

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

Rene C. Davidson Courthouse, Department 21

JUDICIAL OFFICER: HONORABLE EVELIO GRILLO

Courtroom Clerk: Christopher Wright

CSR: None

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**22CV006830**

June 8, 2022  
10:00 AM

**DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING,  
AN AGENCY OF THE STATE OF CALIFORNIA**

**vs  
TESLA, INC.**

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**MINUTES**

**APPEARANCES:**

No Appearances

**NATURE OF PROCEEDINGS: Hearing on Motion for Stay of Proceedings**

The Motion for Stay of Proceedings filed by Tesla, Inc. on 04/18/2022 is Denied.

The Motion of Tesla to stay case is DENIED.

**BACKGROUND**

The DFEH brings this enforcement action against Tesla both (1) in its prosecutorial role, seeking relief in the public interest for the state and (2) for Defendants' Black and/or African American workers ("the Group").

On 2/9/22, the DFEH filed this case. On 3/11/22, the DFEH filed an amended complaint alleging racial harassment, race discrimination based on assignments, compensation, discipline, promotion, termination, and constructive discharge, retaliation for making complaints, failure to prevent discrimination and harassment, unequal pay under Labor Codes 11907.5 and Govt Code 12930(f)(5), unlawful waiver of rights and release of claims, and failure to maintain and produce employment records.

Tesla seeks a stay of the case. The Court may stay a case in its entirety in the interest of justice. (C.C.P. 187; *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 758 ["The case management tools available to trial courts [includes] the inherent authority to stay an action when appropriate"]; *Bailey v. Fosca Oil Co.*, (1963) 216 Cal.App.2d 813, 817 ["the power of a court to stay proceedings ... was inherent at common law and is now vested in the superior courts of this state"].)

Tesla seeks a stay of the case for three separate reasons.

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## COMPLIANCE WITH PRE-FILING PROCESS - LAW

Tesla seeks a stay of the case so that the DFEH can comply with the pre-filing requirements of Govt Code 12965 and 2 CCR 1002 et seq.

There are two separate pre-filing processes: (1) one for the DFEH in its prosecutorial role, seeking relief in the public interest for the state and (2) a second for the DFEH representing employees.

As prosecutor, “The director, in his or her discretion, may make, sign, and file a complaint for investigation that satisfies all the requirements of section 12960 of the Government Code.” (2 CCR 10012.)

As representative for a group, “The director or an aggrieved person may file a complaint for investigation with the department on behalf of a group or class of persons adversely affected, in a similar manner, by an alleged unlawful practice.” (2 CCR 10013.) (Govt Code 12961)

The DFEH then has a conciliation process. (2 CCR 10024) The DFEH also has a “mandatory dispute resolution” process that involves mediation. (2 CCR 10025(d)) “After mediation is declined or is unsuccessful, the department shall commence, resume, or complete the investigation as necessary.” (2 CCR 10025(f).) (Govt Code 12963.7.)

After the mandatory dispute resolution process, the DFEH may file a civil action. 2 CCR 10031 states: “(a) If, after investigation, it is determined by the department that a complaint has merit under the relevant legal standard, the director, in his or her discretion, may file a civil action in the name of the department. The discretion to file a civil action may be delegated to the department's chief counsel or designated associate or assistant chief counsel. (b) A civil action may be filed, if at all, only after the department has required mandatory dispute resolution.” (See also Department of Fair Employment and Housing v. Superior Court of Kern County (2020) 54 Cal.App.5th 356, 372.)

The mandatory dispute resolution process appears to apply both when the DFEH is acting on behalf of the people of the State of California in a law enforcement capacity and when the DFEH is representing a person or group of persons. (Govt Code 12930, 12965.)

The mandatory dispute resolution process is not a jurisdictional prerequisite to filing the civil action. (Moters Ins. Corp. v. Division of Fair Employment Practices (1981) 118 Cal.App.3d 209, 224.) Consistent with that law, Tesla seeks to stay the case rather than to dismiss the case.

## COMPLIANCE WITH PRE-FILING PROCESS –FACTS AND ORDER

In June 2019, DFEH filed and served on Tesla a Notice of Investigation. (Thanasombat Dec., PARA 3-4, Exhs. 1, 2.) The DFEH investigated.

On January 3, 2022, DFEH determined there was merit to the Director’s Complaint and issued a cause finding. (Thanasombat Dec., para 22.)

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On February 8, 2022, The parties participated in an unsuccessful mediation. (Govt Code 12965.) (Thanasombat Dec., para 7.) On February 9, 2022, DFEH filed this case. (Govt Code 12965.)

The court will not stay the case so that the DFEH can comply with its mandatory dispute resolution process. First, it appears that the DFEH has complied with its mandatory dispute resolution process. Second, the filing of the civil action does preclude the parties from engaging in the DFEH's dispute resolution process. (2 CCR 10025(e) ["Post-investigation mediation conferences conducted after a civil action is filed ("post-civil action") shall be attended by the member of the department's legal division who filed the civil action or who has subsequently been assigned the case."].) Third, if Tesla or the DFEH thinks that a mandatory settlement conference presided over by a judicial officer would be useful, then they can ask the court to set a settlement conference. (CRC 3.1380.)

## USE OF SUBSTITUTE COUNSEL TO COMPLETE PRE-FILING PROCESS

Tesla argues that the DFEH should use substitute counsel to complete any pre-filing investigation. The court will not stay the case on this basis.

This is moot because the court does not order a stay of the case for completion of pre-filing investigation.

If not moot, the court would deny the request that the DFEH retain substitute counsel. Tesla's primary argument is that the DFEH was overly aggressive in seeking a stipulation before the mediation that Tesla would not discuss or settle the claims with the EEOC before the DFEH mediation. The DFEH's request was arguably improper to the extent it requested that Tesla not "discuss" the case with the EEOC. That noted, Tesla's counsel, acting on behalf of Tesla, agreed to the request. A person who is represented by counsel in an adversarial matter cannot reasonably claim prejudice if the person stipulated to something.

## WHETHER THE DFEH HAS UNDERGROUND REGULATIONS

Tesla argues that the court should stay the case so that Tesla can file an action with the Office of Administrative Law about whether the DFEH has underground regulations. Tesla generally argues at moving p15:12-19 that it thinks that the DEFH's complaint filing, conciliation, and mandatory dispute resolution process should provide more notice to an employer and that the lack of specific requirements in the formal regulations means that there is an underground regulation that only minimal notice is required.

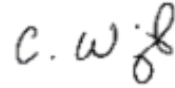
The court will not stay the case on this basis.

Tesla may file its petition with Office of Administrative Law. If Tesla prevails on any such petition, it appears that it might have no effect on this case. Gov Code 11340.5(e) states: "A determination issued by the office pursuant to this section shall not be considered by a court, or by an administrative agency in an adjudicatory proceeding if all of the following occurs: (1) The court or administrative agency proceeding involves the party that sought the determination from

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the office. (2) The proceeding began prior to the party's request for the office's determination. (3) At issue in the proceeding is the question of whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that is the legal basis for the adjudicatory action is a regulation as defined in Section 11342.600.”

The Court orders counsel to obtain a copy of this order from the eCourt portal.



By:

C. Wright, Deputy Clerk

Minutes of: 06/08/2022

Entered on: 06/08/2022