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(Fee Exempt, Gov. Code, § 6103)

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

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

Plaintiff,

v.

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

Defendants.

Case No. 22CV006830

**PLAINTIFF CALIFORNIA CIVIL RIGHTS
DEPARTMENT'S OPPOSITION TO
DEFENDANT TESLA, INC.'S MOTION FOR
JUDGMENT PURSUANT
TO CODE OF CIVIL PROCEDURE
SECTION 631.8**

Department: 15
Judge: Hon. Peter Borkon

Action Filed: February 9, 2022
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Trial Date: September 21, 2026

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1 **I. INTRODUCTION**

2 Over thirteen days of trial, Plaintiff California Civil Rights Department (“CRD”) developed a
3 record that proves a pattern or practice of race discrimination in compensation, promotions, and
4 terminations against Defendant Tesla, Inc.’s (“Tesla”) Black workers in California; systemic racial
5 harassment of Black workers employed in Fremont; and a failure to prevent discrimination and
6 harassment against Black workers statewide. CRD’s evidence of statistically significant racial
7 disparities in compensation, promotions, and terminations, combined with anecdotal evidence from
8 worker witnesses, satisfies the evidentiary framework for proving systemic discrimination under
9 *International Brotherhood of Teamsters v. United States* (1977) 431 U.S. 324 (“*Teamsters*”) and *Alch*
10 *v. Superior Court* (2004) 122 Cal.App.4th 339 (“*Alch*”). Anecdotal and expert evidence that Tesla’s
11 decision-making procedures are permeated by subjectivity and discretion also establishes Tesla’s
12 liability for discrimination in compensation, promotions, and terminations under a disparate-impact
13 framework, consistent with *Watson v. Fort Worth Bank & Trust* (1988) 487 U.S. 977. CRD’s anecdotal
14 evidence of pervasive racial harassment suffered by Black workers—including repeated exposure to
15 racist slurs, often made by or in the presence of supervisors; graffiti in restrooms and common areas
16 depicting racially violent words and images; and music lyrics that workers found offensive—
17 establishes a pattern or practice of racial harassment under *EEOC v. Mitsubishi Motor Mfg. of America,*
18 *Inc.* (C.D. Ill. 1998) 990 F.Supp. 1059 (“*Mitsubishi*”). Evidence that Tesla has been aware of these
19 ongoing violations yet has failed to take effective preventive action establishes a violation of
20 Government Code section 12940, subdivision (k).

21 Tesla’s motion for judgment pursuant to Code of Civil Procedure section 631.8 lacks merit and
22 should be denied. First, CRD’s evidence proves violations of the Fair Employment and Housing Act
23 (“FEHA”) and California Equal Pay Act (“EPA”) continuing through the present. Even if the Court
24 were to find that CRD has less evidence from 2025–2026 compared to 2018–2024, the standard for
25 granting permanent injunctive relief does not require the immediacy of harm Tesla asserts. It suffices
26 that past violations, which here do extend through 2026, are likely to recur. Second, CRD’s evidence
27 establishes a pattern or practice of racial harassment. The Court has appropriately not imposed a random
28 sampling requirement for CRD’s proof, and none is mandated under *Duran v. U.S. Bank National Assn.*

(2014) 59 Cal.4th 1 (“*Duran*”), which expressly carves out pattern-or-practice cases. Third, CRD has presented currently unrefuted evidence of statistically significant disparities in compensation, promotion rates, and termination rates for Black workers, and evidence of employment practices associated with those outcomes, meeting its burden to prove its discrimination claims under Government Code section 12940, subdivision (a) and Labor Code section 1197.5, along with anecdotal evidence extending through 2026. The Court also should draw an adverse inference against Tesla regarding conclusions that could be drawn from worker data for the 2025–2026 period, because Tesla never provided it despite Court orders to do so. Fourth, Tesla’s paper policies prohibiting discrimination and harassment do not negate the overwhelming evidence that for years, these policies have been and remain ineffectual to prevent the very types of unfair employment practices about which so many witnesses have compellingly testified.¹

II. SUMMARY OF EVIDENCE

CRD presented testimony from twenty-seven current and former Black Tesla employees who belong to the group on whose behalf CRD seeks relief. These workers held diverse positions ranging from assembly line associate, production associate, material handler, supervisors, leads, security manager, senior security manager, vehicle readiness advisor, delivery advisor, sales advisor, production tech, quality tech, part service advisor, protection specialist, regional security manager, service assistant, HR coordinator, training coach, and carpenter. They worked in Tesla’s Fremont location, including 901 Page, Lathrop, and other locations across California,² under different supervisors and management teams and in different divisions. Many witnesses testified that as part of their job duties, they traveled throughout the worksite on a regular basis. (Tr. 457:17-23 (Nelson); 588:19-589:10 (Jordan); 739:14-17 (Ahl); 1081:7-9 (Teague); 2389:6-10 (Hawkins).)

The testimony from these worker witnesses, with their varied work assignments and locations establishes an unmistakable pattern or practice of severe or pervasive, racially motivated conduct that was objectively and subjectively offensive, and often violent. (Tr. 749:17-750:23 [Ms. Ahl was told her coworkers were going to “beat [her] Black ass”]; 205:24-206:3 [Ms. Clark was told “f**k you

¹ Due to the page limit and the limited time to prepare this Opposition, CRD’s discussion of the trial evidence is non-exhaustive. Consistent with the Court’s guidance on October 14, 2026, CRD focuses its legal argument on the record of continuing harms that justify prospective relief.

² Statewide evidence is probative because CRD’s section 12940, subdivision (k) is statewide.

1 n****ers I hate n****ers, f**k you n****er b**ch”]; 1353:5-8, 1353:11-13 [Ms. Coney was told by her
2 supervisor that “it’s too many of these n****ers working here. This place feels like a slave ship,” and
3 “[t]hey hired too many of these Black mother f**kers”]; 1357:21-1358:5 [Ms. Coney was told to “shut
4 up you Black n****er b**ch and keep walking”]; 2337:23-2338:1 [Mr. Wayne Jackson’s lead said to
5 “make sure that the n****ers are put in ...a special area on the production line”]; 303:13-304:7 [Mr.
6 Strickland testified to hearing racial slurs on a daily basis including jigaboo, coon, Black bitch, big lip
7 n****er, tar baby, and Sambo]; 353:16-354:14 [Mr. Vegas testified to hearing the n-word, stupid n-
8 word, and that his haircut was one that n****ers would wear]; 563:14-25 [Mr. Stewart’s supervisor
9 referred to three white leads as his “KKK team”]; 643:23-24, 644:14-645:11, 646:1-5 [Ms. Nichols
10 testified to hearing anti-Black slurs as many as ten times per day]; 1082:10-12 [Ms. Teague testified to
11 hearing the n-word approximately 20 times before lunch].) Multiple witnesses testified they heard
12 references to Black workers as monkeys and gorillas or heard monkey noises directed at them. (Tr.
13 1364:20-1365:6 (Coney); 2293:1-8 (Alowonle); 405:6-406:15 (Jackson); 1395:24-1396:23
14 (Richardson); 1982:11-15 (Domitille); 2446:21-2447:22 (Nettles).) Witnesses also testified they
15 frequently and consistently observed racist graffiti in the workplace at Tesla. (E.g., Tr. 152:3-10, 153:7-
16 154:6 (Murray); 306:8-307:6 (Strickland); 407:24-408:11 (Jackson); 480:1-25 (Nelson); 591:20-
17 592:12, 593:5-16, 594:6-20 (Jordan); 711:10-22, 712:2-22 (Davis); 799:04-800:12 (Soumahoro);
18 1369:4-1370:25 (Coney); 1399:20-1402:45 (Richardson); 1456:16-1457:14 (Purvis).)

19 Witnesses also testified to their observations of subjectivity and racial favoritism in promotions
20 that disadvantaged them and other Black workers. (Tr. 743:25-746:13 (Ahl); 2287:4-2289:13
21 (Alowonle); 1406:12-1408:7 (Richardson).) Others testified that they trained new hires who were not
22 Black, who were then promoted instead of them. (Tr. 2402:14-2403:9 (Hawkins); 602:4-24, 619:9-14
23 (Jordan).) Their personal experiences were reinforced by Dr. Champion’s expert opinion that the racial
24 disparities in compensation and promotions identified by Dr. Neumark could be associated with the
25 substantial discretion that Tesla provides managers in making these decisions. (Tr. 1532:10-1533-13;
26 1546:7-14.) Former Human Resources (“HR”) personnel (Chow, Peloquin, Paulino, Martin) testified
27 about deficiencies in the policies, staffing, and resources available to Tesla’s HR and Employee
28 Relations (“ER”) personnel, leading to favoritism, a lack of accountability, and discriminatory

1 outcomes for workers.³ Other current and former HR and ER managers (Childs, Fuh, Jaramillo, Oliver,
2 Patel) testified about Tesla’s policies and practices for investigating and resolving discrimination and
3 harassment complaints, imposing discipline, setting compensation, and awarding promotions.

4 CRD also presented expert testimony: (1) Dr. David Neumark testified as an expert in labor
5 economics on statistically significant racial disparities suffered by Tesla’s Black workers in
6 compensation, promotion rates, and termination rates; (2) Dr. Michael Campion testified as an expert
7 in industrial and organizational psychology concerning, among other things, Tesla’s job architecture
8 and the degree of subjectivity and discretion that Tesla gives individual managers in making promotion
9 and compensation decisions; (3) Jan Duffy testified as an expert in management and HR practices that
10 Tesla’s employment policies and practices are not clear, comprehensible, or comprehensive enough to
11 prevent and correct harassment and discrimination in the workplace, Tesla has not devoted sufficient
12 resources and leadership to have an effective prevention and correction program, and Tesla failed and
13 is failing to undertake measures that are necessary to appropriately respond to complaints of harassment
14 or discrimination in the workplace; and (4) Dr. Geoff Ward testified as an expert in sociology on the
15 historical violence of the n-word and how that connotation continues to underlie its usage today.

16 CRD’s documentary evidence includes Tesla’s own records of at least 119 discrimination and
17 harassment complaints that it investigated (see exhibits listed in Attachment A to the parties’ 10/14/26
18 Joint Stipulation); internal correspondence documenting racist graffiti in the workplace (e.g., Exs. 105,
19 108, 1757, 1939); employees’ concern about aging HR/ER investigations and a lack of follow-up and
20 transparency (e.g., Exs. 109, 113, 120, 1643, 1932); an email from Tesla’s CEO instructing workers in
21 “less represented group[s]” to have “thick skin” in response to unfair treatment (Ex. 127); and Tesla’s
22 various policies on discrimination and harassment, from the 2018 “anti-Handbook Handbook” (Ex.
23 501) to its currently operative March 2021 Policy Against Discrimination and Harassment in the
24 Workplace (Ex. 504). The record also contains evidence that Tesla’s “Zero Tolerance” policy is
25 inconsistently explained and applied, including how and whether “intent” is investigated and
26 determined by HR/ER. (E.g., Tr. 2080:4-2081:3, 2098:8-2102:4 (Oliver); 2627:6-2628:3, 2638:3-
27 2639:3 (Woodard); 2496:12-2497:24 (Patel); 2623:22-2624:4 (Workman); 1411:21-1412:11, 1418:5-

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³ (E.g., Tr. 992:3-25, 994:8-995:6 (Chow); 1128:11-1132:4, 1125:19-1137:20 (Peloquin); 1226:10-1228:21,
1229:16-25, 1232:10-20, 1268:10-1271:11 (Paulino); 1292:22-1296:2 (Martin).)

1 17 (Richardson).)

2 **III. LEGAL STANDARD**

3 In ruling on a motion for judgment under Code of Civil Procedure section 631.8, the Court may
4 consider and weigh all evidence received, and must allow the non-moving party an opportunity to
5 present additional evidence to rebut evidence deemed by the presenting party to be adverse.

6 As a general matter, a “court’s power to grant injunctive relief survives discontinuance of the
7 illegal conduct.” (*United States v. W.T. Grant Co.* (1953) 345 U.S. 629, 633; see also *EEOC v.*
8 *KarenKim, Inc.* (2d Cir. 2012) 698 F.3d 92, 100-101 [evidence of widespread past violations may
9 justify prospective relief even where a defendant has ceased the offending conduct].)

10 Government Code section 12965, subdivision (d) allows the Court to “grant as relief in any
11 action filed [by CRD]. . . any other relief that, in the judgment of the court, will effectuate the purpose
12 of this part,” including affirmative relief to eliminate unlawful employment practices. Permanent
13 injunctive relief is warranted where there is evidence that an employer “has engaged in an unlawful
14 practice of discriminating” against employees in violation of FEHA. (See also *Herr v. Nestle U.S.A.,*
15 *Inc.* (2003) 109 Cal.App.4th 779, 789 (“*Herr*”) [approving injunctive relief as an appropriate remedy
16 where an employer “has engaged in an unlawful practice of discriminating” against employees in
17 violation of FEHA].) Under Title VII, “a person subjected to employment discrimination is entitled to
18 an injunction against future discrimination, [citation] unless the employer proves it is unlikely to repeat
19 the practice,” and [a]n employer that takes curative actions only after it has been sued fails to provide
20 sufficient assurances that it will not repeat the violation to justify denying an injunction.” (*EEOC v.*
21 *Goodyear Aerospace Corp.* (9th Cir. 1987) 813 F.2d 1539, 1544 (“*Goodyear*”).)⁴

22 **IV. ARGUMENT**

23 **A. CRD’s Proof Establishes a Course of Unlawful Employment Practices Continuing
Through the Present**

24 **1. Witnesses employed in 2025 and 2026 establish ongoing harms**

25 Daosha Golden, Cornelious Michael, and Alton Purvis worked for Tesla in 2026. (Tr. 2532:8-
26 9 (Golden); 2149:25-2150:1, 2152:2-2158:4 (Michael); 1449:18-21 (Purvis).) Kareem Nelson worked
27 for Tesla through 2025. (Tr. 455:20-21.) They each testified to ongoing conduct that is racially

28 ⁴ California courts routinely consider federal courts’ interpretation of Title VII when construing FEHA. (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 74.)

1 discriminatory, offensive and subjectively and objectively unwelcome in the workplace. (Tr. 2533:14-
2 24 (Golden); 2167:11-2168:1 (Michael); 1450:25-1451:12, 1453:16-1454:6, 1456:3-15 (Purvis);
3 461:18-25 (Nelson).) For example, Ms. Golden testified that she continues to hear music with the n-
4 word in the lyrics today and that the Zero Tolerance policy is not enforced at Tesla. (Tr. 2537:14-
5 2539:14.) The effect of the ongoing racial harassment caused Mr. Michael to use his vacation time in
6 2025 to seek therapy. (Tr. 2167:11-2168:1.) Mr. Purvis testified that the use of the n-word targets Black
7 workers because of their race and dates back to the Jim Crow era. (Tr. 1453:16-1454:6.) Mr. Nelson
8 testified to hearing the n-word “[a]t least 20 times or more per day” “[a]ll over the factory,” which
9 made him feel degraded, distressed, and uncomfortable to the point where he sought therapy and
10 medication. (Tr. 460:13-19, 461:18-463:2.) A Tesla witness, current employee Azrielle Roundtree,
11 testified that she still hears the n-word at Tesla and had to remind one person that the word was not
12 allowed, and that when another person apologized to her for using it, she responded that “you always
13 use that.” (Tr. 2577:4-2578:1, 2578:4-10.)⁵

14 **2. Tesla’s policies have not changed**

15 CRD’s HR expert, Jan Duffy, gave her expert opinion that Tesla’s current policies and practices
16 are deficient (Tr. 1785:2-10, 1800:18-1801:4), relying in large part on the March 2021 Policy Against
17 Discrimination and Harassment in the Workplace. (Tr. 1803:5-10, Ex. 504.) Ms. Duffy also expressed
18 her critiques of the Zero Tolerance policy and explained how it contributes to the many complaints of
19 race discrimination and harassment. (Tr. 1803:17-1806:24.) On cross examination Tesla did not present
20 any evidence to show that Ms. Duffy’s opinions were not based on Tesla’s currently operative policies.
21 Indeed, Tesla’s current Policy Against Discrimination and Harassment in the Workplace has been in
22 effect since March 2021. (Ex. 504.) Ms. Childs and Ms. Oliver also confirmed that Tesla’s “Zero
23 Tolerance” policy and investigation methods are still in effect. (Tr. 2080:13-2083:7, 2060:1-2065:19,
24 2096:2-2103:20, 2103:23-2110:14 (Oliver); 2206:20-2207:8, 2211:20-2217:4, 2249:14-2249:22,
25 2263:13-21 (Childs).)⁶

26 ⁵ It is challenging for a current employee to testify against their employer. (See *Richards v. CH2M Hill, Inc.*
27 (2001) 26 Cal.4th 798, 821; see also *Mitchell v. Robert DeMario Jewelry, Inc.* (1960) 361 U.S. 288, 292;
28 Declaration of Victoria Ellis (“Ellis Decl.”), ¶¶ 6, 8.)

⁶ Tesla cites testimony by Ms. Jaramillo and Mr. Fuh regarding recent updates to some compensation and
promotion policies. That has no bearing on harassment, and Tesla will bear the burden during its defense to

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3. Tesla continues to receive and substantiate complaints

CRD also introduced evidence that Tesla continues to receive high numbers of complaints of workplace discrimination and harassment, including 39 fully or partially validated complaints in 2025 and five fully or partially validated complaints in 2026 (as of June 22, 2026). (Ex. 391 at p. 5; see also Exs. 79, 80, 81, 83, 86, 163, 164.) (Cf. *EEOC v. Clayton Residential Home, Inc.* (N.D. Ill. 1995) 874 F.Supp. 212, 216 (“*Clayton Residential*”) [denying injunctive relief where the employer showed “by the dearth of complaints against it in the last four years that there is little likelihood of recurrent violations”].)

4. The record establishes ongoing harms and a likelihood of recurrence

This record establishes ongoing practices and harms and meets CRD’s burden to justify prospective injunctive relief. CRD established Tesla’s current policies have been in effect for years; Tesla’s ongoing receipt of complaints of race discrimination and harassment and substantiation rates for those complaints; and ongoing violations and corresponding harm to workers through 2025 (Nelson) and 2026 (Golden, Michael, and Purvis). Because the same policies and practices that have resulted in systemic FEHA and EPA violations apply today, the facts here are distinguishable from the case law Tesla cites, where the challenged conduct was in the past and unlikely to recur.⁷

Even if the Court were to find a brief gap in the temporal scope of the evidence CRD presented, immediate recency of a harm is not a threshold requirement for injunctive relief. Instead, courts have recognized that the “[e]vidence relied on to show a cognizable danger of recurrent violation should not be ‘stale’ or too far removed from the present.” (*EEOC v. Creative Networks, LLC* (D. Ariz. 2012) 912 F.Supp.2d 828, 846.) Here, CRD has evidence through the present from three workers employed in 2025 and 2026, continuing complaints substantiated by Tesla in 2025 and 2026; abundant testimony from people employed through 2024; and robust statistical evidence through 2024. This evidence is not

prove that any 2026 changes in compensation and promotion practices reduced or eliminated the discriminatory outcomes Dr. Neumark identified. (See Part IV.C.)

⁷ (*Mallon v. City of Long Beach* (1958) 164 Cal.App.2d 178, 190 [denying injunctive relief where, at the time of judgment, there was “no reasonable probability that past acts complained of will recur”]; *Davis v. Farmers Insurance Exchange* (2016) 245 Cal.App.4th 1302, 1327 [denying injunctive relief because the plaintiff presented no evidence of a pattern of discrimination to justify an injunction prohibiting such conduct]; see also *Donald v. Cafe Royale, Inc.* (1990) 218 Cal.App.3d 168, 184 [no injunction because the defendant restaurant could no longer discriminate against people with disabilities because it had closed].)

1 stale. (Cf. *Clayton Residential*, *supra*, 874 F.Supp. at p. 216.)

2 Moreover, as Tesla’s own policies and testimony from Tesla witnesses confirm, there is no
3 evidentiary basis to conclude that the unlawful practices have ceased at all, or that they are unlikely to
4 recur in the future. These facts suffice for permanent injunctive relief. (See *Herr*, *supra*, 109
5 Cal.App.4th at p. 789; *Goodyear*, *supra*, 813 F.2d at p. 1544; cf. *People ex rel. Herrera v. Stender*
6 (2012) 212 Cal.App.4th 614, 644 [upholding a preliminary injunction where, although the lawyer who
7 engaged in unlawful business practices had left the firm, the conduct could recur where the firm took
8 no action to stop his unlawful practice of law].) Tesla may defend with proof that the discriminatory
9 conduct, or policies causing discrimination and harassment will not recur. That burden belongs to Tesla
10 during its case in chief. (See, e.g., *Cal. Service Station etc. Assn. v. Union Oil Co.* (1991) 232
11 Cal.App.3d 44, 57.)

12 **B. CRD’s Anecdotal Harassment Evidence Establishes a Pattern or Practice of
Racial Harassment**

13 Tesla responds to CRD’s powerful anecdotal showing of systemic harassment, summarized
14 above in Part II, by arguing that it is not “random” and is instead “cherry-picked” and suggests this
15 Court ordered that CRD prove its first cause of action through a randomized sample. This is wrong.
16 The Court has never held that to prevail, CRD must present a statistically validated representative
17 sample of anecdotal evidence. Tesla’s argument misstates the Court’s May 26, 2026 Order denying
18 Tesla’s motion for summary judgment. In that Order, the Court relied on *Duran* to hold that Tesla’s
19 own non-representative declaration evidence failed to show the absence of a material disputed fact.
20 (5/26/26 Order at p. 25.) It did not establish an evidentiary threshold for CRD to prove its claims.

21 The Court has never so held in this matter, and correctly so. *Duran* is inapposite in a pattern-
22 or-practice discrimination case.⁸ Without foreclosing the use of sampling outright, in *Duran*, the
23 California Supreme Court rejected the trial court’s random sampling protocol because (1) the sample
24 was too small, (2) the trial court refused to allow experts to present a validated statistical sampling
25 model, and (3) the trial court excluded evidence that would have impeached its extrapolated findings.
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27 ⁸ *Duran* was a private class action about misclassification that turned on how much time each class member
28 spent working outside of the bank branch. (59 Cal.4th at p. 12.) The trial court *sua sponte* limited trial testimony
to that from a randomly selected sample of twenty class members and two named plaintiffs and from there
extrapolated class damages calculations. (*Id.* at pp. 12, 21-24.)

1 (59 Cal.4th at pp. 35-36.) The analysis in *Duran* was specific to the nature of the case—a
2 misclassification private class action—and, importantly, did not establish a sampling requirement in
3 every systemic case. (See *id.* at pp. 27-32.)

4 In fact, *Duran* expressly distinguished its analysis of how to manage a misclassification class
5 action in a manner that affords the defendant with due process from disparate treatment pattern-or-
6 practice cases, like here, that follow a *Teamsters* framework: “**In a pattern and practice case, the**
7 **employer’s actions *must* be examined in the aggregate to determine whether the employer is liable**
8 **to any particular plaintiff for discrimination.**” (*Id.* at p. 36, italics in original, emphasis added, citing
9 Nagareda, *Class Certification in the Age of Aggregate Proof* (2009) 84 N.Y.U. L.Rev. 97, 117, 151.)
10 The Court further recognized that in pattern-or-practice discrimination cases, ““it is a reasonable
11 possibility that all class members, even those who have fared exceedingly well, were subject to this
12 unlawful policy or practice....This dimension is absent in a misclassification case.”” (*Id.* at p. 37,
13 ellipses in original, citation omitted.) Simply put, *Duran* did not establish a new sampling requirement
14 for all future representative actions and expressly *not* in a pattern-or-practice discrimination case. (See
15 also *id.* at 55 (Liu, J., concurring) [“a representative sampling approach to proving class liability is not
16 appropriate for all statutory rights,” citing *Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338, a
17 discrimination class action]; *Cortina v. North American Title Co.* (2026) 120 Cal.App.5th 1030, 1099,
18 fn. 12 [*Duran* distinguished proof standard in a wage-and-hour private class action from *Teamsters*,
19 “which involved claims of discriminatory employment practices in violation of federal law”].)

20 Here, it would be error to grant judgment based on a previously unannounced representative
21 sampling requirement. Even if such a requirement applied to this type of case (it does not), the parties
22 would have needed notice of that during discovery, in order to obtain expert opinion as to what
23 constitutes a representative sample that would satisfy the validity and reliability concerns the California
24 Supreme Court addressed in *Duran* (in a substantively distinguishable type of case). Nor, given the
25 Court’s trial management decision to give each side 45 hours of trial time, could CRD have presented
26 a substantially greater number of workers than it did.⁹ Whatever a validated representative sample size

27 ⁹ CRD maximized the allocated trial time and could not have presented testimony from any meaningfully greater
28 number of workers. CRD allocated its time among 27 worker witnesses, four experts, four former HR witnesses,
and five Tesla witnesses who established relevant policies and practices. CRD reserved less than fifteen hours
for cross examination (for the approximately 70 witnesses Tesla indicated it may call) and its closing argument.

1 might have been, given the size of the workforce, it would be a far larger number of workers than either
2 party could reasonably present in the time allotted.

3 Just as CRD is not required to prove harassment through a representative sample, its Phase I
4 evidence need not show that “that all class members have been equally affected by the challenged
5 practices—it suffices that the issue of whether the practice itself was unlawful is common to all.”
6 (*Williams v. Super. Ct.* (2013) 221 Cal.App.4th 1353, 1370, as modified (Dec. 24, 2013), citations
7 omitted; see also, e.g., *Alch, supra*, 122 Cal.App.4th at p. 380; *Mitsubishi, supra*, 990 F.Supp. at pp.
8 1070, 1074.) Regarding Tesla’s complaints that the evidence was one-sided, Tesla had an opportunity
9 to cross examine every witness and has its case-in-chief to present its own evidence. Moreover, its due
10 process rights to defend against liability exposure for specific harassment allegations on worker-by-
11 worker basis will be fully protected during Phase II.¹⁰

12 Importantly, the evidence that CRD presented from twenty-seven workers is probative not only
13 of their individual experiences but that of Black Tesla workers in California in the aggregate. These
14 witnesses testified that they saw racist graffiti in bathrooms and other common areas, remaining visible
15 for days at times, where other workers would have seen the same thing, heard racial slurs (often on a
16 daily basis) throughout the workplace, heard music with racial slurs playing on speakers audible
17 throughout the workplace, and experienced racially segregated line assignments that impacted every
18 other worker subject to those assignments. Their testimony is probative of the severe or pervasive
19 conduct that other Black workers were also subjected to. And every witness who testified was subject
20 to the same HR/ER policies and investigation methods that applied to the entire workforce and are
21 therefore at issue in this trial.

22 C. Neumark’s Unrebutted Statistical Analysis Establishes Discrimination

23 1. Dr. Neumark applied established labor economics methods and his results 24 were robust

25 CRD presented expert testimony from labor economist Dr. David Neumark showing
26 statistically significant disparities for Black workers in compensation, involuntary terminations, and

27 ¹⁰ (See, e.g., *Sav-on Drug Stores, Inc. v. Super. Ct.* (2004) 34 Cal.4th 319, 330-340; *EEOC v. Pitre, Inc.* (D.N.M.
28 2012) 908 F.Supp.2d 1165, 1178.) The “same actor” inference (Tesla Mot. at p. 13) is inapposite in a pattern-or-
practice case, to which the *Teamsters* framework applies.

1 promotions. Dr. Neumark analyzed Tesla’s own personnel data covering June 2018 through June 2024.
2 He used multiple regression analyses to compare Black workers with otherwise comparable workers
3 and to account for factors that could explain differences for nondiscriminatory reasons. Those factors
4 included job, Tesla experience, part-time and exempt status, employee type, year/month, and city. (Tr.
5 856:1–24, 862:16–863:14, 871:9–873:16, 886:2–12, 896:9–23.) His core analyses found that Black
6 workers received lower base pay and total compensation, were involuntarily terminated at higher rates,
7 and were promoted at lower rates. Those disparities were statistically significant. (Tr. 889:22-890:15,
8 893:14–894:9, 911:16–913:14, 914:11–915:25.) He found the same pattern when he compared Black
9 workers with non-Black workers: lower compensation, higher involuntary-termination rates, and lower
10 promotion rates, all statistically significant. (Tr. 926:15–928:2.) His expert evidence is consistent with
11 discrimination against Black workers. (Tr. 929:11–930:12; see also 1559:12-17 (Campion).)¹¹

12 Dr. Neumark also tested whether his findings held when he analyzed the data in other reasonable
13 ways. These additional analyses included performance ratings, job-profile controls, payroll data,
14 separate exempt and nonexempt groups, disaggregated job groupings, and analyses that accounted for
15 promotion eligibility. (Tr. 896:25–905:25, 907:14–911:15, 916:1–20, 956:13–957:1.) The additional
16 analyses continued to show disparities adverse to Black workers. They did not change his conclusions.
17 (Tr. 905:21–25, 911:4–15, 913:17–914:10, 916:14–20.) Nor did several analyses offered by Tesla’s
18 expert, including analyses of time to promotion, time to termination, involuntary termination, and
19 selection pools. (Tr. 920:9–12, 923:12–924:25, 926:9–13.) Taking his analyses and robustness checks
20 together, Dr. Neumark testified that he was “very confident” in his statistical conclusions. (Tr. 931:9–
21 13.) Tesla’s criticisms and the alternative analyses offered by its expert therefore do not rebut Dr.
22 Neumark’s core statistical findings.

23 **2. The Court should draw an adverse inference that the disparities Dr.**
24 **Neumark identified continue through the present**

25 A fact finder may draw an adverse inference against a party that willfully fails to produce
26 relevant discovery, including evidence pertinent to injunctive relief. (Evid. Code, § 413; see *Williamson*
27 *v. Super. Court* (1978) 21 Cal.3d 829, 835, fn. 2 [holding that “[a] trial is not a game where one counsel
28 safely may sit back and refuse to produce evidence where in the nature of things his client is the only

¹¹ Dr. Neumark ran multiple regression models that controlled for job level, which he testified was intended to analyze “substantially similar” jobs, relevant to the EPA claim. (Tr. 895:20-896:23.)

1 source from which that evidence may be secured” and doing so justifies an inference “that the evidence,
2 had it been produced, would have been adverse”].)

3 Dr. Neumark analyzed the data that was provided to CRD from Tesla, which covered the period
4 from June 2018 through June 2024. (Tr. 872:20-873:6.) Should the Court find that his statistical
5 analysis fails to establish race-based disparities in compensation, promotions, and terminations
6 continuing through the present, CRD requests pursuant to Evidence Code section 413 that the Court
7 draw an adverse inference from Tesla’s failure to produce such data through the present, to find that
8 the powerful statistical disparities that Dr. Neumark identified through his rigorous multiple regression
9 analyses of 2018-2024 data establish similar disparities continuing through June 2026, with the close
10 of fact discovery. An adverse evidentiary inference is justified under Evidence Code section 413
11 because Tesla withheld worker data, including data fields and “mysqldump” reports; failed to produce
12 data continuing through the present despite multiple Court Orders requiring it to do so; and
13 misrepresented the completeness of its productions.

14 The history of CRD’s dogged efforts to obtain complete and comprehensive worker data from
15 Tesla is long and varied over years. Notably, on July 26, 2024, the Court granted CRD’s Motion to
16 Establish Sampling as Inappropriate and ordered the production of “all previously requested data
17 regarding employee compensation, promotion, discipline and assignments”. The Court directed Tesla
18 to produce the worker data “promptly.” (July 26, 2024 Order at p. 18:21-25.) CRD was then forced to
19 bring a Motion to Enforce Worker Data Orders, which was granted through the Discovery Referee’s
20 Recommendation 26. This Court’s October 16, 2025 Order adopted Recommendation 26, which
21 recognized that the parties engaged in extensive motion practice concerning Tesla’s production of
22 worker data through the rest of 2024 and continuing through 2025. (Ellis Decl., ¶ 10.) In conformity
23 with Recommendation 26, CRD served tailored discovery requests on September 15, 2025, seeking a
24 report of all Tesla worker data to understand the nature and extent of the information in Tesla’s
25 possession, as well as the underlying worker data **through the present**. (*Id.*, ¶ 11.)

26 In response, Tesla claimed it had completed its worker data production, forcing CRD to file
27 multiple motions. First, CRD filed a second Motion to Enforce the Court’s July 2024 Order, which
28 resulted in the Discovery Referee’s Recommendation 57. The Court’s Order on Recommendation 57

1 made clear that CRD could assert “arguments at trial based on Tesla’s alleged noncompliance with the
2 Order of July [26], 2024, regarding Worker Data, the Order of November 13, 2025, adopting
3 Recommendation 26, [and] any other order”. (July 10, 2026 Order, p. 2.)¹² Additionally, CRD filed a
4 motion to compel, which was granted. (Recommendation 43, p. 19:7-8; April 14, 2026 Order.) yet
5 Tesla refused to produce worker data through to the present. (Ellis Decl., ¶ 14.)

6 On June 22, 2026, after CRD’s statistician disclosed his expert report, Tesla produced worker
7 Job Code and Job Profile data with data on their corresponding pay ranges—information CRD had
8 explicitly requested. Tesla’s belated worker data production included 4,500 rows of data for thousands
9 of Tesla positions and provided data limited to 2024. (Ellis Decl., ¶ 15.) What is more, Tesla has never
10 provided worker data beyond 2024. Its production stops with 2024 data, despite the Court’s July 2024
11 and April 2026 Orders requiring Tesla to produce its worker data from January 1, 2016 to present. (*Id.*,
12 ¶ 16.) Tesla’s own expert studied the same data set as Dr. Neumark. (*Id.*, ¶ 17.)

13 CRD’s showing that Tesla refused to produce responsive worker data through the present
14 despite multiple Court orders to do so justifies an adverse inference under Evidence Code section 413.
15 (See *Jogani v. Jogani* (2026) 118 Cal.App.5th 823, 854 [holding plaintiff “establish[ed] a prima facie
16 showing of willful suppression” where plaintiff elicited testimony that “orders required Defendants to
17 produce ... documents and that despite such orders, what they produced did not include those
18 documents.”].) Although a willful suppression instruction does not require the Court to first find a
19 discovery order violation, see *id.* at p. 854, it has already made such findings here. (October 16, 2025
20 Order at pp. 24-26.)

21 At a minimum, if the Court is unready to draw an adverse inference, it should at least deny
22 Tesla’s motion for judgment, because the data Tesla produced ended with 2024.

23 **3. Dr. Neumark’s analyses are probative of discrimination**

24 Tesla errs in asserting that Dr. Neumark’s analysis fails to rule out explanations other than race
25 and that he had to identify a specific policy that caused the disparities. On cross examination by Tesla,
26 Dr. Campion testified that Dr. Neumark’s analyses were consistent with findings of discrimination and
27

28 ¹² In denying Recommendation 57, the Court did not adopt the findings or analysis, of the recommendation and
acknowledged CRD’s right to present evidence or make arguments at trial “based on Tesla’s alleged
noncompliance” with the Court’s orders. (07/10/26 Order, p. 2.)

1 ruled out explanations other than discrimination for the identified disparities. (Tr. 1559:12-17.)¹³ CRD
2 also introduced evidence of the applicable compensation, promotion, and discipline policies that govern
3 these decisions at Tesla, through testimony including Ms. Jaramillo, Mr. Fuh, and Ms. Oliver's, along
4 with relevant policy exhibits. CRD thus presented precisely the type of evidence required by *Foroudi*
5 *v. The Aerospace Corp.* (2020) 57 Cal.App.5th 992, 1009.

6 Tesla moreover misrepresents the scope of the claims at issue in *Teamsters*, in which the
7 government that the employer engaged in discriminatory practices in hiring, assignment, promotions,
8 and transfers, as well as challenging the discriminatory effects of a specific seniority system.
9 (*Teamsters*, *supra*, 431 U.S. at pp. 329-330; *see also id.* at p. 335 [describing the Government's "theory
10 of discrimination" that the disparate treatment "involved the refusal to recruit, hire, transfer, or promote
11 minority group members on an equal basis with white people"].) The trial court found the employer
12 "had engaged in a pattern or practice of employment discrimination *and* that the seniority system in the
13 collective-bargaining agreements violated Title VII as applied to victims of prior discrimination" (*id.*
14 at p. 333, emphasis added), and the Supreme Court agreed the government had met its burden to prove
15 classwide discrimination. (*Id.* at p. 337.) Tesla is therefore wrong that *Teamsters* requires an analysis
16 tied to a formal, codified policy like the seniority system.

17 **D. The Record Establishes an Ongoing Failure to Prevent**

18 In closing, Tesla sparsely argues that its anti-discrimination and anti-harassment policies are
19 effective. This assertion cannot be reconciled with the weight of evidence that workers are often afraid
20 to report discrimination or harassment and that when they did, they were met with derision, delay, or
21 retaliation. (See *Cal. Fair Employ. & Housing Com. v. Gemini Aluminum Corp.* (2004) 122
22 Cal.App.4th 1004, 1024-1025 [an employer's claim that its procedures are effective in addressing
23 discrimination is negated by proof of retaliation].) Mr. Howard, Mr. Richardson, and Mr. Soumahoro
24 testified that leads and supervisors did not respond to racist language. (Tr. 677:11-20 (Howard); 1396:9-
25 1397:8 (Richardson); 794:8-798:5 (Soumahoro).) Tesla never fired the person who called Mr.
26 Richardson the n-word, but instead trained her for a promotion. (Tr. 1412:17-1421:21.) When Mr.

27 ¹³ In some cases, gross statistical disparities alone may prove a pattern or practice of discrimination, even in the
28 absence of other evidence. (See, e.g., *Hazelwood School Dist. v. United States* (1977) 433 U.S. 299, 307-308;
Beck v. The Boeing Co. (9th Cir. 2003) 60 F. App'x 38, 39; *Alch v. Super. Ct.* (2008) 165 Cal.App.4th 1412,
1437 fn. 23.)

1 Nelson complained to a supervisor about racist language, his supervisor told him “that’s just the way it
2 is here.” (Tr. 463:3-16.) Mr. Soumahoro was fired after complaining about a racist comment by his
3 supervisor, who called his complaint “a n***er reaction”. (Tr. 830:16-22.) Mr. Wayne Jackson was
4 excluded from supervisor meetings and put on an improvement plan with impossible timelines two
5 months into his job, after being forced to make his discrimination complaint in front of the supervisor
6 who called him a racial epithet. (Tr. 2342:3-2344:23, 2355:6-2363:23.) Mr. Hawkins was reassigned
7 to a more physically demanding line and then terminated without explanation on his first day back from
8 parental leave. (Tr. 2398:8-2402:14.)¹⁴ As Ms. Duffy testified and these non-exhaustive examples
9 confirm, Tesla lacks an effective, consistent, coherent process for preventing discrimination and
10 harassment. Even if Tesla has taken action in some instances, the breadth of continuing complaints
11 shows that such actions have not *prevented* ongoing harassment and discrimination. Reactive measures
12 are not preventive.

13 **E. In the Alternative, CRD Seeks Leave to Present Additional Evidence Under Code
14 of Civil Procedure section 631.8, subdivision (a)**

15 Should the Court find any evidentiary gaps, given Tesla’s admitted defense evidence, CRD
16 requests leave to present additional evidence (see Code Civ. Proc., § 631.8, subd. (a)—specifically
17 statistical analysis that CRD could present if the Court requires Tesla to produce worker data through
18 2026 and additional current worker witnesses. Tesla did not produce updated contact information for
19 employees post December 2022 until June 12, 2026. (Ellis Decl., ¶ 5.) Ten days before the close of
20 discovery, CRD could not develop contacts with current workers. (See *id.*, ¶¶ 5-7.)

21 **V. CONCLUSION**

22 For the foregoing reasons, CRD asks that the Court deny Tesla’s Motion for Judgment under
23 Code of Civil Procedure Section 631.8. In the alternative, CRD requests leave pursuant to section 631.8,
24 subdivision (a) to present additional evidence from current workers and 2025-2026 worker data in
25 Tesla’s possession, should the Court find gaps in CRD’s anecdotal and statistical evidence of
26 harassment and discrimination.

27 ¹⁴ Tesla maligns CRD because witnesses testified truthfully to what they knew and were aware of, based on their
28 personal knowledge of Tesla’s response to their complaints. Tesla’s lack of transparency, inconsistent processes,
delay, and failure to inform complainants of the outcome of any investigation that Tesla conducted is the culprit,
not malfeasance by CRD. The adequacy of any investigations Tesla did conduct, and the outcomes, are moreover
heavily disputed.

1
2 Dated: October 16, 2026



3
4 By: _____
5 SIRI THANASOMBAT
6 Attorney for Plaintiff
7 California Civil Rights Department
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