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

13 **MARC CAGE, an individual,**

14 Plaintiff,

15 v.

16 **TESLA, INC., a Delaware corporation,**

17 Defendant.
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CASE No. 22CV007293

COMPLAINT FOR:

- 1. Racial Discrimination (Gov. Code § 12940(a) and (j))
- 2. Hostile Work Environment Race Harassment (Gov. Code § 12940, *et seq.*)
- 3. Retaliation For Engaging in Protected Activity (§ 12940, *et seq.*)
- 4. Failure to Prevent Discrimination and Harassment (Gov. Code § 124940, *et seq.*)
- 5. Wrongful Termination in Violation of Public Policy
- 6. Whistleblowing Retaliation (Cal. Lab. Code § 1102.5)
- 7. Negligent Infliction of Emotional Distress
- 8. Intentional Infliction of Emotional Distress

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

- I. INTRODUCTION.....4**
- II. JURISDICTION AND VENUE.....5**
- III. THE PARTIES.....5**
- IV. FACTUAL BACKGROUND.....7**
 - A. Tesla Recruits Marc Cage, an Experienced and Successful Project Quality Manager, Purportedly to Ensure Code Compliant, Quality Controlled Construction.....7
 - B. Mr. Cage Identifies and Reports Multiple Serious Safety and Building Code Violations.....11
 - 1. Tesla Routinely Violated Federal Injury Reporting Laws, Which Mr. Cage Reports to His Superiors.....11
 - 2. Mr. Cage Reports that Tesla is Violating Safety Codes in its Maintenance of Pressure Vessels.....12
 - 3. Mr. Cage Discovers and Reports that Tesla Had Been Using Unqualified Inspectors Who Were Performing Sham Inspections for Over Three Years14
 - 4. Mr. Cage Reports a Number of Safety and Building Code Violations Occurring at the Fremont Facility.....15
 - C. Seeking to Stifle Mr. Cage’s Reports of Noncompliance, Tesla Limits His Ability to Report Violations, and Prepares to Terminate Him16
 - 1. Tesla Removes Mr. Cage from the Quality Department to Prevent Him from Documenting Further Violations16
 - 2. Mr. Cage Faces Persistent Disrespect, and Discriminatory and Offensive Conduct16
 - 3. Tesla Puts Mr. Cage on a Pretextual Performance Improvement Plan—Then Retracts Its Inaccurate Representations.....17
 - D. Mr. Cage Escalates Previously Reported Violations to Higher Levels of Management, and Reports Additional, Ongoing Violations.....18
 - E. Tesla Retaliates by Terminating Mr. Cage19
 - F. Tesla Subjected Mr. Cage to Discrimination on the Basis of Race20
 - 1. Tesla’s Discrimination Against Mr. Cage20
 - 2. The California Department of Fair Employment and Housing’s Complaint Regarding Tesla’s Racially “Segregated Workplace”22

1 G. Tesla Subjected Mr. Cage to Discrimination on the Basis of Perceived
2 Veteran Status, Perceived Military Status, and Disability23

3 **V. CAUSES OF ACTION25**

4 FIRST CAUSE OF ACTION
5 RACIAL DISCRIMINATION IN VIOLATION OF FEHA
6 GOV. CODE § 12940(a) and (j)25

7 SECOND CAUSE OF ACTION
8 RACIAL HARASSMENT IN VIOLATION OF FEHA
9 CAL. GOV. CODE § 12940, *ET SEQ.*26

10 THIRD CAUSE OF ACTION
11 RETALIATION IN VIOLATION OF FEHA
12 CAL. GOV. CODE § 12940, *ET SEQ.*28

13 FOURTH CAUSE OF ACTION
14 FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT
15 CAL. GOV. CODE § 12940, *ET SEQ.*30

16 FIFTH CAUSE OF ACTION
17 WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY31

18 SIXTH CAUSE OF ACTION
19 WHISTLEBLOWING RETALIATION (CAL. LAB. CODE § 1102.5).....32

20 SEVENTH CAUSE OF ACTION
21 NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS37

22 EIGHTH CAUSE OF ACTION
23 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS38

24 **VI. PRAYER FOR RELIEF.....39**

25 **VII. JURY DEMAND.....40**

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1 **I. INTRODUCTION**

2 1. Marc Cage, an African American employee who was hired as Tesla’s Project
3 Quality Manager. His primary responsibilities were to create and implement a Quality Control
4 Construction Program, along with creating a Special Inspection Program for all construction
5 related activities. Mr. Cage was fired for two reasons: his commitment to safety and his race.

6 2. Tesla employees, with the full knowledge of Tesla’s management, denigrated and
7 harassed Mr. Cage on the basis of his race. Aside from countless stray racist comments made to
8 him by coworkers with the knowledge of management, **virtually every restroom in Tesla’s**
9 **Fremont facility contained writings or carvings of racist symbols and slurs, including**
10 **swastikas and prominent displays of the n-word.** These and other racially motivated acts went
11 entirely uncured by Tesla, despite their knowledge of them. As one of two Black employees on a
12 thirty-person team, Mr. Cage’s reports about his co-worker’s racially motivated conduct, while
13 brave, fell on deaf ears.

14 3. Mr. Cage also demonstrated an unwavering commitment to identifying and
15 correcting Tesla’s widespread safety and building code violations throughout his tenure at Tesla.
16 The violations Mr. Cage reported directly risked endangering him and his co-workers, and
17 maintaining safety was inherent in his work as a Certified Special Inspector overseeing
18 construction operations. It was through this same mentality that Mr. Cage had achieved
19 considerable success in the construction quality industry throughout his career with other
20 companies. Unfortunately, at Tesla, his efforts to remedy noncompliance were received as
21 antagonistic to the Company’s mission of scaling up production at any cost, including the health
22 and safety of its employees.

23 4. Mr. Cage repeatedly sought the help of other employees, managers, and eventually
24 Tesla’s Human Resources department for relief. But rather than take corrective action, Tesla
25 tacitly supported the harassment he endured by failing to cure the conditions, or discipline any of
26 the responsible individuals. Instead, Tesla terminated Mr. Cage for speaking out.

27 5. Tesla also punished him for his commitment to safety and code-compliant
28 construction. For over two years, Mr. Cage reported countless safety and building code violations

1 to dozens of Tesla personnel in various departments, including to the highest levels of the
2 Company. His reports were uniformly ignored. When it was clear Mr. Cage would not cease his
3 whistleblowing conduct, Tesla commenced a campaign of retaliation designed to muzzle his
4 complaints, including a transfer out of the Quality department intended to isolate him, a pretextual
5 Performance Improvement Plan, and ultimately his termination.

6 6. As alleged herein, Tesla also discriminated against Mr. Cage on the basis of his
7 perceived veteran status and disability. Tesla's retaliatory, discriminatory conduct, and unlawful
8 termination of Mr. Cage has derailed his promising career, divested him of what would have been
9 a lucrative equity position, and caused him significant, ongoing emotional distress. California law
10 prohibits the racially motivated and retaliatory actions Tesla took against Mr. Cage. He brings this
11 complaint to right these clear wrongs.

12 **II. JURISDICTION AND VENUE**

13 7. This Court has personal jurisdiction over Defendant because Defendant conducts
14 business in California, is headquartered in California and this County, and, at all times relevant,
15 the events which combined to produce the injuries sustained by Plaintiff occurred in Alameda
16 County and the State of California. This court is competent to adjudicate this action and the
17 amount in controversy exceeds the jurisdictional minimum of this Court.

18 8. Pursuant to California Code of Civil Procedure § 395(a), venue is proper in the
19 above-entitled Court because Defendant does business in this County and a substantial part of the
20 events or omissions giving rise to the claims occurred in this County.

21 **III. THE PARTIES**

22 9. Plaintiff Marc Cage is a construction quality professional who worked for Tesla
23 from November 2018 until December 2020. Mr. Cage reported numerous legal violations and
24 instances of Tesla's regulatory noncompliance to his superiors during his time with the Company,
25 leading to numerous instances of retaliation and harassment towards him.

26 10. Defendant Tesla, Inc. is a publicly traded corporation, headquartered in Palo Alto,
27 California, with revenue of \$31 billion in 2020. Tesla designs, manufactures, and sells electric
28 vehicles, and operates a vehicle manufacturing factory at 45500 Fremont Blvd., Fremont,

1 California (“the Fremont factory”). A true and correct image of the Fremont factory is set forth
2 below. The conduct at issue in this case largely took place at the Fremont factory.



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17 11. In addition to the Defendant named above, Plaintiff sues fictitious defendants Does
18 1-10, inclusive, because their names, capacities, status, or facts showing them to be liable are not
19 presently known. Plaintiff is informed and believes, and thereon alleges, that each of the
20 fictitiously named Defendants is responsible in some manner for the occurrences herein alleged,
21 and such Defendants caused Plaintiff’s damages as herein alleged. Plaintiff will amend this
22 complaint to show their true names and capacities, together with appropriate charging language,
23 when such information has been ascertained.

24 12. Plaintiff is informed and believes, and thereupon alleges, that at all times herein
25 mentioned each of the Defendants was acting as the partner, agent, servant, and employee of each
26 of the remaining Defendants, and in doing the things alleged herein was acting within the course
27 and scope of such agency and with knowledge of the remaining Defendants.

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1 **IV. FACTUAL BACKGROUND**

2 **A. Tesla Recruits Marc Cage, an Experienced and Successful Project Quality**
3 **Manager, Purportedly to Ensure Code Compliant, Quality Controlled**
4 **Construction.**

5 13. Prior to joining Tesla, Mr. Cage enjoyed consistent success in the field of Quality
6 Control and Quality Assurance (“QC/QA”) in the construction industry for over a decade. He had
7 worked as a project manager in Afghanistan for a federal Department of Defense contractor, and
8 then as a Quality Field Manager for a top engineering firm where Mr. Cage was twice recognized
9 as a “top five” employee from a pool of thousands of employees.

10 14. Mr. Cage is an invaluable addition to any company seeking to ensure safe
11 construction: he is a Certified Welding Inspector, an International Building Code Certified
12 Special Inspector, an American Concrete Institute Grade I Inspector, an ASNT NDR Level II
13 Inspector, an ISO 9001 Lead Auditor, and an ASQ Certified Quality Engineer, and is a Six Sigma
14 Champion Black Belt (a certification program accredited by the National Commission for
15 Certifying Agencies).

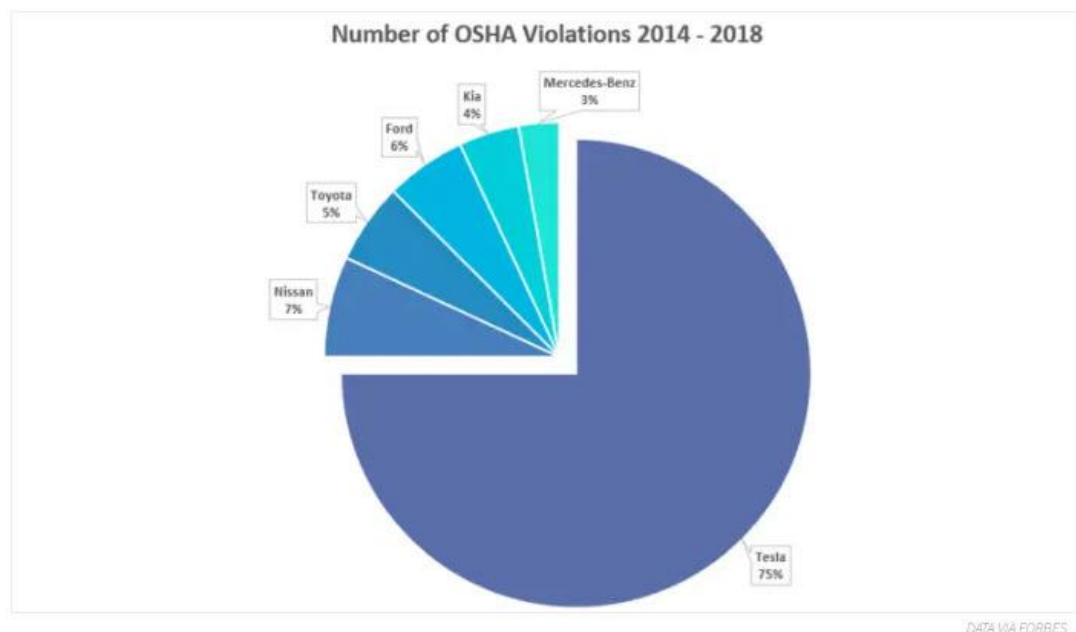
16 15. Recognizing the value of his skills and experience, in June 2018 Tesla began
17 efforts to pluck Mr. Cage from his secure position to become Tesla’s Project Quality Manager.
18 The secure position Mr. Cage left for Tesla was at an engineering firm ranked within the top 5 by
19 The Engineering News Record, which ranks the TOP 500 construction companies. At the time it
20 hired Mr. Cage, Tesla publicly proclaimed its safety values, including to have “the safest car
21 factory in the world.”¹ Excited by the prospect of contributing his skills to a company at the
22 cutting edge of technology, Mr. Cage accepted Tesla’s offer and began on November 5, 2018 as
23 Staff Construction QA/QC Project Manager at Tesla’s Gigafactory in Sparks, Nevada, where he
24 oversaw the procedures on all new construction operations.

25 16. Mr. Cage was required to ensure that all new construction at Tesla complied with
26 the applicable laws, regulations, and codes. He quickly learned that his priority (compliance with
27 the relevant codes) directly conflicted with Tesla’s priority (fast production, at any cost).

28 ¹ See Tesla, “Becoming the Safest Car Factory in the World,” February 4, 2018, *available at*
<https://www.tesla.com/blog/becoming-safest-car-factory-world>.

1 17. Tesla’s commitments to unrealistic production goals and frantic efforts to ramp up
2 its production, often to make good on rash promises,² overrode any commitment to employee
3 safety. Indeed, Tesla’s safety violations have routinely outpaced those of its competitors,³ and
4 although Tesla has claimed that the “recordable incident rate” at certain facilities has at times
5 declined, other reports explain this by pointing out Tesla’s ongoing practice of undercounting and
6 under-reporting work-related injuries.⁴

7 18. For example, Tesla has accumulated more than three times the number of
8 Occupational Safety and Health Administration (OSHA) violations that its top 10 competitors
9 amassed from 2014-2018.



21 ² Lance Ulanoff, *Tesla Model 3 Production Can’t Keep up with Elon Musk’s Twitter Feed*, Mashable (Oct. 3, 2017), available at <https://mashable.com/2017/10/03/tesla-model-3-production-woes-analysis/> (“Tesla reported it has produced just 260 Tesla Model 3 cars, its first mass-market all-electric sedan, in the last quarter. That’s approximately 120 cars a month, a number that would be less distressing if Musk himself hadn’t predicted producing as many as 20,000 Model 3 cars a month by December of this year.”).

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24 ³ Rob Stmpf, *Tesla Had 3 Times as Many OSHA Violations as the 10 Largest US Plants Combined*, TheDrive (Mar. 3, 2019), available at <https://www.thedrive.com/news/26727/tesla-had-3-times-as-many-osha-violations-as-the-10-largest-us-plants-combined#:~:text=In%20fact%2C%20data%20collected%20by,competitors%20amassed%20from%202014%2D2018.>

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27 ⁴ Will Evans, *Tesla Says its Factory Is Safer. But it Left Injuries off the Books*, RevealNews (April 16, 2018), available at <https://revealnews.org/article/tesla-says-its-factory-is-safer-but-it-left-injuries-off-the-books/> (Former Tesla safety professional: “I saw injuries on [Company logs] like broken bones and lacerations that they were saying were not recordable.”).

1 19. Tesla has received 54 OSHA violations, as reported by Forbes,⁵ and has amassed a
 2 total of \$236,730 in fines, many of which presently in the OSHA database are showing as
 3 contested or pending adjudication (meaning that they may change pending the OSHA settlement
 4 post-contest).⁶

Automaker	Plant Location	Employees	Annual Production Capacity	OSHA Violations	Fines
Nissan	Tennessee	8,000	640,000	5	\$ 33,700.00
Toyota	Kentucky	8,000	550,000	4	\$ -
Ford	Missouri	7,320	490,000	4	\$ 29,918.00
BMW	South Carolina	11,000	480,000	0	\$ -
Honda	Ohio	4,200	440,000	0	\$ -
Hyundai	Alabama	3,000	399,500	0	\$ -
Tesla	California	15,000	364,000 *	54 **	\$ 236,730.00
General Motors	Texas	4,125	350,000	0	\$ -
Subaru	Indiana	5,700	340,000	0	\$ -
Kia	Georgia	2,700	340,000	3	\$ 9,180.00
Mercedes-Benz	Alabama	3,800	300,000	2	\$ 16,741.00

* Tesla's annual production capacity is estimated based on CEO Elon Musk's 2018Q3 claims of production output being capped at 7,000 units per week without expansion

** 2014-2018, Includes data uncovered by Forbes not yet available on the OSHA online database.

DATA VIA FORBES, TESLA Q3 2018

5 A collection of OSHA violations and fines amassed by the 10 US auto manufacturing plants from 2014 - 2018.

15 20. And this pattern continued throughout Mr. Cage's tenure. Tesla was cited by
 16 OSHA for more safety violations (45) and received more in fines (\$277,955) related to vehicle
 17 manufacturing than GM (6; \$22,411), Ford (18; \$90,162), or Fiat Chrysler (23; \$90,797) from
 18 2017 through the end of 2019.

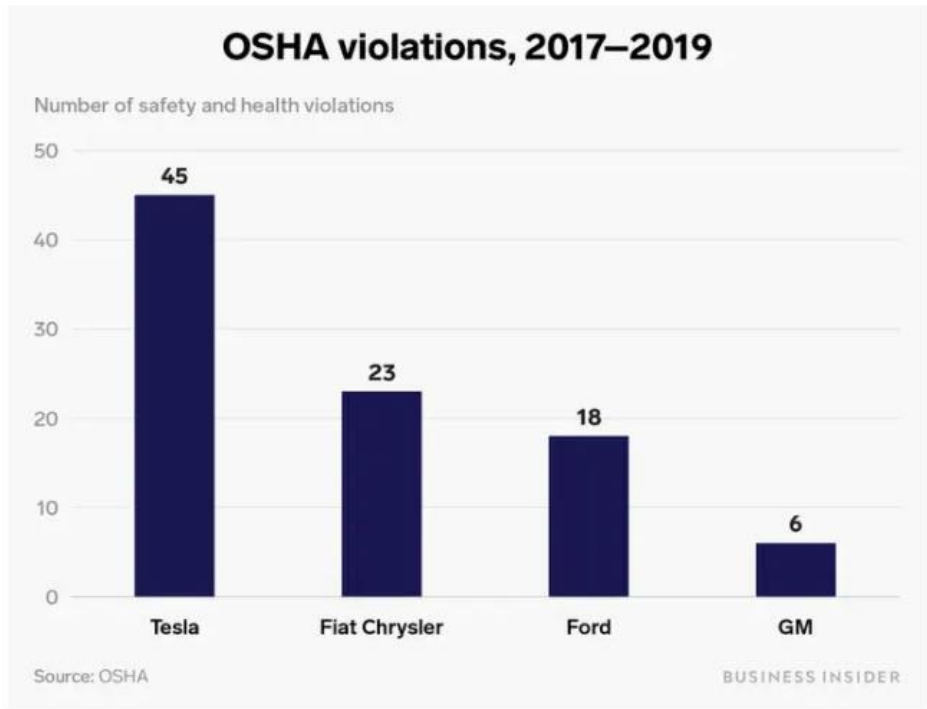
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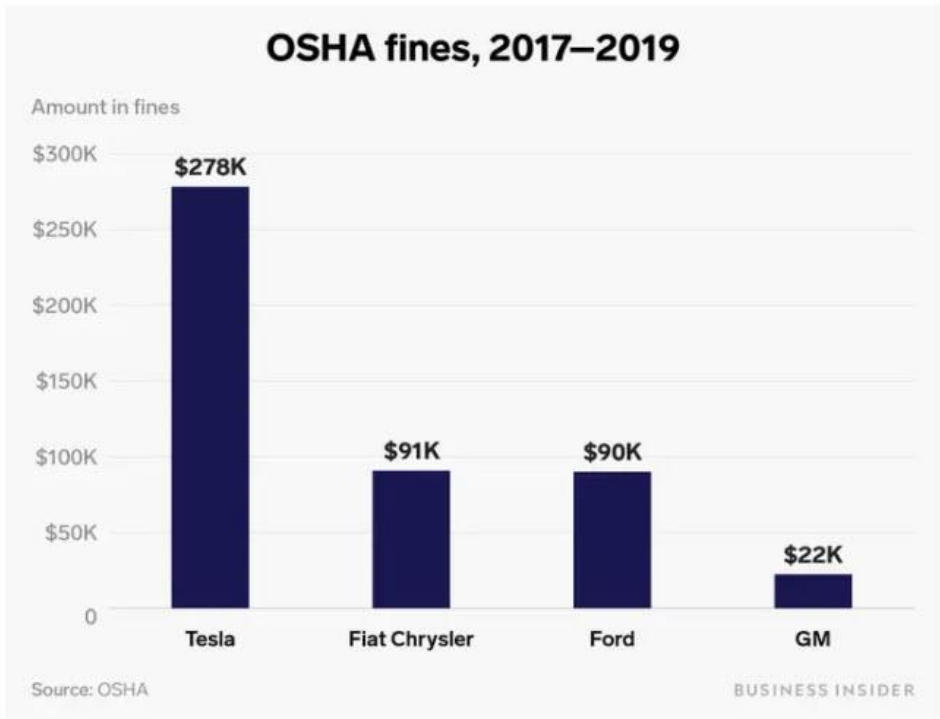
25 _____
 26 ⁵ Alan Ohnsman, *Inside Tesla's Model 3 Factory, Where Safety Violations Keep Rising*,
<https://www.forbes.com/sites/alanohnsman/2019/03/01/tesla-safety-violations-dwarf-big-us-auto-plants-in-aftermath-of-musks-model-3-push/?sh=4343f22e54ce>

27 ⁶ See Rob Stumpf, *Tesla Had 3 Times as Many OSHA Violations as the 10 Largest US Plants Combined*,
 28 <https://www.thedrive.com/news/26727/tesla-had-3-times-as-many-osha-violations-as-the-10-largest-us-plants-combined>

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Shyanne Gal/Business Insider



Shyanne Gal/Business Insider

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⁷ *Tesla Employees Say Car Factory Run Better By Toyota and GM*, available at <https://www.businessinsider.com/tesla-employees-say-car-factory-run-better-by-toyota-gm-2020-2>

1 21. Tesla received total revenues of \$24.578 billion in 2019, \$31.536 billion in 2020,
2 and \$53.823 billion in 2021. Mr. Cage’s experience reveals that these penalties, as well as the risk
3 of serious harm or death to Tesla employees arising from these and other safety violations, is
4 unfortunately accepted by Tesla as the cost of doing business.

5 22. Throughout his employment, Mr. Cage witnessed firsthand (and opposed) Tesla’s
6 prioritization of production over safe construction, as set forth below.

7 **B. Mr. Cage Identifies and Reports Multiple Serious Safety and Building Code**
8 **Violations**

9 **1. Tesla Routinely Violated Federal Injury Reporting Laws, Which Mr.**
10 **Cage Reports to His Superiors**

11 23. In his first month at Tesla, Mr. Cage discovered that the company was not properly
12 handling or tracking on-the-job injuries. On multiple occasions, he learned that employees had
13 sustained serious eye and back injuries on-the-job that were never reported, in contravention of
14 Occupational Safety and Health Administration (“OSHA”) regulations.⁸

15 24. Mr. Cage quickly realized that these incidents were not outliers, but rather, resulted
16 from systematic internal failures on Tesla’s part. For example, Tesla did not even require its
17 Nevada employees to verify they had completed OSHA training to ensure they understood injury
18 reporting protocols, violating Nevada law. Nev. Rev. Stat. § 618.983 (“Not later than 15 days
19 after the date a construction worker other than a supervisory employee is hired, the construction
20 worker must obtain a completion card for an OSHA-10 [hour] course”). And employees
21 repeatedly expressed their fear that reporting injuries could cost them their jobs.

22 25. Failure to effectuate sufficient injury reporting structures is problematic because,
23 among other reasons, it (1) fosters a culture of silence and chilling effect around reporting
24 injuries, and (2) leads to under-reporting and obfuscation of serious safety issues, preventing them
25 from being identified and solved.

26 26. Troubled by Tesla’s dangerous noncompliance, Mr. Cage raised this issue with
27 several superior individuals at Tesla, including the Director of Safety for North America, the

28 ⁸ See 29 C.F.R. §§ 1904.4, 1904.7 (employer “must record each [work-related] . . . injury” that results in, *inter alia*, “[m]edical treatment beyond first aid,” “[d]ays away from work,” or “[a] significant injury or illness”).

1 Senior Construction Manager in charge of the operation, and the Director of Construction, who
2 responded by blaming the Tesla employees for not reporting their injuries. Despite Mr. Cage’s
3 report, Tesla’s OSHA compliance issues persisted.

4 **2. Mr. Cage Reports that Tesla is Violating Safety Codes in its**
5 **Maintenance of Pressure Vessels**

6 27. Not long after the foregoing reports, Mr. Cage documented serious and potentially
7 disastrous deficiencies in Tesla’s welding practices at the Nevada Gigafactory. On February 26,
8 2019, Mr. Cage observed a welder performing a seal weld on a pressure vessel. When Mr. Cage
9 inspected the weld setup, he noted the welder was carrying out work that Tesla could not legally
10 perform without that welder holding a specific National Board of Boiler and Pressure Vessel
11 Inspectors certification.

12 28. Mr. Cage knew that without this certification, a failed vessel could not legally be
13 diagnosed, welded, or stamped as a repair (which the welder was doing). *See Nev. Admin. Code*
14 *455C.216.*⁹ Further, Mr. Cage learned the welder had performed the job without reviewing the
15 fabricator documentation for the vessel: a critical step in ensuring that welding occurs with the
16 correct process, heat input, and filler metal, so as to avoid welding failure. *See Nev. Admin. Code*
17 *455C.108; ASME Boiler and Pressure Vessel Code, Section V, T-190.*

18 29. Aside from being blatantly unlawful, **this impropriety created immediate risk of**
19 **the pressure vessel exploding and blasting shrapnel throughout the Gigafactory.**
20 Catastrophic, fatal explosions occur as a result of such lapses in protocol.¹⁰ The implications of

21 ⁹ Nev. Admin. Code 455C.216(b) (“If a repair or alteration to a boiler or pressure vessel is
22 necessary, an inspector or special inspector must be consulted about the appropriate method of
23 making the repair or alteration. After the repair or alteration is made, the inspector or special
24 inspector shall inspect the boiler or pressure vessel in the manner set forth in the code. The person
25 who makes the repairs or alterations shall submit the ‘R’ form, prescribed by the National Board,
26 to the Mechanical Compliance Section within 30 days after completion of the repair or
27 alteration.”).

28 ¹⁰ *See* 29 U.S.C. § 654(a)(1) (requiring each employer to furnish a place of employment free from
recognized hazards that are “causing or are likely to cause death or serious physical harm.”) Tesla
is indisputably on notice of the serious risk of this flagrant safety violation, which is well-known
throughout the industry. *See, e.g., U.S. EPA, Rupture Hazard of Pressure Vessels* (May 1997),
available at <https://www.epa.gov/sites/production/files/2013-11/documents/rupt-ves.pdf>
 (“[T]hree workers were killed and a number of others were injured when a high-pressure vessel . .
. failed catastrophically at the weld area.”).

1 this safety violation were particularly distressing to Mr. Cage, who had been severely injured as a
2 result of explosions in Afghanistan two different times.

3 30. When Mr. Cage informed his superiors, including the Director of Construction,
4 that the welder was not following the applicable regulations and would need to stop the job, Mr.
5 Westmoreland responded that the repair must continue. To comply with the applicable laws and
6 regulations would have meant shutting down the “die cast stamping” portion of Tesla’s factory, in
7 turn requiring an immediate halt in all factory production. Thus, the welder continued working as
8 a result of the pressure Tesla imposed never to slow production.

9 31. Immediately following the incident and for several days thereafter, Mr. Cage
10 reported the dangerous violations he had witnessed with a variety of Tesla personnel in different
11 departments,¹¹ each of whom disclaimed any responsibility to address them. In response, Mr.
12 Cage was explicitly told that raising an issue with Tesla’s construction practices (or otherwise
13 slowing production) was out of the question, as that would interfere with the agendas of CEO
14 Elon Musk and Jerome Guillen, President of Automotive. Employees firmly believed that raising
15 safety issues could cost them their jobs.

16 32. Undaunted and motivated by a call to safety, Mr. Cage escalated his reports up the
17 chain to Tesla’s Director of Construction, the Quality & Commissioning Program Manager, and
18 fellow Staff Construction Quality Project Manager in a March 4, 2019 email. *See Exhibit 1.* The
19 email explained the utter danger of what had transpired and identified changes Tesla needed to
20 take for legal compliance, noting the company was exposed to criminal liability as a consequence
21 of its failure to act.¹² Mr. Cage explained that Tesla needed to develop a repair plan for all
22 equipment, recommended Tesla maintain welding documentation procedures to prevent
23 potentially deadly explosions, and included the relevant ASME international welding codes and
24 the Nevada Administrative Code, highlighting portions that he observed Tesla had not followed.
25 His report was clear, well-supported, and made in good faith.

26
27 ¹¹ These individuals included Laura Hardy (Director of Safety), Stephen Kwok (Mechanical
28 Designer), and Zack Sloss (Construction Safety Technician).

¹² 29 U.S.C. § 666(e) (providing for criminal liability and imprisonment for willful violations of
safety causing death of an employee).

1 33. Tesla not only failed to adopt Mr. Cage’s recommendations, but kept the illegally
2 repaired vessels in service for *three months* so as not to restrict production, while at the same time
3 pushing to scale-up its production capacity. The pressure vessel could literally have exploded any
4 second. As production carried on, Tesla employees unknowingly risked serious injury or death
5 every day.

6 **3. Mr. Cage Discovers and Reports that Tesla Had Been Using**
7 **Unqualified Inspectors Who Were Performing Sham Inspections for**
8 **Over Three Years**

9 34. In August 2019, at Tesla’s request, Mr. Cage left Tesla’s Nevada Gigafactory and
10 began managing projects at its Model Y factory in Fremont, California. On his first day at this
11 new location, an employee from one of Tesla’s contracting firms held himself out as a special
12 inspector and arrived on a job site to conduct a purported “inspection.” Mr. Cage asked him for
13 proof of his special inspector credential, and the contractor could not provide it. Mr. Cage quickly
14 notified Tesla’s Senior Project Quality Manager, but Tesla ignored Mr. Cage’s report, and
15 continued to contract with the same firm for special inspections.

16 35. Surprised and unsettled by Tesla’s lack of a response, Mr. Cage looked into
17 whether this particular contracted firm had ever sent unqualified special inspectors before. Mr.
18 Cage reviewed relevant records and found that **42% of the inspection reports had been**
19 **performed by non-qualified inspectors** and these invalid inspections had occurred with
20 regularity for over **two years**, dating back to 2017.

21 36. The firm, it turned out, had routinely inspected soil compaction, pile driving,
22 concrete placement, anchor bolt testing, and other critical construction elements, without the
23 qualifications required under the California Building Code.¹³ As a result, years’ worth of tests for
24 concrete and bolts, among other things, were invalid, and Tesla’s facilities were severely out of
25 compliance with the California Building Code and the City of Fremont Municipal Code.¹⁴

26 37. Aiming to bring Tesla into compliance, Mr. Cage conveyed his findings in an
27 email sent on October 30, 2019 to Afsanah Farokhi. To properly address these violations, Tesla

28 ¹³ See Cal. Bldg. Code §§ 1704.2, 1705.

¹⁴ Incidentally, Mr. Cage also discovered and reported that the contractor firm had been routinely
overbilling Tesla for inspections.

1 needed to report the years of sham inspections to the city Building Inspector, who would then
2 perform another inspection to ensure safety standards were adhered to. But reporting its
3 improprieties to the Inspector would have required Tesla to substantially slow, if not stop, its
4 operations at the factory in Fremont. Tesla ignored the issues Mr. Cage raised, and even engaged
5 the same firm for more inspection work soon thereafter, leading to additional—and likely still
6 ongoing—noncompliance.

7 **4. Mr. Cage Reports a Number of Safety and Building Code Violations** 8 **Occurring at the Fremont Facility**

9 38. On or around November 9, 2019, Mr. Cage observed and documented numerous
10 violations at a jobsite at the Model Y facility in Fremont. These violations included: working in a
11 trench without a permit; working in a trench without proper means of egress; workers next to an
12 excavation without fall protection; spoilage being stored too close to the edge of the operation;
13 and no plan to create a hard barricade to prevent access to the trench after hours. Mr. Cage
14 believed these practices violated various legal provisions, including the California Building Code
15 and OSHA.¹⁵ Mr. Cage raised his concerns at the jobsite to the contractor, who responded “*get*
16 *the fuck out of here*” and “*I can do what the fuck I want.*” The contractor explained that Tesla
17 knew what he was doing, and told him to complete the trench work without the applicable permits
18 (despite that they were obviously required by law). Mr. Cage emailed Tesla’s Director of
19 Construction detailing these violations and, once again, was ignored.

20 39. In addition to the violations described above, Mr. Cage documented many other
21 instances of Tesla’s noncompliance. For example, in early 2019, Mr. Cage compiled and
22 circulated to his manager an extensive list of building code violations in the D Quad area of the
23 Gigafactory, stemming from shoddy construction work dating back prior to Mr. Cage’s time with
24 the company. Mr. Cage compiled a list of more than 200 violations, which included improperly
25 routed cables, breaks in piping, missing handrails, and exposed electrical outlets, among many
26 other issues. Mr. Cage emailed a spreadsheet listing the violations and the estimated costs to

27 _____
28 ¹⁵ See, e.g., 29 C.F.R. § 1926.651(c)(1) (“Means of egress from trench excavations. A stairway, ladder, ramp or other safe means of egress shall be located in trench excavations that are more than 4 feet” in depth.), § 1926.652; Cal. Bldg. Code § 1705.6.

1 repair them to the Quality and Commission Program Manager. Tesla management took no actions
2 in response and, to Mr. Cage's knowledge, many if not all of these violations persist to this day.

3 **C. Seeking to Stifle Mr. Cage's Reports of Noncompliance, Tesla Limits His**
4 **Ability to Report Violations, and Prepares to Terminate Him**

5 **1. Tesla Removes Mr. Cage from the Quality Department to Prevent Him**
6 **from Documenting Further Violations**

7 40. In February 2020, Tesla transferred Mr. Cage out of the Quality department, and
8 reassigned him to a position as Superintendent at Tesla's Gigafactory, where his primary
9 responsibility was the administrative task of closing out building permits for projects that were no
10 longer active. This was undoubtedly a demotion.

11 41. Tesla's Director of Construction told Mr. Cage he would be reassigned, but
12 provided no reason for the move, other than Tesla "needed some help closing out permits." This
13 re-assignment was intentionally designed to muzzle any future reporting by Mr. Cage: by limiting
14 Mr. Cage's role to one focused on post-construction permit closing, he would be removed and
15 separated from witnessing building code violations firsthand or slowing the progress on any
16 project.

17 42. Shockingly transparent about Tesla's motivations, the Director of Construction
18 even expressly told him before the transfer: "***Do not report any more deficiencies.***" And a few
19 months after that, in May 2020, Tesla transferred Mr. Cage into the Education Department as
20 construction educator, again providing no explanation for this arbitrary assignment.

21 **2. Mr. Cage Faces Persistent Disrespect, and Discriminatory and**
22 **Offensive Conduct**

23 43. Even after Mr. Cage was reassigned to roles outside of project management he
24 continued to report Tesla's safety and building code violations, causing his new manager (a
25 Superintendent transitioning to Technology Manager) and others to subject him to senseless
26 disrespect, retaliation, and harassment.

27 44. In July 2020, Mr. Cage's manager berated him for confirming that the Special
28 Inspector assigned to inspect rebar-detailing/formwork of his managers construction operation,
was correct with his documentation of deficiencies and halting the operation.

1 45. Later, Mr. Cage was cursed at again by his manager, for noting issues with wall
2 supports in Tesla’s new battery storage facility on the day of construction. Furious that Mr.
3 Cage’s comments could cause a delay, his manager shouted: “What the fuck are you supposed to
4 be doing? Do your fucking job!”

5 46. In August 2020, Mr. Cage observed that a construction project was temporarily
6 without an emergency exit as a result of his manager’s oversight, in violation of OSHA
7 regulations. 29 C.F.R. § 1926.34. Mr. Cage raised this issue, ultimately causing work on the
8 project to stop until it was brought into compliance, delaying the project and again angering his
9 manager.

10 47. After Mr. Cage had challenged his manager’s reckless construction practices
11 several times, his manager made several offensive, unnecessary, racially-motivated remarks to
12 Mr. Cage in questioning his grocery expenses while travelling for work-related reasons. Although
13 Mr. Fissette approved Mr. Cage’s receipt for groceries, he needlessly remarked on the expense
14 report: “This is \$160 for a BBQ?” This comment was made in intentional reference to an
15 insulting, racist stereotype that negatively depicts African Americans’ diet or eating habits. It was
16 intended as a cruel and prejudiced insult. Mr. Cage reported this incident to the Director of Tesla
17 Construction, who did not respond.

18 **3. Tesla Puts Mr. Cage on a Pretextual Performance Improvement**
19 **Plan—Then Retracts Its Inaccurate Representations**

20 48. In September 2020 (shortly after Mr. Cage engaged in protected activity in July
21 and August as described above), his manager put him on a Performance Improvement Plan
22 (“PIP”) claiming he “did not create knowledge based assessments” in his role as construction
23 educator. Mr. Cage immediately corrected this by pointing out he had administered tests and
24 quizzes to evaluate student employees’ progress.

25 49. Unable to counter this fact, Tesla simply deleted that statement, revising the PIP to
26 say: “Marc was not able to implement an ongoing training program through the summer with self-
27 perform construction . . . The main reason was communication challenges with his peers for
28

1 schedule [*sic*] the trainings and communicating the expectations to the SP leadership in order to
2 make the trainings feasible.”

3 50. This inexplicable “feedback” was blatantly pretextual: in June 2020, almost
4 immediately before his whistleblowing conduct, Mr. Cage received a positive performance review
5 from his manager and the Director of Tesla Construction for his role as a construction educator.
6 Only after he raised safety and compliance concerns safety concerns and building code
7 deficiencies within his managers’ scope of work, did Tesla criticize his performance.

8 **D. Mr. Cage Escalates Previously Reported Violations to Higher Levels of**
9 **Management, and Reports Additional, Ongoing Violations**

10 51. In September 2020, Mr. Cage was deeply troubled to learn that several Tesla
11 employees were severely injured as a result of safety code violations. Given that Tesla had
12 ignored all of his prior reports, Mr. Cage concluded he needed to escalate them further. On
13 September 29, 2020, Mr. Cage emailed Valerie Workman (VP, People), Jerome Guillen
14 (President of Automotive), and Fernanda Veiga (Senior HR Business Partner) detailing a variety
15 of Tesla’s prior and continuing violations. *See* **Exhibit 2**.

16 52. Mr. Cage described Tesla’s compliance failures regarding high pressure vessel
17 welding procedures and use of nonqualified inspectors (*see supra* §§ B.2, B.3), and other
18 compliance failures at the Gigafactory, supported by various pieces of photo evidence.
19 Additionally, Mr. Cage pointed out that Tesla had laid off its only Certified Welding inspector,
20 meaning it did not have a certified welding inspector on site for welding and bolting operations,
21 as required by law.¹⁶ Tesla did not respond.

22 53. On October 4, 2020, Mr. Cage emailed Angela Chadwick (Associate General
23 Counsel) and Benita Patel (Senior Employee Relations Manager) reiterating his concerns with
24 Tesla’s lack of compliance with safety laws and the building code. A copy of this email is
25 attached as **Exhibit 3**. In the email he asked: “Where do I raise issues after I have escalated the
26 issues to my manager and director,” as he had done dozens of times to no avail. Mr. Cage
27

28 ¹⁶ On October 2, 2020, Mr. Cage forwarded his September 29 email to Angela Chadwick
(Associate General Counsel) and Benita Patel (Senior Employee Relations Manager).

1 explained that his email, along with the September 29 email, represented his “last hope of having
2 these issues remedied internally.”

3 54. Mr. Cage again reported that he had witnessed the facilities team routinely
4 disregard a range of safety requirements in performing high-stakes welding repairs; that the
5 production team set up a construction contract to upgrade paint booths without quality control and
6 special inspections causing the project to build out of compliance; and that welding at Gigafactory
7 in Nevada was not in compliance with the law whenever a Certified Weld Inspector (like himself)
8 was not present.¹⁷ And when Mr. Cage was transferred to a Superintendent position at the
9 Gigafactory in February 2020, all of the bolting and welding operations were out of compliance
10 as no one with his credentials served as a replacement. Finally, Mr. Cage reported additional
11 compliance deficiencies with Tesla’s Tool Install Team.

12 55. In the email Mr. Cage sought “a commitment from Tesla that we will build in
13 accordance with the International Building Code”¹⁸ and explained that “the point is to make sure
14 that these things don’t happen again.” He concluded by asking Tesla to “make a commitment to
15 do everything the right way.”¹⁹

16 **E. Tesla Retaliates by Terminating Mr. Cage**

17 56. Shortly after the foregoing explicit whistleblowing activity, in November 2020, in
18 the wake of Mr. Cage’s emails informing high levels of Tesla management of the company’s
19 blatant and longstanding compliance failures, Vincent Woodard (HR Director, Fremont) called
20 Mr. Cage, telling him “things had changed” and he would no longer have a position for him.
21 Tesla terminated Mr. Cage on December 5, 2020.

22 ///
23
24

25 ¹⁷ This means Tesla’s welding operations at Gigafactory in Nevada were likely out of compliance
26 from approximately August 2019 to February 2020 and again from April 2020 to December 2020,
27 when Mr. Cage was not working at the Gigafactory.

28 ¹⁸ The California and Nevada building codes substantially incorporate the International Building Code.

¹⁹ On October 5, 2020, Mr. Cage forwarded his March 4, 2019 email reporting the out-of-compliance welding operation to Aummar Kayani (Senior Manager Internal Audit).

1 **F. Tesla Subjected Mr. Cage to Discrimination on the Basis of Race**

2 **1. Tesla’s Discrimination Against Mr. Cage**

3 57. Tesla’s unfavorable treatment of Mr. Cage was also motivated by racial
4 discrimination.

5 58. From the start of his employment with Tesla, Mr. Cage was subjected to hostile,
6 racist treatment. For example, in November 2018, within Mr. Cage’s first two weeks on the job, a
7 Caucasian Construction Superintendent accused Mr. Cage (one of two Black employees on a
8 thirty-person team) of stealing some stickers from him.

9 59. Mr. Cage was shocked to learn that, rather than simply ask him about the
10 “stickers,” the Superintendent and a number of others on the team instead opted to break into Mr.
11 Cage’s locked filing cabinet on a vigilante mission to purportedly look for the missing stickers.
12 Aside from being an outright breach of privacy, around a dozen Tesla employees participated in
13 or observed this invasive “investigation,” which was entirely unnecessary, embarrassing and
14 appeared to target Mr. Cage for no legitimate reason.

15 60. When Mr. Cage reported this incident to the Director of Construction and the
16 Quality & Commissioning Manager, they, again, took no action. Mr. Cage never came to learn of
17 any Caucasian employees being singled out and subjected to any similar type of “investigation.”

18 61. Just weeks later, in December 2018, a Construction Manager passed out
19 construction engineering team jackets to everyone on Mr. Cage’s team of roughly 25 people,
20 except Mr. Cage. Even three members who joined the team after Mr. Cage received jackets, and
21 two employees received the jacket size that Mr. Cage requested. When Mr. Cage asked the
22 Construction Manager why he was singled out and not given a jacket while his two new
23 colleagues were, the Construction Manager screamed at Mr. Cage and threatened to fire him. Mr.
24 Cage reported this incident to The Director of Construction, who, once again, took no action in
25 response.

26 62. Adding further insult to injury, Tesla's Quality & Commissioning Manager, Mr.
27 Cage’s supervisor in 2019, routinely referred to Mr. Cage’s few African-American colleagues at
28 the Gigafactory as his “brothers.” The manager was aware these individuals were not related to

1 Mr. Cage, and never referred to any individual of a different race as Mr. Cage’s “brother.” The
2 use of this term was racially motivated and demeaning.

3 63. In or around January 2020, in the Fremont, California factory, Mr. Cage stopped
4 work on a construction project that was not proceeding in compliance with applicable regulations.
5 A subcontractor of Tesla was carrying out the project, and Tesla personnel were overseeing it.
6 The owner of the subcontractor became enraged that Mr. Cage had stopped work, threatened to
7 beat him up, calling Mr. Cage “boy,” yet another racist insult.

8 64. As discussed above, in August 2020, Mr. Cage’s manager needlessly remarked on
9 Mr. Cage’s expense report for groceries, apparently as a racist insult: “This is \$160 for a BBQ?”
10 Mr. Cage reported this incident (as clearly racially motivated) to the Director of Construction (his
11 manager’s superior) but received no response. In September 2020, soon after Mr. Cage reported
12 his manager’s apparently racist conduct, his manager then placed Mr. Cage on a factually
13 inaccurate Performance Improvement Plan. As discussed, in or around November 2020, shortly
14 after Mr. Cage reported his manager’s racist remarks up the chain of command via email, Vincent
15 Woodard (Human Resources Director, Fremont) called Mr. Cage, telling him “things had
16 changed” and there was no longer a position at the Company for him. Tesla terminated Mr. Cage
17 on December 5, 2020, approximately one month later.

18 65. As if the personal discrimination against him were not enough, Mr. Cage was
19 appalled to find both the Gigafactory and the Tesla Fremont facility filled with racist imagery and
20 phrases. **Virtually every restroom in Tesla’s Fremont facility contained writings or carvings**
21 **of racist symbols and slurs, including swastikas and prominent displays of the n-word.** Mr.
22 Cage observed that this racist material persisted for months in bathrooms without Tesla covering
23 it up or otherwise addressing it. As the restrooms were used by large numbers of Tesla employees
24 (including those in management positions), Tesla was aware of this, but took no remedial action.

25 66. These racist images and writings were present for the duration of Mr. Cage’s time
26 at Tesla’s Fremont factory. Similarly, while working at the Gigafactory, Mr. Cage observed that
27 the interiors of the porta-potties near the Centralized Utilities Building at the Gigafactory were
28 routinely inscribed with racist symbols and slurs, such as swastikas and the n-word. These hateful

1 images contributed to the hostile work environment he experienced. Every day that he went to
2 work, he was reminded of Tesla’s tacit approval of what these images represent.

3 **2. The California Department of Fair Employment and Housing’s**
4 **Complaint Regarding Tesla’s Racially “Segregated Workplace”**

5 67. On February 9, 2022, the California Department of Fair Employment and Housing
6 (“DFEH”) filed a civil complaint in Alameda County Superior Court for operating what it
7 describes as a “racially segregated workplace.” *See Dept. Fair Empl. & Hous. v. Tesla, Inc., et al.*,
8 Case No. 22CV006830 (Alameda County Sup. Ct.).

9 68. The complaint states that after approximately three years of investigation and
10 receiving hundreds of complaints from workings, DFEH issued a cause finding on January 2,
11 2022. The DFEH found evidence that: (a) Tesla subjected its Black and/or African American
12 workers to racial harassment and discrimination against them in the terms and conditions of
13 employment; (b) Tesla retaliated against its Black and/or African American workers when they
14 complained or reported the harassment or discrimination; (c) Tesla failed to take all reasonable
15 steps to prevent unlawful discrimination, harassment, or retaliation; (d) Tesla paid Black and/or
16 African American workers less than workers of another race or ethnicity for substantially similar
17 work; (e) Tesla required Black and/or African American workers to waive rights, forums, and/or
18 procedures as a condition of employment, continued employment, or the receipt of any
19 employment-related benefit; and (f) Tesla had engaged in record-keeping violations.

20 69. The complaint details a litany of appalling racial harassment and discrimination in
21 Tesla’s facilities along the same lines as Tesla’s misconduct detailed herein. For example, the
22 complaint alleges Tesla employees found “swastikas, ‘KKK,’ the n-word, and other racist
23 writings [] etched onto walls of restrooms, restroom stalls, lunch tables, and even factory
24 machinery.” The complaint also alleges that Tesla personnel “referred to the areas where many
25 Black and/or African Americans worked as the ‘porch monkey station.’”

26 70. DFEH Director Kevin Kish commented: “Tesla’s Fremont factory is a racially
27 segregated workplace where Black workers are subjected to racial slurs and discriminated against
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1 in job assignments, discipline, pay, and promotion creating hostile work environment. The facts
2 on this case speak for themselves.”

3 71. Shortly before the complaint was filed, Tesla published a post on its blog
4 downplaying the allegations against the company and stating that they “focus on events from
5 years ago.” The blog post also criticized the DFEH for filing a complaint against a company “that
6 has done so much good for California.”²⁰ Tesla’s response to the detailed allegations of
7 discrimination in the DFEH’s complaint is consistent with the dismissive attitude it has previously
8 adopted in response to racial discrimination within the Company. CEO Elon Musk, for example,
9 has advised Tesla workers that they *should be “thick-skinned” about race harassment.*²¹

10 **G. Tesla Subjected Mr. Cage to Discrimination on the Basis of Perceived Veteran**
11 **Status, Perceived Military Status, and Disability**

12 72. Those Mr. Cage worked with, including his supervisors and upper management,
13 were all aware of Mr. Cage’s experiences in Afghanistan.

14 73. In or around December 2018, a Tesla contractor working on a project with Mr.
15 Cage had set a ringtone on his phone resembling a warning alert for rocket strikes that was
16 disturbingly similar to the alert sound heard by Mr. Cage while working in active duty in a war
17 zone in Afghanistan.

18 74. Mr. Cage quietly explained, in the presence of several co-workers, that hearing this
19 particular ringtone was extremely disturbing to him, as he had been severely injured in explosions
20 in Afghanistan two different times. He asked the contractor if he would change it to a different
21 sound. The Caucasian contractor refused outright, opting instead to maliciously to keep the
22 ringtone for the sole purpose of tormenting Mr. Cage.

23 75. Worse, a Caucasian Tesla Construction Superintendent and several other
24 Caucasian colleagues even *changed their ringtones to the same disturbing sound, purely to harass*
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26 ²⁰ *The DFEH’s Misguided Lawsuit*, TESLA (Feb. 9, 2022), available at
27 <https://www.tesla.com/blog/dfehs-misguided-lawsuit>.

28 ²¹ Lauren Hepler, *Menial Tasks, Slurs, and Swastikas: Many Black Workers at Tesla Say They Faced Racism*, New York Times (Nov. 30, 2018), available at <https://www.nytimes.com/2018/11/30/business/tesla-factory-racism.html>.

1 *Mr. Cage*. Even more egregiously, the Construction Superintendent sarcastically told Mr. Cage to
2 “get over it,” and that it was good for him to hear the disturbing ringtone because he needed to
3 “face his fears.”

4 76. Based on his traumatic experiences in Afghanistan, Mr. Cage was extremely
5 sensitive about people approaching him from behind. In around December 2018, to avoid this
6 trigger, Mr. Cage reoriented his desk to minimize the possibility of people walking up behind
7 him. A Tesla colleague harassed Mr. Cage about this, cruelly interrogating him as to why he
8 reoriented his desk. When Mr. Cage explained the reason related to stress and mental suffering
9 stemming from his experiences in a war zone, the colleague told Mr. Cage he was “not special”
10 and asked him “who he thought he was” to move his desk without the colleague’s permission (he
11 was never Mr. Cage’s superior). Mr. Cage believes he was retaliated and/or discriminated against
12 for his perceived veteran or military status, and for a perceived disability resulting from his
13 symptoms of PTSD.

14 77. As discussed above, in February 2019, Mr. Cage discovered that a pressure vessel
15 at the Tesla Gigafactory had undergone maintenance that did not adhere to various statutory and
16 regulatory requirements. Mr. Cage knew that as a result of this deficient repair, the pressure
17 vessel was at risk of exploding, and he felt very uncomfortable working near it, as Tesla required
18 him to do. He raised this issue and his concerns to his supervisor responsible for Quality and
19 Commissioning, and told her that this issue was particularly distressing to him as he had
20 previously been involved in serious explosions in Afghanistan and experienced ongoing stress
21 from those incidents. But his manager derided and dismissed Mr. Cage’s concerns. The manager,
22 among others to whom Mr. Cage reported the incident, took no action to address Mr. Cage’s
23 report regarding the pressure vessel.

24 78. Although Tesla management was aware of this undisputedly cruel and harassing
25 conduct, they declined to intervene in any way.

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1 **V. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **RACIAL DISCRIMINATION IN VIOLATION OF FEHA**

4 **GOV. CODE § 12940(a) and (j)**

5 79. Plaintiff incorporates by reference each and every allegation in this complaint as
6 though fully set forth here.

7 80. Mr. Cage at all times was an employee covered by the Fair Employment and
8 Housing Act (“FEHA”), California Government Code §§ 12940(a) and (j), which prohibits an
9 employer from discriminating and harassing an employee on the basis of color and race.

10 81. Tesla was at all times an employer as defined under the FEHA.

11 82. As described herein, Mr. Cage was subjected to unwelcome, discriminatory and
12 harassing conduct based on: (a) race and/or color; (b) perceived veteran/military status; and (c)
13 perceived disability.

14 83. This conduct by Mr. Cage’s co-workers and supervisors, ratified by Tesla, was
15 unwelcome, directed towards him, and part of a continuing pattern of conduct. Mr. Cage
16 considered the conduct of Tesla’s employees to be of an expressly racially hostile nature, and
17 believed this conduct was directed at him because he is African American and/or based on his
18 perceived veteran/military status and/or based on his perceived disability.

19 84. Tesla’s practice of failing to take any action in response to Mr. Cage’s complaints
20 was a substantial factor in causing Mr. Cage’s harm.

21 85. Tesla’s violations of the FEHA caused Mr. Cage to suffer harm as set forth above.
22 The above-described discrimination and harassing conduct violates Cal. Gov. Code § 12940, *et*
23 *seq.*, and entitles Mr. Cage to all categories of damages, including (but not limited to) economic,
24 non-economic, exemplary, and punitive damages.

25 86. As a direct and consequential result of Tesla’s actions and omissions, Mr. Cage has
26 suffered and continue to suffer special damages.

27 87. As a direct and consequential result of the actions and failures to act by Tesla
28 alleged herein, Plaintiff has suffered injury to his mental and emotional well-being, including

1 fear, anxiety, depression, pain, humiliation, anger, despair, embarrassment, and uncertainty; all of
2 the type, nature, and extent ordinarily associated with the wrongful conduct alleged against Tesla
3 herein. The value of Plaintiff's damages for injuries to his mental and emotional well-being is an
4 amount in excess of the minimum jurisdictional threshold of this Court, the precise amount of
5 which will be proven at trial.

6 88. By reason of the conduct of Tesla as alleged herein, Mr. Cage has retained
7 attorneys to prosecute the present action. Mr. Cage is therefore entitled to reasonable attorney's
8 fees and litigation expenses, including expert witness fees and costs, incurred in bringing this
9 action.

10 89. Tesla engaged in the acts alleged herein maliciously, fraudulently, and
11 oppressively; with the wrongful intention of injuring Mr. Cage; with the conscious disregard of
12 the rights and safety of Mr. Cage; and with an improper and evil motive amounting to malice.
13 Mr. Cage is thus entitled to recover punitive damages from Tesla in an amount according to
14 proof.

15 **SECOND CAUSE OF ACTION**

16 **RACIAL HARASSMENT IN VIOLATION OF FEHA**

17 **CAL. GOV. CODE § 12940, *ET SEQ.***

18 90. Plaintiff incorporates by reference each and every allegation in this complaint as
19 though fully set forth here.

20 91. Mr. Cage at all times was an employee covered by the Fair Employment and
21 Housing Act ("FEHA"), California Government Code §§ 12940(a) and (j), which prohibits an
22 employer from discriminating and harassing an employee on the basis of color and race.

23 92. Tesla was at all times an employer as defined under the FEHA.

24 93. As described herein, Mr. Cage was subjected to unwelcome, discriminatory and
25 harassing conduct based on: (a) race and/or color; (b) perceived veteran/military status; and (c)
26 perceived disability.

27 94. This conduct by Mr. Cage's co-workers and supervisors, ratified by Tesla, was
28 unwelcome, directed towards him, and part of a continuing pattern of conduct. Mr. Cage

1 considered the conduct of Tesla’s employees to be of an expressly racially hostile nature, and
2 believed this conduct was directed at him because he is African American and/or based on his
3 perceived veteran/military status and/or based on his perceived disability.

4 95. The above-described actions constitute racial harassment and discrimination in
5 violation of the FEHA. Mr. Cage was subjected to working in a severe, persistent and/or
6 pervasive racially hostile work environment, which interfered with his work performance, denied
7 him employment privileges, and adversely affected the terms and conditions of his job on the
8 basis of his race.

9 96. The harassing conduct to which Mr. Cage was subjected to was so severe,
10 widespread, and/or persistent that a reasonable African-American in Mr. Cage’s circumstances
11 would have considered the work environment to be hostile and/or abusive.

12 97. Tesla failed to take prompt, remedial and effective action to stop the harassers.

13 98. Tesla’s violations of the FEHA caused Mr. Cage to suffer harm as set forth above.

14 99. The above-described discrimination and harassing conduct violates Cal. Gov. Code
15 § 12940, *et seq.*, and entitles Mr. Cage to all categories of damages, including (but not limited to)
16 economic, non-economic, exemplary, and punitive damages.

17 100. As a direct and consequential result of Tesla’s actions and omissions, Mr. Cage has
18 suffered and continue to suffer special damages.

19 101. As a direct and consequential result of the actions and failures to act by Tesla
20 alleged herein, Plaintiff has suffered injury to his mental and emotional well-being, including
21 fear, anxiety, depression, pain, humiliation, anger, despair, embarrassment, and uncertainty; all of
22 the type, nature, and extent ordinarily associated with the wrongful conduct alleged against Tesla
23 herein. The value of Plaintiff’s damages for injuries to his mental and emotional well-being is an
24 amount in excess of the minimum jurisdictional threshold of this Court, the precise amount of
25 which will be proven at trial.

26 102. By reason of the conduct of Tesla as alleged herein, Mr. Cage has retained
27 attorneys to prosecute the present action. Mr. Cage is therefore entitled to reasonable attorney’s
28

1 fees and litigation expenses, including expert witness fees and costs, incurred in bringing this
2 action.

3 103. Tesla engaged in the acts alleged herein maliciously, fraudulently, and
4 oppressively; with the wrongful intention of injuring Mr. Cage; with the conscious disregard of
5 the rights and safety of Mr. Cage; and with an improper and evil motive amounting to malice.
6 Mr. Cage is thus entitled to recover punitive damages from Tesla in an amount according to
7 proof.

8 **THIRD CAUSE OF ACTION**
9 **RETALIATION IN VIOLATION OF FEHA**
10 **CAL. GOV. CODE § 12940, ET SEQ.**

11 104. Plaintiff incorporates by reference each and every allegation in this complaint as
12 though fully set forth here.

13 105. California law prohibits any employer from discharging or otherwise
14 discriminating against any person because he has opposed any practices forbidden under
15 California’s Fair Employment and Housing Act (“FEHA”). *See* Gov. Code Section 12940(h).

16 106. Mr. Cage engaged in protected activity by opposing Tesla’s racially discriminatory
17 conduct directed toward him, including through sending an email to Rodney Westmoreland on
18 August 19, 2020 to complain that Mr. Cage’s manager, Caleb Fisette, had made a racist comment
19 (“This is \$160 for a bbq?”) on an expense report submitted by Mr. Cage.

20 107. Mr. Cage engaged in further protected activity by opposing Tesla’s racially
21 discriminatory conduct directed toward him through: (a) sending an email to Valerie Workman
22 (VP, People), Jerome Guillen (President of Automotive), and Fernanda Veiga (Senior HR
23 Business Partner) on September 29, 2020, complaining of the same incident involving Caleb
24 Fisette’s racist comment on his expense report; and (b) sending an email to Angela Chadwick
25 (Associate General Counsel) and Benita Patel (Senior Employee Relations Manager) on October
26 2, 2020 complaining of the same incident involving Caleb Fisette’s racist comment on his
27 expense report.
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1 108. Mr. Cage engaged in further protected activity by opposing Tesla’s discriminatory
2 conduct based on perceived veteran/military status and disability, as described herein.

3 109. Soon after engaging in such conduct, Tesla retaliated against Mr. Cage, including
4 when in September 2020, Mr. Fisette put Mr. Cage on an unfounded and factually inaccurate
5 Performance Improvement Plan, which was intended to facilitate Mr. Cage’s termination, and
6 when in November 2020 Tesla informed Mr. Cage that he was going to be terminated.

7 110. Mr. Cage’s opposition to practices forbidden by FEHA was a substantial
8 motivating factor in Tesla’s retaliatory conduct.

9 111. As a direct and consequential result of the actions and failures to act by Tesla
10 alleged herein, Plaintiff has suffered injury to his mental and emotional well-being, including
11 fear, anxiety, depression, pain, humiliation, anger, despair, embarrassment, and uncertainty; all of
12 the type, nature, and extent ordinarily associated with the wrongful conduct alleged against Tesla
13 herein. The value of Plaintiff’s damages for injuries to his mental and emotional well-being is an
14 amount in excess of the minimum jurisdictional threshold of this Court, the precise amount of
15 which will be proven at trial.

16 112. By reason of the conduct of Tesla as alleged herein, Mr. Cage has retained
17 attorneys to prosecute the present action. Mr. Cage is therefore entitled to reasonable attorney’s
18 fees and litigation expenses, including expert witness fees and costs, incurred in bringing this
19 action.

20 113. Tesla engaged in the acts alleged herein maliciously, fraudulently, and
21 oppressively; with the wrongful intention of injuring Mr. Cage; with the conscious disregard of
22 the rights and safety of Mr. Cage; and with an improper and evil motive amounting to malice.
23 Mr. Cage is thus entitled to recover punitive damages from Tesla in an amount according to
24 proof.

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FOURTH CAUSE OF ACTION
FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT
CAL. GOV. CODE § 12940, ET SEQ.

114. Plaintiff incorporates by reference each and every allegation in this complaint as though fully set forth here.

115. Under Gov. Code §12940(k), an employer is required to “take all reasonable steps necessary to prevent [harassing, discriminatory, and/or retaliatory behavior]” in the workplace.

116. Tesla failed to take reasonable steps necessary to prevent instances of discrimination and harassment from occurring. For example, despite Mr. Cage’s repeated reports to persons within Tesla who had the authority to address and prevent harassment and discrimination, Mr. Cage was regularly cursed out by coworkers and was continually confronted by the racist imagery and phrases which were pervasive in Tesla’s facilities. Tesla knew or should have known that Tesla’s employees had engaged or were engaging in racially offensive behavior and failed to stop it.

117. Mr. Cage complained to multiple supervisory employees of Tesla as well as to the Human Resources Department about the discrimination he faced on the basis of race, perceived veteran/military status, and disability, and the subsequent retaliation he was subjected to; but Tesla failed to take any corrective action.

118. Despite being on notice of Tesla’s employees’ propensity to engage in harassing conduct, Tesla failed to act to prevent employees from harassing Mr. Cage, and failed, for example, to address the racist symbols and phrases that pervaded the facilities in which Mr. Cage worked.

119. Tesla also failed to enact an anti-discrimination policy and/or failed to distribute it appropriately and failed to effectively train its employees on racial harassment or discrimination, as well as harassment or discrimination based on perceived veteran/military status or disability.

120. As a result of Tesla’s violations of the FEHA, Mr. Cage suffered harm as set forth herein.

1 121. By reason of the conduct of Tesla as alleged herein, Mr. Cage has retained
2 attorneys to prosecute the present action. Mr. Cage is therefore entitled to reasonable attorney's
3 fees and litigation expenses, including expert witness fees and costs, incurred in bringing this
4 action.

5 122. Tesla engaged in the acts alleged herein maliciously, fraudulently, and
6 oppressively; with the wrongful intention of injuring Mr. Cage; with the conscious disregard of
7 the rights and safety of Mr. Cage; and with an improper and evil motive amounting to malice.
8 Mr. Cage is thus entitled to recover punitive damages from Tesla in an amount according to
9 proof.

10 **FIFTH CAUSE OF ACTION**

11 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

12 123. Plaintiff incorporates by reference each and every allegation in this complaint as
13 though fully set forth here.

14 124. At all relevant times, Tesla was Mr. Cage's employer, and Mr. Cage was Tesla's
15 employee as those terms are defined under the Labor Code.

16 125. Tesla discharged Mr. Cage on or around December 5, 2020.

17 126. The following were substantial motivating reasons for Mr. O'Connell's discharge:
18 (a) Mr. Cage repeatedly reported Tesla's legal violations and noncompliance to those with
19 authority over Mr. Cage and/or authority to investigate, discover, or correct Tesla's violation or
20 noncompliance, as described herein; (b) Mr. Cage opposed Tesla management's harassing and
21 discriminatory conduct; and (c) Tesla discriminated against Mr. Cage on the basis of his race,
22 perceived veteran/military status, and/or disability.

23 127. Mr. Cage was harmed by his discharge from Tesla, as he has lost salary,
24 commissions, equity, and benefits, among other compensation.

25 128. The discharge was a substantial factor in causing Mr. Cage's harm.

26 129. As a direct and consequential result of the actions and failures to act by Tesla
27 alleged herein, Plaintiff has suffered injury to their mental and emotional well-being, including
28 fear, anxiety, depression, pain, humiliation, anger, despair, embarrassment, and uncertainty; all of

1 the type, nature, and extent ordinarily associated with the wrongful conduct alleged against Tesla
2 herein.

3 130. By reason of the conduct of Tesla as alleged herein, Mr. Cage has retained
4 attorneys to prosecute the present action. Mr. Cage is therefore entitled to reasonable attorney's
5 fees and litigation expenses, including expert witness fees and costs, incurred in bringing this
6 action.

7 131. Tesla engaged in the acts alleged herein maliciously, fraudulently, and
8 oppressively; with the wrongful intention of injuring Mr. Cage; with the conscious disregard of
9 the rights and safety of Mr. Cage; and with an improper and evil motive amounting to malice.
10 Mr. Cage is thus entitled to recover punitive damages from Tesla in an amount according to
11 proof.

12 **SIXTH CAUSE OF ACTION**

13 **WHISTLEBLOWING RETALIATION (CAL. LAB. CODE § 1102.5)**

14 132. Plaintiff incorporates by reference each and every allegation in this complaint as
15 though fully set forth here.

16 133. California Labor Code section 1102.5 makes it unlawful for an employer to
17 retaliate against an employee for disclosing conduct that he reasonably believes is a violation of
18 the law and/or for his refusal to participate in such conduct.

19 134. At all relevant times, Tesla was Mr. Cage's employer, and Mr. Cage was Tesla's
20 employee as those terms are defined under the Labor Code.

21 135. Mr. Cage repeatedly made clear his opposition to conduct by Tesla he believed to
22 be unlawful and/or in which he refused to participate. By way of example only and as more fully
23 set forth herein:

- 24 a. On February 26, 2019, Mr. Cage observed that Tesla conducted a repair on
25 a pressure vessel recklessly, in violation of OSHA, and without
26 certification required to diagnose, weld, and/or stamp the repair. This
27 created a risk that the pressure vessel could rupture and blast debris
28 throughout a part of Tesla's Gigafactory in Nevada. Immediately following

1 the incident and for several days thereafter, Mr. Cage reported Tesla's
2 violations relating to the pressure vessel repair to his superiors who had
3 authority to investigate, discover, or correct the reported legal violations,
4 including Rodney Westmoreland, Laura Hardy (Director of Safety),
5 Stephen Kwok (Mechanical Designer), and Zack Sloss (Construction
6 Safety Technician). After these individuals failed to respond to Mr. Cage's
7 reports, Mr. Cage sent an email on March 4, 2019 to Rodney
8 Westmoreland, Afsaneh Farokhi Senior Project Quality Manager), and
9 Faiek Hanna (Staff Construction Quality Project Manager), all of whom
10 had authority to investigate, discover, or correct the reported legal
11 violations. On September 29, 2020, at which point Tesla had still not
12 responded to Mr. Cage's report of welding violations, Mr. Cage reported
13 these violations, among others, in an email to Valerie Workman (VP,
14 People), Jerome Guillen (President of Automotive), and Fernanda Viega
15 (Senior HR Business Partner), all of whom had authority to investigate,
16 discover, or correct the reported legal violations.

17 b. In or about August through October 2019, Mr. Cage observed that Tesla
18 was and had been regularly employing unqualified individuals to perform
19 "special inspections" regarding items such as soil compaction, pile driving,
20 concrete placement, and anchor bolt testing. On October 30, 2019, Mr.
21 Cage reported Tesla's violations regarding unqualified special inspectors to
22 his superior, Afsaneh Farokhi, who had authority to investigate, discover,
23 or correct the reported legal violations. On September 29, 2020, at which
24 point Tesla had still not responded to Mr. Cage's report of violations
25 regarding unqualified special inspectors, Mr. Cage reported these
26 violations, among others, in an email to Valerie Workman (VP, People),
27 Jerome Guillen (President of Automotive), and Fernanda Viega (Senior HR
28 Business Partner), all of whom had authority to investigate, discover, or

1 correct the reported legal violations. On October 2, 2020, Mr. Cage
2 forwarded the September 29, 2020 email to Angela Chadwick (Associate
3 General Counsel) and Benita Patel (Senior Employee Relations Manager),
4 both of whom had authority to investigate, discover, or correct the reported
5 legal violations.

6 c. On September 29, 2020, Mr. Cage sent an email to Valerie Workman (VP,
7 People), Jerome Guillen (President of Automotive), and Fernanda Viega
8 (Senior HR Business Partner) detailing, in addition to the violations
9 mentioned above, the following: (i) the Construction Team did not perform
10 Weld Lot Testing on the Hot Oil Mechanical System, NMP Mechanical
11 System and Electrolyte Mechanical System at GF1; (ii) the Construction
12 Team was in violation of the Nevada Administrative Code 455C.108,
13 ASME Boiler and Pressure Vessel Code, Section V, T-190 from February
14 2020 onwards on every welding scope it performed because there was no
15 Certified Welding Inspector present for them;

16 d. On or around November 9, 2019, Mr. Cage observed and documented
17 numerous violations at a jobsite at the Model Y facility in Fremont. These
18 violations included: working in a trench without a permit; working in a
19 trench without proper means of egress; workers next to an excavation
20 without fall protection; spoilage being stored too close to the edge of the
21 operation; and no plan to create a hard barricade to prevent access to the
22 trench after hours. The Tesla contractor who was overseeing the project
23 informed Mr. Cage that Tesla was aware of how the project was proceeding
24 and told him to complete the trench work despite knowing the applicable
25 permits had not been obtained. Mr. Cage emailed his superior, Rodney
26 Westmoreland, detailing these violations but received no response.

27 e. In early 2019, Mr. Cage compiled a spreadsheet detailing an extensive list
28 of over 200 building code violations in the D Quad area of the Gigafactory

1 stemming from Tesla's construction work dating back prior to Mr. Cage's
2 time with the company. These violations included improperly routed
3 cables, breaks in piping, missing handrails, and exposed electrical outlets.
4 Mr. Cage emailed the spreadsheet to Afsaneh Farokhi, who had authority to
5 investigate, discover, or correct the reported legal violations. To Mr.
6 Cage's knowledge, Tesla took no action in response to his reports. On
7 September 29, 2020, Mr. Cage sent this list attached to an email to Valerie
8 Workman (VP, People), Jerome Guillen (President of Automotive), and
9 Fernanda Viega (Senior HR Business Partner), all of whom had authority
10 to investigate, discover, or correct the reported legal violations. On October
11 2, 2020, Mr. Cage forwarded the September 29, 2020 email to Angela
12 Chadwick (Associate General Counsel) and Benita Patel (Senior Employee
13 Relations Manager), both of whom had authority to investigate, discover,
14 or correct the reported legal violations.

15 f. In or about December 2018, Mr. Cage discovered that the company was not
16 properly handling or tracking on-the-job injuries, in violation of OSHA;
17 and that the Company did not require its employees to verify they had
18 completed OSHA training. Mr. Cage reported these violations and
19 instances of non-compliance to his superiors, Laura Harding (Director of
20 Safety for North America), Jack Griffin (Senior Construction Manager),
21 and Rodney Westmoreland (Director of Construction). These individuals
22 had authority to investigate, discover, or correct the reported legal
23 violations. To Mr. Cage's knowledge, Tesla took no action in response to
24 his reports.

25 g. In or about July 2020, Mr. Cage reported his belief to Caleb Fissette (Mr.
26 Cage's manager) that the Tesla Self-Perform Construction Department had
27 installed deficient rebar in a project at Fremont, in violation of the
28

1 California Building Code. Mr. Fissette berated Mr. Cage in response to his
2 report and did not correct Tesla's violation.

3 h. In or about July 2020, Mr. Cage reported his belief to Caleb Fissette (Mr.
4 Cage's manager) that the wall supports in Tesla's new battery storage
5 facility were not in compliance with the California Building Code. Mr.
6 Fissette cursed at Mr. Cage in response to his report and did not correct
7 Tesla's violation.

8 i. In or about August 2020, Mr. Cage observed that a construction project
9 was temporarily without an emergency exit in violation of OSHA
10 regulations. Mr. Cage raised this issue, ultimately causing work on the
11 project to stop until it was brought into compliance.

12 136. Tesla responded to Mr. Cage's reports of legal violations and noncompliance by
13 subjecting him to adverse employment actions, including without limitation: (a) terminating Mr.
14 Cage, (b) removing Mr. Cage from the Quality department, and (c) putting Mr. Cage on a
15 factually inaccurate performance improvement plan.

16 137. Tesla's termination of Mr. Cage was motivated by his refusal to participate, his
17 reporting, or the risk that he would report the conduct described herein, which Mr. Cage
18 reasonably believed to be unlawful. Mr. Cage escalated his reports regarding Tesla's widespread
19 violations in September and October 2020 through the emails described above; Tesla notified Mr.
20 Cage he would be terminated in November 2020, in close temporal proximity to these reports.

21 138. Tesla's removal of Mr. Cage from the Quality department was motivated by his
22 refusal to participate, his reporting, or the risk that he would report the conduct described above,
23 which Mr. Cage reasonably believed to be unlawful. Upon his transfer out of the Quality
24 department, Rodney Westmoreland even expressly told Mr. Cage: "Do not report any more
25 deficiencies."

26 139. Tesla's decision to put Mr. Cage on a performance improvement plan was
27 motivated by his refusal to participate, his reporting, or the risk that he would report the conduct
28 described above, which Mr. Cage reasonably believed to be unlawful.

1 140. As a direct and consequential result of the actions and failures to act by Tesla
2 alleged herein, Plaintiff has suffered injury to his mental and emotional well-being, including
3 fear, anxiety, depression, pain, humiliation, anger, despair, embarrassment, and uncertainty; all of
4 the type, nature, and extent ordinarily associated with the wrongful conduct alleged against Tesla
5 herein. The value of Plaintiff's damages for injuries to his mental and emotional well-being is an
6 amount in excess of the minimum jurisdictional threshold of this Court, the precise amount of
7 which will be proven at trial.

8 141. By reason of the conduct of Tesla as alleged herein, Mr. Cage has retained
9 attorneys to prosecute the present action. Mr. Cage is therefore entitled to reasonable attorney's
10 fees and litigation expenses, including expert witness fees and costs, incurred in bringing this
11 action.

12 142. Tesla engaged in the acts alleged herein maliciously, fraudulently, and
13 oppressively; with the wrongful intention of injuring Mr. Cage; with the conscious disregard of
14 the rights and safety of Mr. Cage; and with an improper and evil motive amounting to malice. As
15 one of many examples, on information and belief, Tesla was aware of the same or similar health
16 and safety issues raised by Mr. Cage before he even raised them, and many of these issues have
17 been publicly reported. (*See e.g.*, notes 3 and 4, *supra*). Tesla's reaction to Mr. Cage's reports,
18 including the adverse employment actions alleged herein, were malicious and unjustified.

19 143. Mr. Cage is thus entitled to recover punitive damages from Tesla in an amount
20 according to proof.

21 **SEVENTH CAUSE OF ACTION**

22 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

23 144. Plaintiff incorporates by reference each and every allegation in this complaint as
24 though fully set forth here.

25 145. As an employee of Tesla, Mr. Cage was owed a duty of due care by Tesla to
26 ensure that Mr. Cage was not exposed to foreseeable harms.

27 146. Tesla knew or should have known that Mr. Cage was being subjected to
28 harassment, discrimination, and retaliation based on race, perceived veteran/military status, and

1 disability, and that failing to exercise due care to prevent such harassing, discriminatory, and
2 retaliatory conduct could and would cause Mr. Cage to suffer serious emotional distress.

3 147. Tesla further knew or should have known that Mr. Cage was experiencing
4 retaliation in response to his reports of Tesla's safety and/or building code violations and
5 noncompliance.

6 148. Tesla breached its duty of care by failing to prevent its employees, managers,
7 supervisors and/or officers from this harassment, discrimination, and retaliation against Mr. Cage.

8 149. As a direct and consequential result of Tesla's actions, Mr. Cage suffered serious
9 mental and emotional distress, including without limitation, pain, anxiety, humiliation, anger,
10 shame, embarrassment, frustration, and fear. Mr. Cage alleges that Tesla is responsible for the
11 harm he suffered.

12 150. By reason of the conduct of Tesla as alleged herein, Mr. Cage has retained
13 attorneys to prosecute the present action. Mr. Cage is therefore entitled to reasonable attorney's
14 fees and litigation expenses, including expert witness fees and costs, incurred in bringing this
15 action.

16 151. Tesla engaged in the acts alleged herein maliciously, fraudulently, and
17 oppressively; with the wrongful intention of injuring Mr. Cage; with the conscious disregard of
18 the rights and safety of Mr. Cage; and with an improper and evil motive amounting to malice.
19 Mr. Cage is thus entitled to recover punitive damages from Tesla in an amount according to
20 proof.

21 **EIGHTH CAUSE OF ACTION**

22 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

23 152. Plaintiff incorporates by reference each and every allegation in this complaint as
24 though fully set forth here.

25 153. Mr. Cage complained repeatedly to Tesla about the abuse he received in
26 connection with his reports of Tesla's legal violations and harassment, discrimination, and
27 retaliation based on race, perceived veteran/military status, and disability. Mr. Cage made clear
28 that such abuse caused him distress, humiliation, and suffering.

1 154. When Tesla failed to take corrective action, Tesla knew that Mr. Cage would
2 continue to suffer extreme emotional distress and harm as a result of Tesla's failure to act.

3 155. As a direct and consequential result of Tesla's actions, Mr. Cage has suffered
4 severe emotional distress to his person. Such harm includes without limitation pain, anxiety,
5 humiliation, anger, shame, embarrassment, frustration, and fear. Mr. Cage alleges Tesla is
6 responsible for the harm he suffered.

7 156. By reason of the conduct of Tesla as alleged herein, Mr. Cage has retained
8 attorneys to prosecute the present action. Mr. Cage is therefore entitled to reasonable attorney's
9 fees and litigation expenses, including expert witness fees and costs, incurred in bringing this
10 action.

11 157. Tesla engaged in the acts alleged herein maliciously, fraudulently, and
12 oppressively; with the wrongful intention of injuring Mr. Cage; with the conscious disregard of
13 the rights and safety of Mr. Cage; and with an improper and evil motive amounting to malice.
14 Mr. Cage is thus entitled to recover punitive damages from Tesla in an amount according to
15 proof.

16 **VI. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs prays for judgment against Defendant as follows:

- 18 1. For economic and non-economic damages according to proof;
- 19 2. For exemplary damages;
- 20 3. For emotional distress damages;
- 21 4. For appropriate injunctive and declaratory relief;
- 22 5. For an award of prejudgment and post-judgment interest;
- 23 6. For costs of suit herein;
- 24 7. For an award of reasonable attorneys' fees, as provided for by California
25 Government Code Sections 12940 *et seq.*, California Labor Code Section 1102.5,
26 and any other applicable law;
- 27 8. Such other and further relief as the court deems proper.

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1 **VII. JURY DEMAND**

2 Plaintiff demands trial by jury on all issues so triable.

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Dated: February 18, 2022

COTCHETT, PITRE & McCARTHY, LLP

By: _____

JUSTIN T. BERGER
TAMARAH P. PREVOST
MELISSA MONTENEGRO
KEVIN J. BOUTIN

Attorneys for Plaintiff

EXHIBIT 1

From: Marcellous Cage
Sent: Monday, March 4, 2019 8:51 AM
To: Rodney Westmoreland <rwestmoreland@tesla.com>
Cc: Afsaneh Farokhi <afarokhi@tesla.com>; Faiek Hanna <fahanna@tesla.com>
Subject: Production Assistance with ASME Pressure Vessel Repair
Importance: High

Hello Rodney,

On Tuesday February 26, 2019, the Quality Department responded to an inspection request to Q.C. the repair of a failed weld in the section G1F maintenance shop.

- Upon arrival at the maintenance shop I observed a welder performing a seal weld on an ASME pressure vessel.
- When the welder stopped welding, I began to inspect the weld setup. The welder was using Gas Metal Arc Welding with Lincoln ER70S-2 filler metal. The welder was using a carbon dioxide & argon gas mixture.
- Tesla does not have a National Board of Boiler and Pressure Vessel Inspectors certification. (R-Stamp)
 - Without this stamp the failed vessel cannot be diagnosed, welded, or stamped as a repair after the weld has been repaired.
 - Tesla cannot create a Repair Welding Procedure or certify a Welder to make the necessary repairs.
- Upon talking to the personnel making the repair it was discovered that the fabricator documentation was not reviewed prior to welding.
 - The fabricator documentation must be reviewed prior welding to verify the base metal. Without knowing what the tank was fabricated from a welder cannot ensure they are welding with the correct process, heat input or filler metal. Welding without determining the fabrication essential can lead to welding failure.
 - The fabricator documentation must be reviewed to verify if the base metal received any type of heat treatment. Heat treatment is used to reduce stress in high strength metals. If the fabricator performed heat treatment any additional welding performed without heat treatment will add stress to the base metal causing weld failure.
 - Welds must be Inspected to the same criteria as the fabricator. Without verifying the fabricator's documentation we cannot ensure that we performed the right level of

inspection.

- The pressure vessel may fail again while in service.
 - *Tesla can and may be held criminally liable for repairs made to an ASME pressure vessel.*
 - *The vessel has also failed twice and without enhanced Non Destructive Examination of the base metal there is no way to determine if non visible damage has occurred that may lead to catastrophic pressure.*
 - *The first repair was also welded by a non-certified shop. (A shop without a National Board of Boiler and Pressure Vessel Inspectors certification R {repair stamp})*
 - https://www.osha.gov/ooc/citations/FontaromeChemicalInc_952515_0604_14.pdf (OSHA Citation for pressure vessel)
 - <https://www.osha.gov/laws-regs/standardinterpretations/2006-07-17-0> (OSHA Citation for pressure vessel)
- The pressure vessel received penetrant testing after the weld was complete.
 - Non Destructive Examination of welds should not occur less than 24 hours after the completion of the weld as Hydrogen Induced Cracking will not be present until at least 24 hours after the completion of the weld. *The Weld needs to be re-inspected.*
 - The pressure vessel was pneumatically tested for 1 hour prior to being released back to production. The vessel held at 1.5 times the operating pressure for an hour.
- Please reference the codes that were not followed to ensure Tesla is in compliance when conducting future repairs.

The following action items need to be addressed to ensure Tesla Production Team is making repairs in accordance with all applicable codes, laws, ordinances, regulations, manufacturers specifications and jurisdiction requirements. The following areas of improvement will ensure Tesla is in compliance with applicable standards.

- 1) Develop a Quality Repair plan for all equipment. The Repair plans should state the following.
 - a. Who can remove equipment from service
 - b. How equipment must be placed and removed from operation
 - i. Rigging – Ensure pressure vessels and other equipment are flown using equipment approved by the manufacturer for handling.
 - ii. Approved Riggers – Ensure all people involved in rigging operations are certified per OSHA general Industry or construction requirements.
 - iii. Approved handling locations - Ensure rigging and handling points are identified on each piece of equipment prior to repair.
 - iv. Establish levels of equipment protection that must be added prior to handling equipment
 - c. Reliability Testing
 - i. What testing is required by code prior to placing equipment back in service
 - ii. How long must the equipment be tested.
 - iii. Testing notifications and boundaries
 - iv. Testing or inspection required prior to placing equipment back in service

- v. OSHA stress testing requirements
 - 1. Exclusion zone
 - 2. Pressure Testing Packages
 - 3. Walk down of boundaries pre and post test
 - 4. Safety and Quality sign off prior to testing
 - d. Equipment Demobilization
 - i. Equipment Cannibalization Process
 - ii. Acceptance of Demobilized Space
- 2) Documentation
- a. Material Testing Reports (MTR's)
 - b. Manufacturing Specification Library
 - c. Material Receipt Inspections
 - d. Filler Metal Ordering Documentation (welding electrodes)
 - i. Material Testing Reports
 - ii. Filler Metal Issuance
 - iii. Filler Metal Request
 - iv. Daily Filler Metal Oven Temperature Logs
 - e. Welder Testing Qualification Reports
 - f. Welder Qualification Log
 - g. Welder Preheat Logs
 - h. Welding Documentation
 - i. Welding Procedure Qualification Records
 - ii. Welding Procedure Specification
 - iii. Welding Continuity Logs
 - i. Calibration logs
 - i. Calibrated pressure testing gauge report
 - ii. Calibrated welding equipment reports
 - iii. Calibrated Thermometer documentation
 - j. Nondestructive Testing Procedure
 - i. Certified Personnel
 - ii. Penetrant Testing Procedure (PT)
 - iii. Magnetic Particle Testing Procedure (MT)
 - iv. Radiographic Testing Procedure (RT)
 - v. Ultrasonic Testing Procedure (UT)
 - vi. Positive Material Identification (PMI)
 - k. Inspector Certification
 - i. Certified Welding Inspector
 - l. Rigging Certifications
 - m. ASME Repair Procedure
 - i. Authorized Inspector
 - ii. ASME R Stamp
 - n. Property Control Plan
 - i. Positively identifying all equipment & where its located in a searchable database

- 3) Equipment Needed
 - a. Welding Wire Cases
 - b. Welding Rod Ovens
 - c. Welding Screens
 - d. Pressure Testing Gauges
 - e. Pressure Testing Trees
 - f. Pressure Testing Hoses
 - g. Pressure Testing Stand
 - h. Portable Welding Wire Caddies
 - i. Welding Crayons

Applicable Codes & References

1. Tesla will greatly benefit from The National Board offers the *Certificate of Authorization* and **R** symbol stamp for the repair and/or alteration of boilers, pressure vessels, and other pressure-retaining items. Requirements are described in [NB-415. Accreditation of R Repair Organizations](#)
5.7 STAMPING REQUIREMENTS FOR REPAIRS AND ALTERATIONS
5.7.1 GENERAL The stamping of or attachment of a nameplate to a pressure-retaining item shall indicate that the work was performed in accordance with the requirements of this Code. Such stamping or attaching of a nameplate shall be done only with the knowledge and authorization of the inspector. The "R" Certificate Holder responsible for the repair or the construction portion of the alteration shall apply the stamping. For a rerating where no physical changes are made to the pressure-retaining item, the "R" Certificate Holder responsible for design shall apply the stamping.
5.7.2 STAMPING REQUIREMENTS FOR REPAIRS
 - a) Pressure-retaining items repaired in accordance with the NBIC shall be stamped as required by this section.
 - b) Subject to the acceptance of the Jurisdiction and the concurrence of the Inspector, nameplates and stamping may not be required for routine repairs (see 3.3.2). In all cases, the type and extent of repairs necessary shall be considered prior to waiving the requirement. The Production Team or Quality Team could benefit greatly from obtain The National Board of Boiler and Pressure Vessel Inspectors R stamp.

R Stamp

R Stamp *Certificate of Authorization* Program

([Español](#)).

Prerequisites

Organizations seeking a National Board **R** *Certificate of Authorization* must complete [NB-12. Application for the National Board R Certificate of Authorization](#) and:

1. have and maintain an inspection agreement with an [authorized inspection agency](#),

2. have a written quality system that complies with the requirements of the current edition of the National Board Inspection Code (NBIC) and includes the expected scope of activities,
3. have the current edition of all parts of the [NBIC](#). Organizations have the option of using either a printed version or an electronic version, including a subscription from a National Board licensed reseller, to fulfill this requirement; and,
4. have available a copy of the code of construction appropriate for the intended scope of work.

Prior to issuance of a National Board **R Certificate of Authorization**, the organization and its facilities are subject to an onsite review of its quality system.

Estimated Fees

Certification Fees:

The certificate fee for the **R Certificate of Authorization** is \$660 USD for a three-year period. For new issuances, there will be an additional one-time charge of \$75 USD for the loan of the steel **R** symbol stamp.

2) Pressure

2017 ASME Boiler and Pressure Vessel Code

Section VIII Rule for Construction of Pressure Vessels

Division 1

SUBSECTION A GENERAL REQUIREMENTS

- PART UG GENERAL REQUIREMENTS FOR ALL METHODS OF CONSTRUCTION AND ALL MATERIALS

UG-1 SCOPE: The requirements of Part UG are applicable to all pressure vessels and vessel parts and shall be used in conjunction with the specific requirements in Subsections B and C and the Mandatory Appendices that pertain to the method of fabrication and the material used.

MATERIALS UG-4 GENERAL (a) Material subject to stress due to pressure shall conform to one of the specifications given in Section II, Part D, Subpart 1, Tables 1A, 1B, and 3, including all applicable notes in the tables, and shall be limited to those that are permitted in the applicable Part of Subsection C, except as otherwise permitted in UG-9, UG-10, UG-11, UG-15, Part UCS, Part UIG, and the Mandatory Appendices. Material may be identified as meeting more than one material specification and/or grade, provided the material meets all requirements of the identified material specification(s) and/or grade(s) [see UG-23(a)].

(17) UG-9 WELDING MATERIALS Welding materials used for production shall comply with the requirements of this Division, those of Section IX, and the applicable qualified welding procedure specification. When the welding materials comply with one of the specifications in Section II, Part C, the marking or tagging of the material, containers, or packages as required by the applicable Section II specification may be accepted for identification in lieu of a Test Report or a Certificate of Compliance.

SUBSECTION B REQUIREMENTS PERTAINING TO METHODS OF FABRICATION OF PRESSURE VESSELS

- PART UW REQUIREMENTS FOR PRESSURE VESSELS FABRICATED BY WELDING

ARTICLE III WELDING PERFORMANCE QUALIFICATIONS

QW-301.2 Qualification Tests. Each organization shall qualify each welder or welding operator for each welding process to be used in production welding. The performance qualification test shall be welded in accordance with qualified Welding Procedure Specifications (WPS), or Standard Welding Procedure Specifications (SWPS) listed in [Mandatory Appendix E](#), except that when performance qualification is done in accordance with a WPS or SWPS that requires a preheat or postweld heat treatment, these may be omitted. Changes beyond which requalification is required are given in [QW-350](#) for welders and in [QW-360](#) for welding operators. Allowable visual, mechanical, and radiographic examination requirements are described in [QW-304](#) and [QW-305](#). Retests and renewal of qualification are given in [QW-320](#).

Chapter VI - Inspection, Examination, and Testing

341 EXAMINATION

341.1 General

Examination applies to quality control functions performed by the manufacturer (for components only), fabricator, or erector. Reference in this Code to an examiner is to a person who performs quality control examinations.

341.2 Responsibility for Examination

Inspection does not relieve the manufacturer, the fabricator, or the erector of the responsibility for

- (a) providing materials, components, and workmanship in accordance with the requirements of this Code and of the engineering design [see para. 300(b)(3)]
- (b) performing all required examinations
- (c) preparing suitable records of examinations and tests for the Inspector's use

341.4 Extent of Required Examination

341.4.1 Examination — Normal Fluid Service. Piping in Normal Fluid Service shall be examined to the extent specified herein or to any greater extent specified in the engineering design. Acceptance criteria are as stated in para. 341.3.2 and in Table 341.3.2, for Normal Fluid Service unless otherwise specified.

(c) *Certifications and Records.* The examiner shall be assured, by examination of certifications, records, and other evidence, that the materials and components are of the specified grades and that they have received required heat treatment, examination, and testing. The examiner shall provide the Inspector with a certification that all the quality control requirements of the Code and of the engineering design have been carried out.

ASME Section - IX

QUALIFICATION STANDARD FOR WELDING, BRAZING, AND FUSING PROCEDURES; WELDERS; BRAZERS; AND WELDING,

BRAZING, AND FUSING OPERATORS

PART QW- WELDING ARTICLE I WELDING GENERAL

REQUIREMENTS

QW-103.2 Records. Each organization shall maintain a record of the results obtained in welding procedure and welder and welding operator performance qualifications. Refer to recommended Forms in Nonmandatory Appendix B.

QW-102 In performance qualification, the basic criterion established for welder qualification is to determine the welder's ability to deposit sound weld metal. The purpose of the performance qualification test for the welding operator is to determine the welding operator's mechanical ability to operate the welding equipment.

QG-103 PERFORMANCE QUALIFICATION

The purpose of qualifying the person who will use a joining process is to demonstrate that person's ability to produce a sound joint when using a procedure specification.

QG-104 PERFORMANCE QUALIFICATION RECORD

The performance qualification record documents what occurred during the production of a test coupon by a person using one or more joining processes following an organization's procedure specification. As a minimum, the record shall document the essential variables for each process used to produce the test coupon, the ranges of variables qualified, and the results of the required testing and/or nondestructive examinations. The organization shall certify a performance qualification record by a signature or other means as described in the organization's Quality Control System and shall make the performance qualification record accessible to the Authorized Inspector.

QG-106.2 Performance Qualifications

(c) Production of test joints under the supervision and control of another organization is not permitted. It is permitted to subcontract any or all of the work necessary for preparing the materials to be joined in the test joint, and the subsequent work for preparing test specimens from the completed test joint, and the performance of nondestructive examination and mechanical tests, provided the organization accepts full responsibility for any such work.

(e) When a procedure qualification test coupon has been tested and found acceptable, the person who prepared the test coupon is also qualified for the joining process used, within the ranges specified for performance qualification for the applicable process(es).

(f) Persons who are successfully qualified shall be assigned an identifying number, letter, or symbol by the organization, which shall be used to identify their work.

QW-202.2 Groove and Fillet Welds

(a) *Qualification for Groove Full Penetration Welds.*

Groove-weld test coupons shall qualify the thickness ranges of both base metal and deposited weld metal to be used in production. Limits of qualification shall be in accordance with [QW-451](#). WPS qualification for groove welds shall be made on groove welds using tension and guided-bend specimens. Toughness tests shall be made when required by other Section(s) of the Code. The WPS shall be qualified for use with groove welds within the range of essential variables listed.

(b) *Qualification for Partial Penetration Groove Welds.* Partial penetration groove welds shall be

qualified in accordance with the requirements of [QW-451](#) for both base metal and deposited weld metal thickness, except there need be no upper limit on the base metal thickness provided qualification was made on base metal having a thickness of 1 1/2 in. (38 mm) or more.

(c) *Qualification for Fillet Welds.* WPS qualification for fillet welds may be made on groove-weld test coupons using test specimens specified in (a) or (b). Fillet-weld procedures so qualified may be used for welding all thicknesses of base metal for all sizes of fillet welds, and all diameters of pipe or tube in accordance with [Table QW-451.4](#). Non pressure-retaining fillet welds, as defined in other Sections of the Code, may as an alternate be qualified with fillet welds only. Tests shall be made in accordance with [QW-180](#). Limits of qualification shall be in accordance with [Table QW-451.3](#).

ARTICLE II

WELDING PROCEDURE QUALIFICATIONS

QW-200 GENERAL

QW-200.2 Each organization shall be required to prepare a procedure qualification record which is defined as follows:

- (a) *Procedure Qualification Record (PQR).* The PQR is a record of variables recorded during the welding of the test coupons. It also contains the test results of the tested specimens. Recorded variables normally fall within a small range of the actual variables that will be used in production welding.

QW-201 ORGANIZATIONAL RESPONSIBILITY The organization shall certify that they have qualified each Welding Procedure Specification, performed the procedure qualification test, and documented it with the necessary Procedure Qualification Record (PQR).

ASME Section -V NONDESTRUCTIVE EXAMINATION

MANDATORY APPENDIX II SUPPLEMENTAL PERSONNEL QUALIFICATION REQUIREMENTS FOR NDE CERTIFICATION

II-110 SCOPE This Appendix provides the additional personnel qualification requirements that are mandated by Article 1, T-120(g), and which are to be included in the employer's written practice for NDE personnel certification, when any of the following techniques are used by the employer: computed radiography (CR), digital radiography (DR), Phased Array Ultrasonic (PAUT), and ultrasonic Time of Flight Diffraction (TOFD).

T-120 GENERAL

(e) For those documents that directly reference this Article for the qualification of NDE personnel, the qualification shall be in accordance with their employer's written practice which shall be in accordance with one of the following documents: (1) SNT-TC-1A (2006 Edition),³ Personnel Qualification and Certification in Nondestructive Testing; or (2) ANSI/ASNT CP-189 (2006 Edition),³ ASNT Standard for Qualification and Certification of Nondestructive Testing Personnel

(j) The user of this Article is responsible for the qualification and certification of NDE Personnel in accordance with the requirements of this Article. The organization's 4 Quality Program shall stipulate

how this is to be accomplished. Qualifications in accordance with a prior edition of SNT-TC-1A, or CP-189 are valid until recertification. Recertification or new certification shall be in accordance with the edition of SNT-TC-1A or CP-189 specified in (e) above. When any of the techniques included in (g) above are used, the additional requirements of that paragraph shall also apply.

T-190 RECORDS/DOCUMENTATION (a) Documentation and records shall be prepared as specified by the referencing Code Section and the applicable requirements of this Section. Examination records shall include the following information as a minimum: (1) date of the examination (2) name and/or identity and certification level (if applicable) for personnel performing the examination (3) identification of the weld, part, or component examined including weld number, serial number, or other identifier (4) examination method, technique, procedure identification, and revision (5) results of the examination (b) Personnel qualification and procedure performance demonstrations performed in compliance with the requirements of T-150(a) or T-150(b) shall be documented as specified by the referencing Code Section

II-124 TRAINING OUTLINES II-124.1 Computed Radiography (CR) Topical Training Outlines. Topical training outlines appropriate for the training of Level I and Level II personnel in computed radiography may be found in ANSI/ASNT CP-105 (2016 edition)³ and should be used as a minimum.

II-124.2 Digital Radiography (DR) Topical Training Outlines. Topical training outlines appropriate for the training of Level I and Level II personnel in digital radiography may be found in ANSI/ASNT CP-105 (2016 edition)³ and should be used as a minimum. For individuals holding a valid Level I or Level II film certification, the "Basic Radiography Physics" segment of the topical outlines referenced in II-124.1 and II-124.2 need not be repeated, as described in the employer's written practice

ARTICLE 2 RADIOGRAPHIC EXAMINATION

T-220 GENERAL REQUIREMENTS

T-221 PROCEDURE REQUIREMENTS

T-221.1 Written Procedure. Radiographic examination shall be performed in accordance with a written procedure. Each procedure shall include at least the following information, as applicable: **VI-223 PERSONNEL REQUIREMENTS** Personnel shall be qualified as follows: (a) Level II and Level III Personnel. Level II and Level III personnel shall be qualified in the radiographic method as required by Article 1. In addition, the employer's written practice shall describe the specific training and practical experience of Level II and Level III personnel involved in the application of the digital imaging process and the interpretation of results and acceptance of system performance. Training and experience shall be documented in the individual's certification records. (b) As a minimum, Level II and III individuals shall have 40 hours of training and 1 month of practical experience in the digital imaging process technique. (c) Other Personnel. Personnel with limited qualifications performing operations other than those required for the Level II or Level III shall be qualified in accordance with Article 1. Each individual shall have specified training and practical experience in the operations to be performed.

Marc Cage | Staff Construction QA/QC Project Manager | Gigafactory1



1 Electric Avenue | Sparks, NV 89437
c (775)-346-0425 | mcage@teslamotors.com

EXHIBIT 2

From: Marcellous Cage
Sent: Friday, October 2, 2020 4:57 PM
To: Angela Chadwick; Benita Patel
Subject: FW: Construction Quality Issues - Whistle Blower Protection
Attachments: Special Inspection Re-Inspections ; MatriScope Legal Bulletins ; MatriScope Audit Sample 10.30.2019; FW: Marcellous's Quality Year End Performance Presentation ; Special Inspection Manpower ; Special Inspection Analysis ; Quality Incident Weekly Status Meeting - Updating & Closing Quality Condition Reports ; Construction Quality Tool Box Talks; RE: Welder Training Path Forward; executive summary data.docx; Nondestructive Testing Quality Improvements.pptx; FW: Production Assistance with ASME Pressure Vessel Repair ; executive summary data.docx; DQuad Non Conformance Notice Report Log.xls; SUPER IMPORTANT

Importance: High

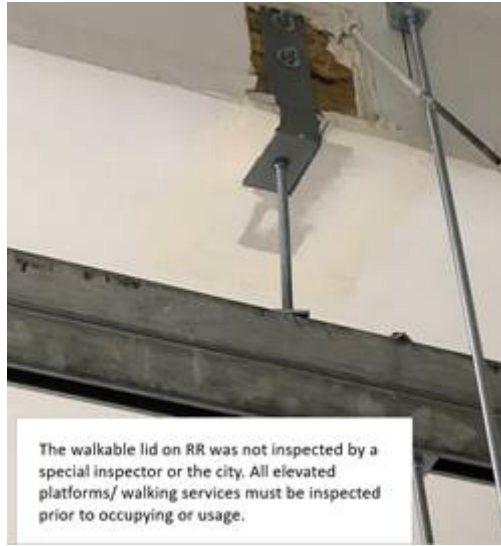
From: Marcellous Cage
Sent: Tuesday, September 29, 2020 6:29 PM
To: Valerie Workman <vworkman@tesla.com>; Jerome Guillen <jerome@tesla.com>
Cc: Fernanda Veiga <fveiga@tesla.com>
Subject: Construction Quality Issues - Whistle Blower Protection
Importance: High

Hello Team,

Since joining Tesla I have faced an uphill battle trying to guide Tesla's Construction Team on the pathway to compliance. The following code violations have occurred. Please reach out to the Tesla Construction Subject Matter experts and read the email chain so you can properly understand the depth of the deficiencies and violations that have occurred. I have raised these issues to the Construction Management Team on several occasions. Since raising the issues I have been booted out of quality and I have been verbally harassed by my construction counterparts.

- Tesla's Construction Team used Nonqualified inspector for over 3 years. Tesla paid for inspections that have no legal value. Please review the first attachments.
 - The Director of Construction halted the audit into MatriScope's over billing and use of nonqualified inspectors.
- Not only did we underinspect we overinspected scopes that did not need inspections on Saturdays and Sundays at time and a half and double time rates. There is too much waste to detail in this message. I created the cost of quality to allow Tesla's senior management to see how efficient the Construction Team is, the cost of quality was immediately stopped. If this tool was in place someone may have inquired about the Construction Team demolishing a slab three times at a cost of \$40,000 a try when the original estimate was 50k. (Please review the executive summary)
- Since I was removed from Quality, The Quality Team no longer does toolbox trainings to go over the lessons learned from making mistakes.
- Immediately after I was booted out of quality the nonqualified inspectors returned. Special Inspection Reports will prove the inspector's level of certifications along with the billing invoice
- Please see the D-Quad Deficiency list that I compiled after my first month of coming on board. Very few of the violations were fixed and no one wanted to ask for more to complete deficient construction.

- Please see the Model Y deficiency list. Model Y has several outstanding issues that have yet to be corrected.
- If you would like to see a list or pictures of the systemic safety failures, please let me know. The list is too large to attach.
- **Here are the most serious Violation. The Construction Team did not perform Weld Lot Testing on the Hot Oil Mechanical System, NMP Mechanical System and Electrolyte Mechanical System at GF1. ASME B31.3 requires the welding lots to be closed prior to placing the systems in operation. This is a super serious issue that was brought up. Just ask for the documentation to prove if lot testing was done.**
- **Tesla performed welding on pressure vessels. I don't even know how to explain this. Tesla had 17 Building Code and National Boiler Code violations on this operation. I will not even attempt to explain what would have happened if the vessel would have ruptured and blew debris through the maintenance bay of GF1. **Jim Fischer** <jafischer@tesla.com>; **Stephen Kwok** <skwok@tesla.com>; **Todd Schricker** tschricker@tesla.com are the engineering subject matter experts.**
- A total of 37 scopes of Special Inspections were missed between the projects at 901 Page, 10555 Page and RR. Each scope contains multiple inspections. Here are a few examples. The Structural Engineers can help you understand the validity Bryan McDonald <bmcdonald@tesla.com>; Robert McDougall rmcdougall@tesla.com



- Tesla is required to have a Certified Welding Inspector on site to perform welding and bolting operations. I was sent back to Reno after I submitted my deficiency list on the Model Y project. All operations were required to legally stop because the only Certified Welding Inspector Tesla has was shipped to Reno then laid off as further retaliation. Me being laid off alone is the easiest way to prove Tesla performed building code violations, because

the Construction Team didn't hire a replacement. I brought this problem to the Director of Constructions attention when I was first asked to go to Fremont, because that would require structural work to stop at GF1. Notice there are QC & QA tasks. The Construction Team has been in violation since February on every welding scope as the other members of the quality Department have only one certification between the 3. The one certification that is currently held by the quality team is irrelevant to all scopes of construction work Tesla is performing. Tesla can pass the CWI requirements to the subcontractors but did not and presents a conflict of interest when the subcontractor does not have a warranty clause in their contract.



Chapter 3 - Special Inspection

3

- 9. Sprayed-on fireproofing.
- 10. Piling, drilled piers and caissons.
- 11. Special grading, excavation and filling.

Code provisions continued to allow the building official to require special inspections for work that involved additional hazards not listed in the 11 types of work.

The 1976 UBC listed the duties and responsibilities of the special inspector for the first time. Approved fabricator status was defined and the requirements for achieving this status listed.

This code edition also defined periodic special inspection. The provision stated:

"Periodic Special Inspection. Some inspections may be made on a periodic basis and satisfy the requirements of continuous inspection, provided this periodic scheduled inspection is performed as indicated in the project plans and specifications and approved by the Building Official."

The International Code Council (ICC) continued the legacy codes' history by clarifying and adding to the special inspection provisions in the International Building Code (IBC). Many building departments have established special inspection programs that ensure improved organization and better communication on construction projects. These building departments that have a well-designed program in place have not only saved lives, but have also spared their government and community unnecessary damage and financial losses.

Special Inspection

Special inspection is required of materials, installation, fabrication, erection or placement of components, assemblies and connections requiring special knowledge and expertise to ensure compliance with approved construction documents and applicable referenced standards.

Chapter 2 of the 2018 International Building Code defines special inspection as inspection of construction requiring the expertise of an approved special inspector in order to ensure compliance with the IBC and the approved construction documents.

Special inspections can also be described as:

- The monitoring of the materials and workmanship critical to the integrity of the building structure warranting special attention as dictated by the architect or engineer of record (registered design professional in responsible charge) or the building official.
- A **quality assurance measure** that ensures critical structural or fire and life safety design features are incorporated into the construction of the building structure. Special inspection is required to ensure compliance with the approved construction documents (plans) and standards referenced in the applicable codes.

IBC 1712

CHAPTER N

QUALITY CONTROL AND QUALITY ASSURANCE

This chapter addresses minimum requirements for quality control, quality assurance and nondestructive testing for structural steel systems and steel elements of composite members for buildings and other structures.

User Note: This chapter does not address quality control or quality assurance for the following items:

- (a) Steel lugs, web joists and girders
- (b) Tanks or pressure vessels
- (c) Cables, cold-formed steel products, or pipe material
- (d) Concrete reinforcing bars, concrete materials, or placement of concrete for composite members
- (e) Surface preparations or coatings

The Chapter is organized as follows:

- N1. General Provisions
- N2. Fabricator and Erector Quality Control Program
- N3. Fabricator and Erector Documents
- N4. Inspection and Nondestructive Testing Personnel
- N5. Minimum Requirements for Inspection of Structural Steel Buildings
- N6. Approved Fabricators and Erectors
- N7. Nonconforming Material and Workmanship

N1. GENERAL PROVISIONS

Quality control (QC) as specified in this chapter shall be provided by the fabricator and erector. Quality assurance (QA) as specified in this chapter shall be provided by others when required by the authority having jurisdiction (AHJ), applicable building code, purchaser, owner, or engineer of record (EOR). Nondestructive testing (NDT) shall be performed by the agency or firm responsible for quality assurance, except as permitted in accordance with Section N6.

User Note: The QA/QC requirements in Chapter N are considered adequate and effective for most steel structures and are strongly encouraged without modification. When the applicable building code and AHJ requires the use of a QA plan, this chapter outlines the minimum requirements deemed effective to provide satisfactory results in steel building construction. There may be cases where supplemental inspections are advisable. Additionally, where the contractor's QC program has demonstrated the capability to perform some tasks this plan has assigned to QA, modification of the plan could be considered.

Specification for Structural Steel Buildings, July 7, 2010
 Approved for Use by the American Institute of Steel Construction, Inc.

Table N1.1

MINIMUM REQUIREMENTS FOR INSPECTION

IBC 1712

N4. INSPECTION AND NONDESTRUCTIVE TESTING PERSONNEL

1. Quality Control Inspector Qualifications

QC welding inspection personnel shall be qualified to the satisfaction of the fabricator's or erector's QC program, as applicable, and in accordance with either of the following:

- (a) **Associate welding inspectors (AWI) or higher as defined in Standard for the Qualification of Welding Inspectors (AWS B5.1), or**
- (b) **Qualified under the provisions of AWS D1.1/D1.1M clause 6.1.4.**

QC bolting inspection personnel shall be qualified on the basis of documented training and experience in structural bolting inspection.

2. Quality Assurance Inspector Qualifications

QA welding inspectors shall be qualified to the satisfaction of the QA agency's written practice, and in accordance with either of the following:

- (a) Welding inspectors (WI) or senior welding inspectors (SWI), as defined in Standard for the Qualification of Welding Inspectors (AWS B5.1), except AWI are permitted to be used under the direct supervision of WI, who are on the premises and available when weld inspection is being conducted, or
- (b) Qualified under the provisions of AWS D1.1/D1.1M clause 6.1.4.

QA bolting inspection personnel shall be qualified on the basis of documented training and experience in structural bolting inspection.

3. NDT Personnel Qualifications

NDT personnel, for NDT other than visual, shall be qualified in accordance with their employer's written practice, which shall meet or exceed the criteria of AWS D1.1/D1.1M clause 6.34.6, and:

- (a) **Personnel Qualification and Certification Nondestructive Testing (ANSI SNT-TC-1A), or**
- (b) **Standard for the Qualification and Certification of Nondestructive Testing Personnel (ANSI/ASNT CP-189).**

N5. MINIMUM REQUIREMENTS FOR INSPECTION OF STRUCTURAL STEEL BUILDINGS

1. Quality Control

QC inspection tasks shall be performed by the fabricator's or erector's QCI, as applicable, in accordance with Sections NS.4, NS.6 and NS.7.

Tasks in Tables NS.4-3 through NS.4-3 and Tables NS.6-1 through NS.6-3 listed for QC are those inspections performed by the QCI to ensure that the work is performed in accordance with the construction documents.

Specification for Structural Steel Buildings, July 7, 2010
 Approved for Use by the American Institute of Steel Construction, Inc.

TABLE N5.4-1 Inspection Tasks Prior to Welding		
Inspection Tasks Prior to Welding	QC	QA
Welder qualification records and continuity records	P	O
WPS available	P	P
Manufacturer certifications for welding consumables available	P	P
Material identification (type/grade)	O	O
Welder identification system ⁽¹⁾	O	O
Fit-up of groove welds (including joint geometry) <ul style="list-style-type: none"> • Joint preparations • Dimensions (alignment, root opening, root face, bevel) • Cleanliness (condition of steel surfaces) • Tacking (back weld quality and location) • Backing type and fit (if applicable) 	O	O
Fit-up of CJP groove welds of HSS T, Y, and K-joints without backing (including joint geometry) <ul style="list-style-type: none"> • Joint preparations • Dimensions (alignment, root opening, root face, bevel) • Cleanliness (condition of steel surfaces) • Tacking (back weld quality and location) 	P	O
Configuration and finish of access holes	O	O
Fit-up of fillet welds <ul style="list-style-type: none"> • Dimensions (alignment, gaps at root) • Cleanliness (condition of steel surfaces) • Tacking (back weld quality and location) 	O	O
Check welding equipment	O	-

⁽¹⁾ The fabricator or erector, as applicable, shall maintain a system by which a welder who has welded a joint or member can be identified. Stamps, if used, shall be the low-stress type.

TABLE N5.4-2 Inspection Tasks During Welding		
Inspection Tasks During Welding	QC	QA
Control and handling of welding consumables <ul style="list-style-type: none"> • Packaging • Exposure control 	O	O
No welding over cracked tack welds	O	O
Environmental conditions <ul style="list-style-type: none"> • Wind speed within limits • Precipitation and temperature 	O	O
WPS followed <ul style="list-style-type: none"> • Settings on welding equipment • Travel speed • Selected welding materials • Shielding gas type/flow rate • Preheat applied • Interpass temperature maintained (min./max.) • Proper position (F, V, H, OH) 	O	O
Welding techniques <ul style="list-style-type: none"> • Interpass and final cleaning • Each pass within profile limitations • Each pass meets quality requirements 	O	O
Placement and installation of steel headed stud anchors	P	P

Welds cleaned
Size, length an
Welds meet vis <ul style="list-style-type: none"> • Crack prof • Weld/base • Crater one • Weld profi • Weld size • Undercut • Porosity
Arc strikes
Access ⁽¹⁾
Weld access h
Backing remo
Repair activit
Document acc
No prohibiti
⁽¹⁾ When welding inspect the we
⁽²⁾ After rolled has visually inspect

- As punishment for bringing up deficiencies, I have been cursed out repeatedly. I elevated the issue to my Director who was once in charge of quality to no avail. As further retaliation not only have I been kicked out of quality without an explanation, I have recently been placed on a PIP. I have never had one professional issue or personal issue documented against me. The manager who is writing me up is doing so after my complaints of his treatment of me. Here is an email I sent to the Director of Construction and no actions were taken on my behalf. My direct manager has also gone as far as to not pay my mileage back and forth to Reno as retaliation. My mileage is \$260 a week far cheaper than my weekly flight and rental car. I don't want to show up to work if HR will not step in to protect me against these coordinated attacks.



Marcellous Cage | Rodney Westmoreland

SUPER IMPORTANT

You forwarded this message on 9/17/2020 9:05 PM.

Hello Rodney,

When you get a chance please visit with Caleb. He made a comment that is very offensive. He also is having trouble with understanding expense basics.

- Caleb does not want to pay mileage for my previous trips back to Reno on the weekend. His belief is that because I'm in a hotel continuously than I li waived the taxes and tourism fees bringing my nightly stay down to \$80 from \$133 a night. The \$53 dollar nightly saving equals a savings of \$265 Mc back to Reno where I reside because I'm continuously checked into a hotel. Either way it goes the hotel room rate charge is the same amount if I lost
- Caleb is under the belief that mileage should not be paid if it exceeds \$300 a month. Caleb is using Pre COVID Travel Standards to justify his travel ra
- **Lastly Caleb did not understand why I spent \$160 dollars on groceries instead of buying fast food every day. Buying groceries is way cheaper than Caleb comments states "This is \$160.00 for BBQ?", when I didn't purchase any BBQ or BBQ related products. As a black man who doesn't joke like purchases are in align with Tesla's corporate travel policy**
- How can I be asked to justify any bill about my expenses when having a special inspector on site on a Saturday to do the same pour three times exce

Expense Report Status Change

Your expense report listed below has changed status.

Changed By	Caleb Daniel Fissette
Report Name	August Expenses (08/01/2020)
Report Date	08/05/2020
Submit Date	08/06/2020
Amount Approved	166.78 USD
Approval Status Set To	Sent Back to Employee
Payment Status Set To	Pending Payment
Approver's Comments	This is \$160 for a bbq?

[View Report](#)

This email was sent by: SAP Concur - 601 108th Ave NE, Bellevue, WA 98004, USA



Marc Cage | Construction, EPC



(775) 348-0425

mcage@teslamotors.com

Marc Cage | Construction, EPC



(775) 346-0425
| mcage@teslamotors.com

EXHIBIT 3

From: [Marcellous Cage](#)
To: [Angela Chadwick](#)
Cc: [Benita Patel](#)
Subject: Code/Violations Objectives
Date: Sunday, October 4, 2020 10:50:00 AM
Attachments: [image001.png](#)
Importance: High

Hello,

My goal was to raise awareness on Tesla's Lack of Quality Construction Management but I did not have a clear line of communication. My objective is to ensure that Tesla's Facilities Team, Production Team, Tool Install Team and Construction Team have quality control oversight for their construction operations. My goal is to get Tesla to commit to ensuring all construction that is currently happening and that will happen is done in accordance with the International Building Code. After Tesla commits to doing things the right way Tesla will need to implement a Code Compliant Quality Control Plan. As a mandatory reporter I cannot sit by and allow Tesla to still sweep issues to the side. The most difficult challenge that I have faced as quality control manager, is inspecting a project or scope of work and overlooking another project that is happening adjacent that has much more serious violations. As a Quality Manager I should be able to inspect all required scopes of work not just the work constructed by my team. I'm aware that we cannot go back and fix everything but we must attempt and commit to doing things correctly. Without implementing Quality Control over the other Tesla entities that construct projects governed by the International Building Code it makes the construction Quality Department look hypocritical and always gives the Construction Team a way out as they argue at least we have quality control.

Examples:

Tesla's Maintenance Team at Fremont needed a new fabrication table and other upgrades last December. The Maintenance Team put in an inspection request so the operation came to my attention. I walked the area to understand the scope. While walking the area I encountered my very worst experience working at Tesla, I was verbally berated in front of the maintenance staff workers by the person in charge of the maintenance team. The maintenance team missed out on several of their required inspections. In order to make them compliant we had to spend three times the amount of what the project should have cost to perform additional inspections to prove compliance. The maintenance team got used to doing things out of compliance because the inspectors we were using for three years were not qualified because they were being managed by procurement for two years before being handed back to construction.

Tesla Facilities Team is routinely out of compliance as they attempt to make the necessary repairs to keep Tesla up and running. After the Maintenance Teams at Fremont and GF1 complete construction repairs they do not use a qualified inspector or manager to inspect the completed projects, making Tesla extremely liable. I have witnessed the facilities team perform welding repairs at Fremont and GF1 without having their welds inspected, qualified welders, welding procedure specifications, procedure qualification records, weld detailing, welders stencils and welding filler metal control. Every welding operation that is conducted by facility has these same violations as all of these things must be developed prior to welding and they have never had oversight. This is extremely bad.

The Production Team set up a construction contract with several subcontractors to upgrade North Paint's paint booths to support Model Y. The Production Team setup a contract without quality control and special inspections, this caused the project to build out of compliance for a week. The welding that happened in North Paint required a Tesla CWI to be onsite 24 hours a day from December until when the project wrapped up. I was covering the project when I was onsite as the only construction CWI Tesla has but I could not cover the project as required by code. Once I was transferred in February all of the bolting and welding operations became out of compliance. The issue was elevated to my manager at the time Afsaneh, and I was told it's not our problem Production can't plan their work. The Production Team even setup a special inspection contract with a non-approved special inspector vendor at a much higher rate. The Production Team did not do their vendor fabrication special inspections as required by the IBC. The Production Team also started work before their special inspector couldn't cover the project causing me to pull inspectors from other areas where coverage was mandatory to cover their operation. This required the work that they installed to be tested for compliance instead of visually inspected. The cost of testing is three times more expensive.

The Tool Install Team has suffered tremendously from not having a quality control team. After explaining what was required per the IBC to complete the Model Y Project, I was made aware that the other three tool line installations that he oversaw were constructed out of compliance. I gave the tool install manager some trainings and began helping him out, but many of the deficiencies remain open as I was the only certified quality manager overseeing all of the Bay area Tesla Construction operations and Lathrop.

I have countless other examples but the point is to make sure that these things don't happen again, not to reinspect all the deficiencies but to reinspect what we must. Tesla is required to have Quality Management and I need a commitment from Tesla that we will build in accordance with the International Building Code or I have no choice but to report the violations as a mandatory reporter. Where do I raise issues after I have escalated the issues to my manager and director. I have followed the plan of escalation and Jerome is my directors manager. Jerome is my last hope of having these issues remedied internally. Let's make a commitment to do everything the right way!!!

Marc Cage | Construction, EPC



(775) 346-0425

| mcage@teslamotors.com