SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, et al, Plaintiffs, v. TESLA, INC., et al, Defendants.	No. 22CV006830 ORDER ON MOTION OF TESLA FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION Date: 5/22/26 Time: 9:30 AM Dept.: 15

The Motion of Tesla for summary adjudication or summary judgment came on for hearing on May 22, 2026, in Department 15 of this Court, the Honorable Peter Borkon presiding. Counsel appeared on behalf of Plaintiffs and on behalf of Defendant. After consideration of the issues, as well as the oral argument of counsel, IT IS ORDERED: The Motion of Tesla for summary adjudication or summary judgment is GRANTED IN PART AND DENIED IN PART.

PROCEDURE

Reconsideration. Tesla's motion is primarily directed at the merits of CRD's claims. Tesla's motion also revisits the issue of whether CRD complied with its pre-filing

responsibilities. The Court addressed the pre-filing responsibilities issue and granted summary adjudication on that issue on 9/25/24. (*Dept. of Fair Employment and Housing v. Tesla, Inc.* (Cal. Super. 9/25/2024) 2024 WL 5316956.) To the extent that the current motion revisits whether CRD complied with its pre-filing responsibilities the motion is an improper motion for reconsideration. (CCP 1008.)

Format. Tesla's format of the motion is not consistent with CCP 437c(b)(1) and CRC 3.1350(d)(1) and (2) because it does not clearly and separately address the causes of action. The Court will nevertheless reach the merits.

EVIDENCE

Tesla is a large business operating throughout California. CRD asserts that Tesla has engaged in a pattern or practice of race harassment, discrimination, and other violations of the FEHA. There is voluminous evidence on the working conditions at Tesla facilities. The Court sets out the relevant evidence in the context of the various claims and defenses. That noted, the Court preliminarily addresses two bodies of evidence.

EVIDENCE DEVELOPED IN THE RELATED *VAUGHN* CASE

The evidence presented on the claim for a pattern or practice of harassment in this case, *CRD v. Tesla*, 22CV006830, is in large measure a replication of the evidence presented on the motion for class certification in *Vaughn v. Tesla*, RG17882082.[1] Specifically, Tesla's Cardozo Dec. filed 10/16/25 at Exh 32 is Tesla's RJN on its previous motion for summary adjudication,

[1] A search for the word "Vaughn" in Tesla's Separate Statement of Undisputed Facts ["SSUF"] and CRD's Plaintiffs' Additional Facts ["PAF"] shows that the word appears 243 times.

which in turn at Exhibits 4-7 attaches Plaintiffs' Compendium of Declarations in Support of the *Vaughn* Motion for Class Certification and at Exhibits 11-16 attaches Tesla's Compendium of Declarations in Opposition to the *Vaughn* Motion for Class Certification. Tesla's Cardozo Dec. filed 10/16/25 at Exh 10 is the Cardozo Dec. in opposition to the *Vaughn* motion for class certification, which in turn attaches as Exhibit D a table summarizing the declarations and at Exh F the deposition transcripts of various declarants. Tesla's Cardozo Dec. filed 10/16/25 at Exh 18 is the Helland Reply Declaration in support of the *Vaughn* motion for class certification, which in turn attaches at Exhs C and D summaries of witness declarations and deposition testimony.

Both sides present and rely on evidence developed in the related *Vaughn* case. The Court has not located and counsel did not raise at argument any evidence objection based on the improper use of "former testimony." (Evid Code 1290 et seq.)

Given the reliance on the evidence in the Vaughn motion for class certification, the Court repeats the summary of evidence in the class certification order:

> Plaintiffs provided declarations from 240 witnesses who stated that they observed harassment at the Tesla Fremont factory; some complained about it. Of the 240 declarations submitted by plaintiffs, all stated that they heard the n-word at the Tesla Fremont factory [citations], 112 stated that they complained to a supervisor, lead, manager or HR about harassment, and 16 made written complaints. [citation] The number of declarations demonstrates that the sample is sufficiently large. (*Duran,* 59 Cal.4th at 42 [sample must be sufficiently large].) The selection by plaintiffs' counsel of which declarations to present to the court suggest that the sample was not random. (*Duran,* 59 Cal.4th at 43-45 [sample must be random].)
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> In opposing this motion, Tesla provided declarations from 228 witnesses who generally stated that they did not observe harassment at the Tesla Fremont factory or that if they observed it then Tesla took "immediate and appropriate corrective action." Of the 228 declarations submitted by Tesla, 99 heard the n-word at the Tesla Fremont factory. [citations] Of the defendant declarations, several workers state they made complaints, and several supervisors or managers state that they received complaints. (E.g. Robert Brown, Philip Buchannan.) Like the declarations submitted by plaintiffs, the number of declarations demonstrates that the sample is sufficiently large but the selection by defendant's counsel suggests that the sample was not random. (*Duran,* 59 Cal.4th at 42-45.)

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

(*Vaughn v. Tesla, Inc.* (Cal. Super. 5/17/24) 2024 WL 2786025, at *6.) The Court's comments about the evidence apply equally to this motion, except that on this motion the Court takes all inferences in favor of CRD as the non-moving party.[2]

DECLARATION OF DAVID NEUMARK

CRD presents the declaration of statistician David Neumark, who analyzed Tesla's June 2018 to June 2024 California worker data and opines: (1) "that Black workers at Tesla were paid less than all other workers, and were paid less than White workers"; (2) "that Black workers at Tesla were involuntarily terminated at higher rates than all other workers or than White

[2] The record also contains significant relevant evidence independently developed in this case and not imported from *Vaughn*. CRD Exhs 16-20 are declarations by former Tesla HR professionals concerning the operation of Tesla's HR department. These are directly relevant to whether Tesla's HR department was on notice of complaints of race harassment and discrimination and whether Tesla's HR Department took immediate and appropriate action. CRD Exhs 24-29 are transcripts of depositions of Tesla workers that were taken in this case.

workers"; and (3) "that Black workers are promoted at lower rates than all other workers or White workers." (CRD Evidence filed 4/22/26, Part 4, Tab C, Neumark Report, page 2:23, 3:20, 3:26.)

Tesla objects to the Neumark declaration on the grounds of relevance and speculation. (Tesla Evid Objections at p. 30.) The Court OVERRULES those objections. Tesla's objection that "The expert's opinions are also speculative" is arguably an objection under Evidence Code 801 and 802 and *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747. Courts have applied *Sargon* to declarations submitted in connection with motions for summary judgment and summary adjudication. (*Sanchez v. Kern Emergency Medical Transportation Corp.* (2017) 8 Cal.App.5th 146, 156; *Shiffer v. CBS Corp.* (2015) 240 Cal.App.4th 246, 253.) When a *Sargon* motion is filed at summary adjudication, the Court takes all reasonable inferences in favor of admissibility. (*Garrett v. Howmedica Osteonics Corp.* (2013) 214 Cal.App.4th 173, 189.) Furthermore, under California law, "The requisite of a detailed, reasoned explanation for expert opinions applies to 'expert declarations in *support* of summary judgment,' not to expert declarations in *opposition* to summary judgment." (*Shiver v. Laramee* (2018) 24 Cal.App.5th 395, 403.) The Court OVERRULES this implicit *Sargon* objection for purposes of summary judgment.

Tesla criticizes the Neumark declaration for a variety of reasons. According to Tesla, the promotions analysis "fails to control for individual worker performance, qualifications, and prior experience" and "whether workers even applied for promotions." (Reply at 6:23-7:21.) The termination analysis allegedly fails to account for job performance and does not control for attendance, disciplinary infractions, and policy violations. (Reply at 7:22-25.) The analysis combined Tesla's 18,000 Business Titles into 22 Job Families and 163 Job Functions. The

analysis was based on "employee-months" instead of "employees," which gave greater weight to employees who had spent more time at Tesla. At trial, Tesla could offer these arguments as grounds to exclude Neumark's expert testimony and Tesla may cross-examine Neumark on the alleged problems with his analysis. On this motion for summary adjudication, however, the Neumark declaration is admissible, and the Court makes factual inferences in favor of CRD.

In reply, Tesla offers the testimony of Kevin Hara, an attorney at Tesla's outside counsel, Reed Smith, that there are material errors in the Neumark declaration. (Hara Reply Dec. filed 4/30/26 para 3-10.) CRD objects to the Hara declaration on the basis that he "has not established any expertise or skills in statistics to opine on regression analyses or statistical methodologies." (CRD objections filed 5/5/26.) The Court SUSTAINS the objections to the Hart declaration on the basis that the testimony is on an "expert" topic and Hart has not provided any indication that he has any expertise in statistics. (Evid Code 800, 802.)

CLAIMS ASSERTED

The Complaint asserts many causes of action: (1) Racial Harassment; (2) Discriminatory Assignments; (3) Pay Inequality; (4) Racially Targeted Discipline; (5) Racially Targeted Failure To Promote; (6) Discriminatory Termination; (7) Racial Constructive Discharge; (8) Unlawful Retaliation; (9) Failure To Prevent Discrimination And Harassment, On Behalf Of A Class; (10) Failure To Prevent Discrimination And Harassment; (11) unequal pay on the basis of race; (12) Unlawful Waiver Of Rights, Forums, Or Procedures And Release Of Claims; and (13) Failure To Retain And Produce Records.

SUMMARY ADJUDICATION OF CLAIM FOR INJUNCTIVE RELIEF

The motion for summary adjudication on the remedy of injunctive relief is DENIED.

Tesla argues that CRD cannot seek injunctive relief in this case based on conduct occurring after CRD completed its pre-filing investigation and filed this case on 2/9/22. (Tesla Opening Brf. at 18-19.) Tesla makes two separate but related arguments. Neither has merit.

First, Tesla argues that the scope of the pre-filing investigation determines the scope of the case and the temporal scope of the pre-filing investigation ended when CRD filed this case. The Court addressed this issue in the Order of 5/20/25, which concluded "The Court finds that for purposes of seeking injunctive relief the end date of the temporal scope of the case is through the date of trial." (*Dept. of Fair Employment and Housing v. Tesla, Inc*. (Cal. Super. 5/20/2025) 2025 WL 1558899, at *6.)

Second, Tesla argues that the CRD cannot simultaneously pursue an administrative proceeding and a civil action that cover the same subject matter. Tesla reasons that CRD cannot be in two places at once. The Court addressed this issue in the Order of 12/16/25, which concluded: "The CRD's pre-filing investigation is a "procedural" limitation on the subsequent civil action and is not a "jurisdictional" limitation in the sense of the *court's fundamental subject matter* jurisdiction." (*Dept. of Fair Employment and Housing v. Tesla, Inc.* (Cal. Super. 12/16/2025) 2025 WL 3726823, at *3.)

In addition, as a matter of procedure the Court cannot grant summary adjudication on the remedy of injunctive relief. CCP 437c(f)(1) permits "summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty." "Injunctive relief is a remedy, not a cause of action." (*Ivanoff v. Bank of America, N.A.* (2017) 9 Cal.App.5th 719, 734.) CCP 437c(f)(1)'s list of

things that can be subject to summary adjudication does not include either "remedies" generally or "injunctive relief" specifically. "[T]he explicit mention of some things in a text may imply other matters not similarly addressed are excluded." (*Howard Jarvis Taxpayers Assn. v. Padilla* (2016) 62 Cal.4th 486, 514.) "[CCP 437c(f)(1)] does not permit summary adjudication of a single [remedy] which does not dispose of an entire cause of action." (*DeCastro West Chodorow & Burns, Inc. v. Superior Court* (1996) 47 Cal.App.4th 410, 422.)

SUMMARY ADJUDICATION OF TIME-BARRED CLAIMS

The motion for summary adjudication of claims based on statute of limitation is GRANTED IN PART.

Tesla argues that CRD's complaint includes claims barred by the statute of limitations. (Tesla Opening Brf at 19.) Tesla asserts that CRD has failed to clarify the temporal scope of the complaint, noting that CRD had previously argued that no statute of limitations applies to CRD.

The Court has addressed and resolved this issue, although in the context of an order on the temporal scope of discovery. The Order of 11/18/22 conducted a thorough evaluation of the applicable statute of limitation (which is a major factor in the in the temporal scope of discovery) and concluded: "the CRD can assert that the pattern or practice was unlawful for any given day that is within the statute of limitation. But the CRD is barred by the statute of limitation from asserting that the pattern or practice was unlawful on days earlier than the statute of limitation." The order later states: "The result is that the court finds for purposes of this discovery order that the CRD may prosecute claims arising on the days within one year of the CRD's filing of its administrative complaint on 6/18/19. This means the CRD can prosecute claims arising on the

days from 6/18/18 through the present." (*Dept. of Fair Employment and Housing v. Tesla, Inc.* (Cal. Super. 11/18/22) 2022 WL 17549760, at *4, 5.)

Tesla's motion for summary adjudication on time barred claims is GRANTED IN PART. CRD can prosecute claims arising after 6/18/18 and cannot prosecute claims arising before 6/18/18.

SUMMARY ADJUDICATION OF CRD'S CLAIMS ON THEIR MERITS

STANDARD ON SUMMARY JUDGMENT

Regarding burden shifting, a defendant moving for summary adjudication meets its burden of showing that a cause of action has no merit "if that party has shown that one or more elements of the cause of action ... cannot be established...." "The defendant may, but need not, present evidence that conclusively negates an element of the plaintiff's cause of action." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854–855.) The defendant may also present evidence that the plaintiff does not possess, and cannot reasonably obtain, needed evidence—as through admissions by the plaintiff following extensive discovery to the effect that he has discovered nothing." (*Aguilar,* 25 Cal.4th at 854–855.) The defendant's evidence must "*make a prima facie showing.* A prima facie showing is one that is sufficient to support the position of the party in question." (*Aguilar,* 25 Cal.4th at 851.) Once a defendant meets its initial burden, "the burden shifts to the plaintiff ... to show that a triable issue of one or more material facts exists as to that cause of action ... [and] set forth the specific facts showing that a triable issue of material fact exists as to that cause of action...." (CCP 437c(p)(2); *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 780; *Kaney v. Custance* (2022) 74 Cal.App.5th 201, 212.)

Regarding evidence, the court views the evidence in the light most favorable to the plaintiff and resolves any evidentiary doubts or ambiguities in their favor. *(Bailey v. San Francisco Dist. Attorney's Office* (2024) 16 Cal.5th 611, 620.) The Court focuses on the separate statement and whether Tesla is relying on facts that are both undisputed and material. *(Beltran v. Hard Rock* (2023) 97 Cal.App.5th 865, 874-876.) (See also *Insalaco v. Hope Lutheran Church of West Contra Costa County* (2020) 49 Cal.App.5th 506, 521.) "[I]f a triable issue is raised as to any of the facts in your separate statement, the motion must be denied!" *(Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252.)

Regarding the specific claims at issue in this case, there are a few specific considerations. First, CRD is asserting "pattern or practice" claims. These claims require proof of more than isolated or anecdotal instances of harassment or discrimination. On this motion, Tesla must present a prima facie case that CRD cannot prove the "pattern or practice" claims, and at trial CRD will need to prove the claims it is asserting. Because the case concerns "pattern or practice" claims, the Court will not apply the *McDonnell-Douglas* burden shifting approach that applies to cases of individual discrimination. (Compare *Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 354–355.)

Second, the Court is directed to be cautious about granting summary adjudication on claims for harassment. The legislature in Gov Code 12923(e) states: "Harassment cases are rarely appropriate for disposition on summary judgment." (*Bailey v. San Francisco Dist. Attorney's Office* (2024) 16 Cal.5th 611, 632 [importance of context]; *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 286 [similar].) CRD's "pattern or practice" claims concern Tesla's corporate action or inaction in creating or responding to a pattern or practice of discrimination, harassment, or retaliation based on race. The attention to context applies to the

existence of a hostile environment but not to corporate knowledge or to corporate action or inaction in responding to a known hostile environment.

Third, Tesla in its Reply at p. 2:11 asserts that "there is a higher burden of proof for pattern and practice cases as opposed to" individual cases on summary judgment. Tesla cites to *E.E.O.C. v. City of Independence, Mo* (W.D. Mo., 2005) 2005 WL 2898021, at *2. The case does not stand for that proposition. The full quotation is "The City argues that this distinction is important because there is a higher burden of proof for pattern and practice cases as opposed to an individual age discrimination case." A court's recitation of a party's argument is not the court's adoption of that argument.

NATURE OF A "PATTERN OR PRACTICE"

All of CRD's claims allege that Tesla had a "pattern or practice" of some unlawful action. The definition of "pattern or practice" comes from case law. *Duran v. U. S. Bank National Assn.* (2014) 59 Cal.5th 1, 36, concerns the merits of a case and states: "In a pattern and practice case, the employer's actions must be examined in the aggregate…" (See also *Alch v. Superior Court* (2004) 122 Cal.App.4th 339, 379 [applying federal "standard operating procedure" standard to California FEHA class].)

The court can also look to federal law. The United State Supreme Court has stated that a practice is a "standard operating procedure." (*Teamsters v. United States* (1977) 431 U.S. 324, 336 fn 16.) *E.E.O.C. v. CRST Van Expedited, Inc.* (N.D. Iowa, 2009) 611 F.Supp.2d 918, 931, sets out legislative history that the US Congress intended a "pattern or practice" to be "present only where the denial of rights consists of something more than an isolated, sporadic incident, but is repeated, routine, or of a generalized nature. .... The point is that single, insignificant,

isolated acts of discrimination by a single business would not justify a finding of a pattern or practice...." (See also *Hunter v. County of Sacramento* (9th Cir. 2011) 652 F.3d 1225 [jury instruction on "custom or practice" for purposes of civil rights violations]; *Warkentine v. Soria* (E.D. Cal. 2016) 152 F.Supp.3d 1269, 1295 ["practice or custom" for purposes of civil rights violations]; *Comite De Apoyo Para Los Trabajadores Agricolas (CATA) v. Dole* (D.C. Cir. 1990) 731 F.Supp. 541 [definition of "prevailing practice" in immigration regulations]; Ninth Circuit Model Jury Instruction 9.5 [defining "Practice or custom"].)

For purposes of this motion, this court adopts the definition of "pattern or practice" as a "standard operating procedure." This is based on *Alch v. Superior Court* (2004) 122 Cal.App.4th 339, 379, which is the only California appellate authority directly on point. *Alch* borrowed from *Teamsters*, supra, and *Teamsters* is consistent with the legislative intent of Congress as set out in *CRST*, supra.

Plaintiffs in pattern or practice discrimination cases typically prove their claims through a combination of statistical and nonstatistical evidence. *Alch v. Superior Court* (2008) 165 Cal.App.4th 1412 (the 2008 follow-on decision) states: "in theory, a pattern and practice of discrimination (the disparate treatment claim) may be established without statistical evidence, plaintiffs "normally seek to establish a pattern or practice of discriminatory intent by combining statistical and nonstatistical evidence, the latter most commonly consisting of anecdotal evidence of individual instances of discriminatory treatment." (*Alch,* 165 Cal.App.4th at 1428.)[3]

[3] (See also *Alch,* 165 Cal.App.4th at 1428 fn 23 ["Statistics alone may be used to establish a prima facie pattern-or-practice case where a gross, statistically significant, disparity exists. Most courts, however, have indicated that more than statistical evidence is necessary to satisfy the plaintiff's ultimate burden of proving intentional discrimination."].)

CAUSES OF ACTION

The remaining portion of this order tracks the claims in the complaint. "The pleadings define the issues to be considered on a motion for summary judgment. (*Scalf v. D. B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1519–1520.)

Significantly for the Court's burden shifting analysis, "[a]s to each claim as framed by the complaint, the defendant must present facts to negate an essential element or to establish defense. Only then will the burden shift to the plaintiff to demonstrate the existence of a triable, material issue of fact." (*Scalf v. D. B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1519–1520.) On all claims Tesla has not presented evidence or "factually devoid discovery responses" that would shift the burden to CRD. (*Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 590.)

FIRST CAUSE OF ACTION - HARASSMENT

The motion on the First Cause of Action Racial Harassment is DENIED.

In Tesla's SSUF on this motion, Tesla asserts that "over 12,000 Black workers have worked at the Fremont factory," that counsel in the related *Vaughn* case filed declarations and deposition testimony from "more than four hundred people," that "Tesla disciplines offensive behavior whenever it is aware of it," and that "Less than 2% percent of the witnesses identified *any* occasion on which Tesla did not respond to a [written] report of harassment." (SSUF 10, 11, 12, 13.)

Existence of hostile work environment. Tesla did not submit undisputed material facts that presented a prima facie case that there was an absence of a hostile work environment. Over 12,000 Black workers have worked at the Fremont factory during the relevant time period.

(SSUF 10.) The evidence indicates that "Of the 240 declarations submitted by plaintiffs, all stated that they heard the n-word at the Tesla Fremont factory" and "Of the 228 declarations submitted by Tesla, 99 heard the n-word at the Tesla Fremont factory." (Class Cert order, 2024 WL 2786025, at *6.) That suggests that out of 12,000 Black workers at least 339 (2.8%) heard the N-word at work. Tesla's evidence did not shift the burden to plaintiff CRD. First, CRD's claims alleges harassment state-wide but Tesla's evidence appears to be limited to the Fremont factory. Second, Tesla's evidence appears to be a non-representative sample from the Tesla factory, so it cannot reasonably be extrapolated to the whole Tesla factory. Third, Tesla's evidence defines the minimum number of Black workers who heard the N-word at work rather than the total number of Black workers who heard the N-word at work.

Tesla suggests that there was no hostile work environment because the percentage of Black employees at Tesla increased during the relevant time period and that Black workers would on occasion encourage family and friends to work at Tesla. (SSUF8 and 9.) At trial this might support an inference that the Tesla workplace was not hostile to Black workers, but at summary adjudication the Court does not make factual inferences in Tesla's favor.

Tesla asserted that the existence of its written policies and procedures and its training and orientation programs established a prima facie case that there was no pattern or practice of harassment and that when Tesla was on notice of an incident it took immediate and appropriate action. Tesla's implicit argument is that the evidence that those policies, procedures, and programs existed on paper supported a reasonable inference that they were both implemented and effective. The Court is not persuaded that the existence of written policies alone is sufficient to establish a prima facie showing that there was no harassment or discrimination.

Assuming that Tesla's evidence was sufficient to shift the burden to CRD, the evidence presented by CRD creates a triable issue of fact as to the existence of a hostile work environment. The evidence presented in opposition to this motion indicates that almost all Tesla workers heard some variant of the N-word at work with some regularity. At summary judgment the Court takes all inferences in favor of CRD, so the Court makes the factual inference that the uses were derogatory. This creates a triable issue of fact whether there was a pattern or practice of race harassment at work.

Tesla is incorrect in its argument that CRD must present evidence that persons acting in concert created a pattern or practice of race harassment. (Tesla Opening Brf at 9:27; 12:9; Tesla Reply Brf at 1:4, 3:17-20; 5:10.) What is relevant is whether there was a pattern or practice of race harassment. Assuming there was such a pattern or practice at Tesla (whether by isolated individuals or by persons acting in concert), then the issue turns to whether Tesla was on notice and took immediate and appropriate action.

Tesla argues this case is similar to *E.E.O.C. v. CRST Van Expedited, Inc.* (N.D. Iowa 2009) 611 F.Supp.2d 918, 953, where a federal district judge granted summary judgment on the EEOC's harassment claims. In *CRST*, the EEOC (like CRD in this case) did not offer any of its own statistical or expert evidence regarding harassment. (CRST, 611 F.Supp.2d at 953.) In CRST, the court reviewed what appears to be a summary of data on the incidence of sexual harassment among CRST's drivers. (CRST, 611 F.Supp.2d at 946.) The Court concluded: "The incidence of sexual harassment against CRST's female drivers—no more than 5.4% of the total 2,701 female drivers employed by CRST who were teamed with at least one male driver during the relevant period, 2.7% of all female/male teams, 0.8% of the trips taken, 0.9% of all days driven or 0.8% of all the miles driven—is not so high as to lead to a reasonable inference that

CRST's anti-sexual harassment policies and practices are a ruse to hide a pattern or practice of tolerating sexual harassment. (CRST, 611 F.Supp.2d at 953.) The evidence in this case has similar raw data on the incidence of harassment. During the relevant time period, the declarations demonstrate that out of 12,000 Black workers at least 339 (2.8%) heard the N-word at work.

CRST is distinguishable because in *CRST* all of the alleged harassment was co-worker harassment. *CRST* states: "There is no evidence any of CRST's managers sexually harassed drivers. Likewise, there is no evidence anyone sexually harassed CRST female managers. The unwelcome and offensive conduct by co-drivers and lead drivers generally occurred on the road in remote locations, not in CRST's corporate offices." (*CRST*, 611 F.Supp.2d at 946.) In contrast, in this case CRD has presented evidence that "Black workers were directly called the N-word by Tesla leads, supervisors, and/or managers." (PAF 1.9)

Tesla also argues this case is similar to *EEOC v. Carrols Corp.*, 2005 WL 928634 (N.D.N.Y. Apr. 20, 2005) at *3-4. Tesla focuses on the fact that summary judgment was granted where 333 (0.367%) women out of the 90,835 of the women employed by Defendant claimed harassment. The factual record is more nuanced. First, in *Carrols* most of Defendant's female employees did not work at more than one restaurant, so "they knew little of … the experiences of Defendant's employees beyond what they saw in their individual restaurants." In contrast, the Tesla factory was a "unified work environment[] and workforce[]," where the harassment of one person more likely affected their co-workers. (*Carrols*, 2005 WL 928634 at *4.) Second, of the 333 alleged incidents of sexual harassment in *Carrols*, 69 were against non-supervisory employees and 53 were against low-level supervisors, suggesting that there were 211 complaints against supervisors. In this case CRD has presented evidence that "Black workers were directly

called the N-word by Tesla leads, supervisors, and/or managers." (PAF 1.9.) Third, in *Carrols* the Defendant presented evidence "that investigations of the 159 sexual harassment complaints that it received between January 1, 1990, and June 30, 2000, and for which information is available, resulted in forty-two alleged harassers being terminated, eighteen being suspended, two being demoted, and thirty-four receiving written warnings." (*Carrols*, 2005 WL 928634 at *5.) Tesla has not presented similar evidence about its responses when it was put on notice of harassment. The Court finds *Carrols* to be distinguishable.

Plaintiff points to *E.E.O.C. v. Scolari Warehouse Markets, Inc.* (D. Nev. 2007) 488 F.Supp.2d 1117, 1131, and suggests that at summary judgment the judge found that 17 claimants out of total of 5,000 employees was sufficient to create a triable issue on a hostile work environment claim. (CRD Oppo at 16:13-15.) The case does not stand for that proposition. The full quotation is "[Defendant] Scolari … focuses on the total number of claimants (17) versus the total number of employees solicited (5,200)." A court's recitation of a party's focus of argument is not the court's finding or adoption of that argument. Later in the paragraph, the order states: "Even if this Court were to accept Defendant's statistic over the EEOC's objection, …, the EEOC claims that it has received over 500 complaints by women and men attesting to the hostile work environment at Scolari and to the company's failure to remedy the harassment. … taking the evidence in the light most favorable to the EEOC, it accepts, for now, that there may be more than 17 claimants out there." (*Scolari* , 488 F.Supp.2d at 1130–1131.) *Scolari* does not stand for the proposition that complaints by 17 out of 5,200 employees (0.3%) can create a triable issue of fact on a pattern or practice claim.

Tesla's knowledge of a hostile work environment. There is a triable issue of fact whether Tesla knew that there was a hostile work environment. CRD's response to SSUF 13 is both: "Numerous declarants in *Vaughn* indicated that they made complaints about race discrimination or harassment at Tesla to leads, supervisors, managers, and/or Human resources" and "out of the 240 *Vaughn* declarations, "[o]ne-hundred ten (110) declarants complained about the discrimination and harassment they experienced to leads, supervisors, managers, and/or Human Resources."

Tesla's immediate and appropriate action. There is a triable issue of fact whether Tesla took immediate and appropriate action. Tesla presents evidence that it "provides multiple avenues for employees to report harassment claims," that Tesla trains its own employees (but not contract workers) on its anti-harassment policies, and "maintains a comprehensive antiharassment policy." (SSUF 2, 3, 4.) The existence of the policies and procedures are factors, but the ultimate issue is whether Tesla actually and consistently took immediate and appropriate action. Tesla asserts that "Tesla created and maintains a centralized internal tracking system for Employee Relations to document complaints and investigations." (SSUF 4.) Tesla does not provide any information from that "centralized internal tracking system" about the number of recorded complaints on a monthly basis throughout the relevant time period, the mean, median, and mode times to investigate and resolve complaints, and other information that might indicate that Tesla had a pattern or practice of taking immediate and appropriate action. Tesla has not presented evidence or "factually devoid discovery responses" that would shift the burden to CRD.

Assuming that Tesla's evidence was sufficient to shift the burden to CRD, then CRD has presented evidence that creates a triable issue of fact. CRD presents testimony from five former

Tesla HR professionals about how Tesla actually implemented its policies. (CRD Exhs 16-20.) Tesla's HR or ER department had no standardized timeline to complete an internal investigation. (PAF 9.43, 9.72, 10.43, 10.72.) The ratio of ER or HR personnel to employees was arguably low. In 2018 and 2019 the ratio was 5 to 6 personnel for more than 100,000 employees, in 2020 the ratio increased to 6 to 7 personnel for 100,000 employees, and since 2021, ER has had between 6 to 12 employees to investigate complaints for more than 100,000 employees worldwide. (PAF 9.13-9.17, 9.60, 10.13, 10,58-60.) The result was that Tesla's ER had a backlog of complaints such that some cases were open for over 500 days (*id.* ¶¶ 9.30, 9.44, 10.30, 10.44). Even if Tesla's responses were ultimately appropriate, there is a triable issue whether Tesla had a pattern or practice of immediate responses.

SECOND CAUSE OF ACTION – DISCRIMINATORY ASSIGNMENTS

The motion on the Second Cause of Action, Discriminatory Assignments is DENIED.

Tesla's SSUF asserts as undisputed fact: "As for CRD's claims of discrimination in terminations, promotions, assignment, compensation, and discipline, each issue involves individuals exercising discretion and making independent, fact-specific, case-by-case decisions based on many variables" and "Each actor decided independently." (SSUF 16, 17.) This evidence would be relevant to the question of class certification if this were a motion for class certification. In *Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338, 355, the Court stated that a corporate "policy" of *allowing discretion* by local supervisors over employment matters can result in no discrimination or sporadic discrimination, but also that "an employer's undisciplined system of subjective decisionmaking [can have] precisely the same effects as a system pervaded by impermissible intentional discrimination." (*Wal-Mart,* 564 U.S. at 355.)

This is not a motion for class certification where a plaintiff has the burden. This is a motion for summary adjudication where the defendant has the burden to present undisputed material facts. Accepting Tesla's SSUF 16 and 17 about distributed independent decisionmaking as undisputed facts, they do not address the questions of whether Tesla's independent decisionmakers had a pattern or practice of making discriminatory decisions, whether Tesla knew of that pattern or practice, and whether Tesla took immediate and appropriate action.

Tesla argues "CRD's lack of evidence is even starker when it comes to its claims of discriminatory terminations, promotions, assignments, compensation, or discipline. SSUF 16-17." (Tesla Opening Brf. at 14:15-16.) Tesla states "CRD has *no* evidence to meet *any* of the above requirements to prove discrimination in hiring, promotion, assignment, and compensation practices." (Tesla Opening Brf. at 16:4-5.) Tesla's assertion that CRD has no evidence is not undisputed evidence that CRD cannot prove an element of the claim. Addressing this issue, *Aguilar,* 25 Cal.4th at 854–855, compares state and federal law, and states: "Summary judgment law in this state, however, continues to require a defendant moving for summary judgment to present evidence, and not simply point out that the plaintiff does not possess, and cannot reasonably obtain, needed evidence. In this particular at least, it still diverges from federal law."

Tesla did not present its own expert statistical testimony with a prima facie showing that there was no discrimination. Tesla's SSUF 8 asserts: "statistical evidence shows that both the raw numbers and percentages of Black workers in Fremont factory production jobs grew throughout the period at issue, and the percentage of White workers declined in that period." Tesla supports that assertion with Cardozo Dec Exh 29, which is the Declaration of Tesla Paralegal Manager Quon-Vaili Dec., para 11-12, who states: "At the Fremont factory this year [2024], of those who self-identified, approximately 15% of Tesla employees self-identify as

Black. This translates to approximately 3,260 employees. This number is a significant increase from 2016 when Tesla employed approximately 680 Black employees, amounting to approximately 8.3% of the workforce. In contrast, the percentage of white workers declined in this period from approximately 28% to 12%." Quon-Vaili is a non-expert reciting data rather than an expert doing a statistical evaluation of data. Quon-Vaili provides data on the single subject of the race of employees as of the two data points of 2016 and 2024. Tesla provides no statistical information about the applicant pool or about pay, promotions, assignments, discipline, termination, or other matters.

Tesla did not present "factually devoid discovery responses" indicating that CRD "*does not possess* needed evidence" and "*cannot reasonably obtain* needed evidence." (*Aguilar*, 25 Cal.4th at 854 fn 20.) Presentation of "factually devoid discovery responses" would have shifted the burden to CRD. (*Simmons v. Superior Court* (2016) 7 Cal.App.5th 1113, 1124; *Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 590.) Assuming that Tesla's evidence was sufficient to shift the burden to CRD, the Neumark expert testimony creates a triable issue of material fact.

Tesla asserts that Neumark's report is not sufficient to create a triable issue of fact. (Tesla reply at 6:23-7:16.) The Neumark report makes evaluations on what are the standard deviations, what is "statistically significant" and summarizes: "(1) I find evidence that Black workers at Tesla were paid less than all other workers, and were paid less than White workers. These pay shortfalls for Black workers are statistically significant at the 5% level. … (4) I find evidence that Black workers at Tesla were involuntarily terminated at higher rates than all other workers or than White workers. These differences are statistically significant at the 5% level. … (5) I find evidence that Black workers are promoted at lower rates than all other workers or

White workers. For example, the promotion rate of Black workers, controlling for Job Function and Management Level, is 0.5 percentage points lower than for White workers (13.0 standard deviations)." (Neumark Dec. at pp 2-4.) This creates triable issues of fact on the identified issues.

Tesla cites to federal cases for the proposition that even where expert testimony is admissible under the federal *Daubert* standard (similar to the California *Sargon* standard), a trial judge may nevertheless find that the regression analysis is so deficient that it "is insufficient to allow a reasonable juror to conclude" that there was a pattern of discrimination. (*Morgan v. United Parcel Service of America, Inc.* (8th Cir. 2004) 380 F.3d 459, 468; *E.E.O.C. v. Autozone, Inc.* (W.D. Tenn., 2006) 2006 WL 2524093, at *5-7.) This appears inconsistent with California law. Under California law, if an expert is qualified and the testimony has factual foundation, explains its reasoning, is non-speculative, and is therefore admissible under *Sargon*, then it is generally sufficient to create a triable issue of fact on the subject of the testimony. (*Property California SCJLW One Corp. v. Leamy* (2018) 25 Cal.App.5th 1155, 1163; *Sanchez v. Kern Emergency Medical Transportation Corp.* (2017) 8 Cal.App.5th 146, 155-156.) On a motion for summary judgment the Court will not assume the mantle of expert statistician and independently find fault in an expert report that is admissible under *Sargon*.

Tesla argues this case is similar to *E.E.O.C. v. Bloomberg L.P.* (S.D.N.Y. 2011) 778 F.Supp.2d 458, where a federal district judge granted summary judgment on the EEOC's discrimination claims. The EEOC presented no statistical evidence in that case. *Bloomberg* states: "The singular fact that the EEOC has no statistical evidence in support of its case, while maybe not fatal in itself, is severely damaging in this case." (778 F.Supp.2d at 471.) In contrast, "[Defendant] Bloomberg … offered statistical evidence that disproves the EEOC's

compensation- and promotion-based pattern or practice claim." (778 F. Supp.2d at 481.) Regarding anecdotal evidence, the EEOC presented evidence that "78 of 603 female employees who became pregnant or took maternity leave during the class period—12.9%—had a claim." (778 F.Supp.2d at 472.) The federal trial court concluded: "the EEOC's evidence does not make a relevant comparison between women who took leave for pregnancy-related reasons and other employees who took leave for any reason, so an inference of discriminatory conduct cannot be drawn." *Bloomberg* is distinguishable because in this case the CRD provided expert statistical information in addition to anecdotal testimony.

THIRD CAUSE OF ACTION - PAY INEQUALITY

The motion on the Third Cause of Action, Pay Inequality is DENIED. Tesla has not presented evidence or "factually devoid discovery responses" that would shift the burden to CRD. See second cause of action. Assuming the burden shifted to CRD, the Neumark expert testimony creates a triable issue of material fact.

FOURTH CAUSE OF ACTION - DISCIPLINE

The motion on the Fourth Cause of Action, Racially Targeted Discipline is DENIED. Tesla has not presented evidence or "factually devoid discovery responses" that would shift the burden to CRD. See second cause of action. Assuming the burden shifted to CRD, the Neumark expert testimony creates a triable issue of material fact.

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FIFTH CAUSE OF ACTION - FAILURE TO PROMOTE

The motion on the Fifth Cause of Action, Racially Targeted Failure to Promote is DENIED. Tesla has not presented evidence or "factually devoid discovery responses" that would shift the burden to CRD. See second cause of action. Assuming the burden shifted to CRD, the Neumark expert testimony creates a triable issue of material fact.

SIXTH CAUSE OF ACTION - TERMINATION

The motion on the Sixth Cause of Action, Discriminatory Termination is DENIED. Tesla has not presented evidence or "factually devoid discovery responses" that would shift the burden to CRD. See second cause of action. Assuming the burden shifted to CRD, the Neumark expert testimony creates a triable issue of material fact.

SEVENTH CAUSE OF ACTION - CONSTRUCTIVE DISCHARGE

The motion on the Seventh Cause of Action, Racial Constructive Discharge is DENIED. Tesla has not presented evidence or "factually devoid discovery responses" that would shift the burden to CRD. See second cause of action. Assuming the burden shifted to CRD, the Neumark expert testimony creates a triable issue of material fact.

EIGHTH CAUSE OF ACTION - RETALIATION

The motion on the Eighth Cause of Action Unlawful Retaliation is DENIED. (Tesla Opening at 13-14.)

Tesla's SSUF asserts as undisputed fact: "Only a small fraction of witnesses [who provided declarations in *Vaughn*] can articulate any adverse employment action taken against

workers who engaged in protected activity, and fewer still gave admissible testimony permitting an inference that Tesla took such action *because of* protected activity." (SSUF 15.) Tesla's argument is: "Only 3% of witnesses [who provided declarations in *Vaughn*] allege any adverse employment action taken against persons engaged in protected activity." (Tesla opening at 14:1-2.)

Tesla's evidence is not undisputed evidence that there was no pattern or practice of retaliation. Tesla presented non-representative attorney selected declarations and not a statistically significant representative sample of Tesla workers or of Tesla workers who made complaints of harassment or discrimination. (*Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 38-49.) Evidence that "Only a small fraction of witnesses" from a non-representative group suffered retaliation is not a prima facie showing that there was no California-wide pattern or practice of retaliation. Tesla has not presented evidence or "factually devoid discovery responses" that would shift the burden to CRD.

In addition, CRD's response to SSUF 15 is that "numerous *Vaughn* declarants set forth that they were subjected to adverse employment actions following reports of harassment or discrimination." Assuming that Tesla's non-representative sample of declarations were sufficient to shift the burden to CRD, then CRD's non-representative sample of declarations would be sufficient to create a triable issue of material fact. Furthermore, at summary adjudication, CRD can make its prima facie case by showing proximity in time between the protected actions and the allegedly retaliatory employment decisions. (*Wawrzenski v. United Airlines, Inc.* (2024) 106 Cal.App.5th 663, 702.) Tesla did not present evidence that it had legitimate non-discriminatory business reasons for the allegedly retaliatory employment decisions.

NINTH CAUSE OF ACTION - FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT (CLASS)

The motion on the Ninth Cause of Action Failure to Prevent Discrimination and Harassment, On Behalf of A Class is DENIED. This claim on behalf of a class is under Govt Code 12940(j)(1) and (k). Private litigants cannot prove this claim unless they also prove that the "failure to prevent" resulted in plaintiff suffering discrimination or harassment. *(Trujillo v. North County Transit District* (1998) 63 Cal.App.4th 282, 287-288.) This claim is on behalf of a "class," so the order on this claim follows the orders on the claims for discrimination and harassment.

TENTH CAUSE OF ACTION - FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT

The motion on the Tenth Cause of Action, Failure to Prevent Discrimination and Harassment is DENIED. This claim is on behalf of the CRD as a law enforcement entity under Govt Code 12940(j)(1) and (k). 2 CCR 11023(a)(3) states: "in an exercise of its police powers, the Department may independently seek non-monetary preventative remedies for a violation of Government Code section 12940(k) whether or not the Department prevails on an underlying claim of discrimination, harassment, or retaliation." CRD as a state law enforcement entity can prove this claim based on failure to have adequate and effective policies and procedures in place without regard to whether CRD can prove past or current discrimination, harassment, or retaliation.

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ELEVENTH CAUSE OF ACTION - UNEQUAL PAY

The motion on the Eleventh cause of action, unequal pay on the basis of race is NOT AT ISSUE. Tesla's motion and SSUF did not address this cause of action. This is distinct from the FEHA claim for discrimination in compensation on the basis of race because "Discriminatory intent is not an element of a claim under the Equal Pay Act." (*Green v. Par Pools, Inc.* (2003) 111 Cal.App.4th 620, 629.) Assuming Tesla's motion addressed this claim, Tesla has not presented evidence or "factually devoid discovery responses" that would shift the burden to CRD. Assuming the burden shifted to CRD, the Neumark expert testimony creates a triable issue of material fact.

TWELFTH CAUSE OF ACTION - UNLAWFUL WAIVER OF RIGHTS

The motion on the Twelfth Cause of Action, Unlawful Waiver of Rights, Forums, Or Procedures and Release of Claims is NOT AT ISSUE and will be DISMISSED. Tesla's motion and SSUF did not address this cause of action. CRD's opposition states: "CRD will be filing a dismissal of its twelfth claim." (CRD Oppo at 5:28.)

THIRTEENTH CAUSE OF ACTION - FAILURE TO RETAIN AND PRODUCE RECORDS

The motion on the Thirteenth Cause of Action, Failure to Retain and Produce Records is NOT AT ISSUE. At the time CRD initiated this action Government Code section 12946 and 2 CCR 11013 required an employer to "maintain and preserve" certain records for at least two years. Tesla's motion and SSUF did not address this cause of action. Tesla has not presented evidence or "factually devoid discovery responses" that would shift the burden to CRD.

Assuming Tesla's motion addressed this claim, CRD has presented evidence that creates a triable issue of fact whether Tesla maintained internal complaint investigation records. (PAF 13.1].)

OBJECTIONS TO EVIDENCE

The Court has not considered for purposes of the merits any of Tesla's evidence filed with its reply brief. (CCP 437c(b)(4) ["The reply shall not include any new evidentiary matter"].) The Court's tentative decision observed that the parties had made many objections to evidence, referred the parties to *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532, for the proposition that parties are encouraged "to raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion," and invited the parties to "specify the evidentiary objections they consider important, so that the court can focus its rulings on evidentiary matters that are critical in resolving the summary judgment motion." (*Reid*, 50 Cal.4th at 533.) Neither side identified specific objections to evidence that required specific judicial attention. The Court has considered all the declarations submitted, as well as all the exhibits attached thereto. The Court's consideration of the evidence is limited to this motion for summary judgment and should not be construed as an indication of admissibility in future motions or at trial.

Dated: May 26, 2026

Peter Borkon
Judge of the Superior Court

Superior Court of California, County of Alameda
Department 15, Administration Building

Case Number: 22CV006830
Case Name: **Department of Fair Employment and Housing v. Tesla, Inc.**

ORDER ON MOTION OF TESLA FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION

DECLARATION OF ELECTRONIC SERVICE

I certify that I am not a party to these cases and that a true and correct copy of the foregoing document was served electronically pursuant to the Joint Stipulation and Order Authorizing Electronic Service, entered in these coordinated proceedings on July 7, 2022 via the CASE ANYWHERE system. Execution of this certificate occurred at 1221 Oak Street, Oakland, California.

Executed on 05/26/2026

Executive Officer/Clerk of the Superior Court

By *: Aquetta Scoggins*
Deputy Clerk