVIL RIGHTS Case No. 22CV006830 **DEPARTMENT**, an agency of the State of 15 California, CROSS-DEFENDANT CALIFORNIA CIVIL RIGHTS DEPARTMENT'S NOTICE OF 16 Plaintiff. DEMURRER AND DEMURRER TO 17 AMENDED CROSS-COMPLAINT OF VS. CROSS-COMPLAINANT TELSA, INC. 18 TESLA, INC., doing business in California as December 21, 2022 Date: 19 TESLA MOTORS, INC., and DOES ONE Time: 10:00 AM through FIFTY, inclusive, **Department:** 21 20 Judge: Hon. Evelio Grillo 21 Reservation ID: 475859688441 Defendants. 22 **Action Filed:** February 9, 2022 March 11, 2022 **FAC Filed:** 23 **Trial Date: TBD** 24 TESLA, INC., a Delaware Corporation doing business in California as TESLA MOTORS, 25 INC.. Petitioner and Cross-Complainant, 26 27 VS. 28

ELECTRONICALLY FILED

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

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

CRD's request for a demurrer is made following several telephonic conferences of counsel on October 17, 2022 and November 10, 2022, convened pursuant to California Code of Civil Procedure section 430.4l(a).

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

DATED: November 21, 2022

CALIFORNIA CIVIL RIGHTS DEPARTMENT

SIRI THANASOMBAT Associate Chief Counsel

PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT'S DEMURRER TO DEFENDANT

TESLA INC.'S AMENDED CROSS-COMPLAINT

Demurrer to First Cause of Action

- 1. The First Cause of Action for "Violations of the Administrative Procedure Act" fails because the Amended Cross-Complaint does not state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10 (e).) The Amended Cross-Complaint does not clearly allege or otherwise identify any actions taken by CRD that constitute generally applicable "regulations" requiring notice and comment under the Administrative Procedure Act (APA). Because CRD's alleged actions are not rules or regulations as defined by the APA, they cannot be invalid "underground regulations."
- 2. The First Cause of Action further fails because its request for declaratory relief is uncertain, ambiguous, and unintelligible. (Code Civ. Proc., § 430.10 (f).) It seeks declaratory relief based on alleged past actions only. Thus, there is no actual, present controversy ripe for declaratory relief.
- 3. The First Cause of Action further fails because its request for mandamus relief (*i.e.*, writ of mandate) is uncertain, ambiguous, and unintelligible. (Code Civ. Proc., § 430.10 (f).) The Amended Cross-Complaint does not clearly allege or otherwise identify a legally required ministerial duty that was not satisfied, thus requiring enforcement. Rather, the actions alleged concern the investigative functions of CRD, which are discretionary and not subject to mandamus relief. Moreover, the Amended Cross-Complaint fails to state facts sufficient to establish any abuse of that discretion. (Code Civ. Proc., § 430.10 (e).)

Demurrer to Second Cause of Action

- 4. The Second Cause of Action for "Declaratory Relief" under Code of Civil Procedure, Section 1060 fails because the Amended Cross-Complaint does not state facts sufficient to constitute a cause of action under that statute. (Code Civ. Proc., § 430.10 (e).) The Amended Cross-Complaint alleges facts concerning CRD's past actions only. Thus, it fails to allege facts stating an actual, present controversy ripe for declaratory relief.
 - 5. The Second Cause of Action further fails because its request for relief is uncertain,

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	6 Dated: November 21, 2022 CALIFORNIA CIVIL RIGHTS DEPARTM	ENT			
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8	SIRI THANASOMBAT Associate Chief Counsel				
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10	JAMIE CROOK Chief Counsel				
11	ALEXIS MCKENNA				
12	Assistant Chief Counsel				
13	BRETT D. WATSON				
14	Senior FEH Counsel				
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Superior Court of Alameda County Public Portal

Court Reservation Receipt

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

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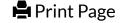
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