

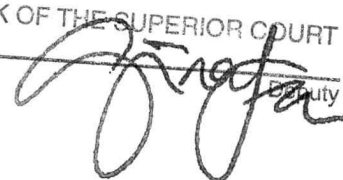
1 DAVID A. LOWE (SBN 178811)
dal@rezlaw.com
2 MEGHAN F. LOISEL (SBN 291400)
mfl@rezlaw.com
3 RUDY, EXELROD, ZIEFF & LOWE, LLP
4 351 California Street, Suite 700
San Francisco, CA 94104
5 Telephone: (415) 434-9800
6 Facsimile: (415) 434-0513

7 WILLIAM C. JHAVERI-WEEKS (SBN 289984)
wjw@jhaveriweeks.com
8 ALLY N. GIROUARD (SBN 336625)
ag@jhaveriweeks.com
9 THE JHAVERI-WEEKS FIRM
351 California Street, Suite 700
10 San Francisco, CA 94104
11 Telephone: (415) 463-8097
Facsimile: (415) 367-1439

12 Attorneys for Plaintiff
13 Jessica Barraza

FILED
ALAMEDA COUNTY

NOV 18 2021

CLERK OF THE SUPERIOR COURT
By  Deputy

14
15 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
16 **COUNTY OF ALAMEDA**
17

18 JESSICA BARRAZA,
19 Plaintiff,
20 vs.

Case No. 21CV002714

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, AND
DECLARATORY RELIEF**

21 TESLA, INC. WHICH WILL DO BUSINESS
IN CALIFORNIA AS TESLA MOTORS,
22 INC., a Delaware Corporation; and DOES 1
through 20, inclusive,
23 Defendants.

DEMAND FOR JURY TRIAL

24 _____ /

BY FAX

1 Jessica Barraza complains and alleges as follows:

2 **NATURE OF THE CASE**

3 1. Although Tesla publicly claims that it fosters a safe and respectful environment
4 for its workers,¹ the truth is that for years Tesla has subjected women working in its Fremont
5 plant to nightmarish conditions of rampant sexual harassment. Tesla's factory floor more
6 resembles a crude, archaic construction site or frat house than a cutting-edge company in the
7 heart of the progressive San Francisco Bay Area. The pervasive culture of sexual harassment,
8 which includes a daily barrage of sexist language and behavior, including frequent groping on the
9 factory floor, is known to supervisors and managers and often perpetrated by them. Jessica
10 Barraza complained repeatedly to managers and to HR, who failed to protect her. She was forced
11 to endure this atrocious and illegal behavior for years until she could not take it anymore.
12 Ms. Barraza is bringing this case to put a stop to the systemic sexual harassment that plagues her
13 and the other women at Tesla.

14 2. Ms. Barraza is a thirty-eight-year-old mother of two. She works nights at Tesla.
15 As she walks to and from her work-station at the beginning and end of shifts or breaks, men
16 make comments like "She's got fat titties," "She's got cakes!," "That bitch hella thick," "Go
17 ahead, sexy," "Damn, girl!," "She has a fat ass," "Oh, she looks like a coke bottle," and "Girl has
18 an onion booty." The comments come not only from co-workers, but from supervisory "Leads,"
19 and within earshot of Supervisors, and sometimes from Supervisors themselves. One of her
20 Supervisors referred to her and other female colleagues as "bitches." That same Supervisor re-
21 assigned her to another area where his friend had a "crush" on her, as if she were a "prize" to be
22 doled out. A Lead propositioned her by text message, and another Supervisor flirted with her and
23 told her how he controlled her career prospects.

24 3. Multiple times a week, male co-workers brush up against Ms. Barraza's back-side
25 (including with their groins) or unnecessarily touch her under the pretext of working together in
26

27 ¹ Tesla, Inc. 2020 10-K Report to the Securities and Exchange Commission at pp. 12-13,
28 https://www.sec.gov/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm

1 close quarters. In September 2021, a man snuck up behind Ms. Barraza as she clocked in from
2 her lunch break and positioned his leg between her legs so that when she stepped away from the
3 clock, she felt a leg between her thighs; she jumped in shock, shouting "What the fuck!?" The
4 man chuckled and said, "Oh, my bad."

5 4. When the harassment was not committed by Leads and Supervisors themselves,
6 Ms. Barraza often reported it to her Leads and Supervisors, and eventually to HR. They failed to
7 take action to protect her.

8 5. Ms. Barraza has always been a tough person. She builds cars. She stands up for
9 herself. When men insult or proposition her at work, she asks them to stop or ignores them and
10 maintains her composure and dignity. But three years of harassment and no support from Tesla
11 have changed Ms. Barraza. She reached her breaking point when her complaints about the man
12 placing his leg between her legs were ignored in September 2021. She had a severe panic attack
13 that day and another panic attack several days later at work when asked to do group "stretches"
14 that would have required her to bend over in front of the male colleagues who harassed her. She
15 left work and drove to the emergency room. She is afraid to return to work knowing that her
16 body could be violated at any time with no repercussions. She is now afraid to be alone in public
17 spaces around men she does not know. Her doctor has taken her off work, she is on medication
18 and in therapy, and she is not the same person she used to be.

19 6. Ms. Barraza saw other women experiencing the same environment, and witnesses
20 will testify that they too experienced or observed the rampant sexual harassment at Tesla. Ms.
21 Barraza brings this action to hold Tesla accountable for the harm it has caused her and other
22 women and to seek injunctive relief in the form of policy changes at Tesla that will put a stop to
23 the unsafe, hostile work environment harming women at its Fremont factory.

24 **PARTIES**

25 7. Plaintiff Ms. Barraza has been employed by Tesla since October 2018 at its
26 Fremont, California factory. She resides in Modesto, California.

27 8. Defendant Tesla, Inc. Which Will Do Business In California As Tesla Motors, Inc.
28 ("Tesla" or "Defendant"), is a Delaware Corporation with its principal place of business in Palo

1 Alto, California.

2 9. The true names and capacities of Defendants named herein as Does 1 through 20,
3 inclusive, whether individual, corporate, associate or otherwise are unknown to Plaintiff, who
4 therefore sues said Defendants by fictitious names pursuant to California Code of Civil Procedure
5 section 474. Plaintiff will amend this Complaint to show such true names and capacities of
6 Does 1 through 20, inclusive, when they have been determined.

7 **VENUE AND JURISDICTION**

8 10. Venue is proper in this Court under California Code of Civil Procedure § 395.5
9 because Plaintiff's employment was performed in this county and because the legal violations
10 alleged herein took place in this county.

11 11. Venue is also proper in this Court under California Government Code § 12965(b)
12 because Defendant committed the unlawful practices alleged herein in this county.

13 12. This Court has general jurisdiction to adjudicate this unlimited civil case, in which
14 the total amount in controversy, exclusive of interest and costs, exceeds \$75,000.

15 13. This Court has jurisdiction to adjudicate Plaintiff's claims under the Fair
16 Employment and Housing Act pursuant to California Government Code § 12965(b).

17 14. This Court has jurisdiction over Plaintiff's claim for declaratory relief under
18 California Code of Civil Procedure § 1060.

19 15. This Court has personal jurisdiction over Defendant because Defendant employed
20 Plaintiff at Defendant's place of business located in this county, and because Defendant's acts
21 allegedly giving rise to liability occurred in this county.

22 **PROCEDURAL ALLEGATIONS**

23 16. Prior to filing this Complaint, Plaintiff filed a complaint with the Department of
24 Fair Employment and Housing against Defendant for discrimination, harassment, and retaliation
25 on November 18, 2021. Plaintiff obtained a notice of Right-to-Sue on the same date prior to
26 filing this lawsuit.

27 17. Plaintiff will file a Private Attorneys General Act ("PAGA") Notice seeking
28 penalties for violation of California Labor Code Sections 6400(a) and 6401 against Tesla on

1 behalf of herself and all other women working at the Fremont facilities within the past year who
2 were subjected to the unsafe environment alleged herein. After fulfilling the exhaustion
3 requirements set forth in Labor Code § 2699.3, Plaintiff intends to amend this Complaint to add a
4 cause of action under PAGA.

5 **FACTS COMMON TO ALL CAUSES OF ACTION**

6 18. Tesla hired Ms. Barraza in October 2018 as a Production Associate working on
7 the factory floor in Fremont. She has been dedicated to the Company and has done her job well
8 and with pride. Her Supervisors have consistently rated her performance highly, and she has
9 been given responsibility for training new employees because of her knowledge of technical
10 issues on the line. Ms. Barraza's hopes of spending her career at Tesla and rising through the
11 ranks faded away as the sexual harassment she suffered at Tesla's Fremont factory came to define
12 her role and experience there.

13 **A. Throughout Ms. Barraza's Three Years at Tesla, She Has Experienced Near**
14 **Daily Sexually Harassing Comments and Touching.**

15 19. Ms. Barraza's job takes place in the midst of a steady-state of sexual harassment
16 by men on the factory floor. When she walks to and from her place on the assembly line, she
17 must walk past her coworkers, generally on an elevated walkway known as the "catwalk" that
18 provides workers with walking access to the various work-stations along the assembly line. On
19 the catwalk and throughout the factory generally, her male coworkers ogle her and comment on
20 her appearance. Sometimes these comments are made directly to her ("Go on, sexy," "Damn,
21 girl," "Hey mama," "What's your name?"); other times her coworkers make the comments
22 ostensibly to each other, but with her as the clearly intended audience ("That bitch hella thick!,"
23 "Look at those titties!"). Men comment on her breasts, saying: "She's got cakes," "She's got fat-
24 cakes," or "She's got fat titties." Other times they refer to the shape of her body, saying: "Girl
25 has an onion booty," "She has a fat ass," or "Oh, she looks like a coke bottle." Sometimes the
26 men just whistle or stare suggestively.

27 20. Men have also propositioned her more intently and directly. A Lead in the
28 factory, James [last name unknown], sent her flirtatious text messages, writing, "I just think you

1 sexy asf and wanted to kick it sometime, you kno I always had a crush on yo fine ass.” She
2 brushed him off, explaining that she was married. He replied, “You know this only makes me
3 want you more, right?” A male co-worker named Demetrious Moore told her she needed a “king
4 at work,” and said he did not care that she was married.

5 21. In early 2020, when Ernie Tambo was Ms. Barraza’s Supervisor, Ms. Barraza was
6 told by her former Supervisor, Josh Canelas, that Mr. Tambo referred to her and the other women
7 in her area as “bitches,” saying things like “I have to deal with these bitches” or “these bitches
8 keep complaining.” A few months later, Mr. Tambo re-assigned Ms. Barraza to work near a
9 friend of Mr. Tambo’s, Skylar. Ms. Barraza later learned that she had been reassigned because
10 Skylar had a “crush” on her. Upon information and belief, when Mr. Tambo informed Skylar of
11 the reassignment, Mr. Tambo said, “You’re welcome” – as if Ms. Barraza were a prize to be
12 handed out.

13 22. Around August 2020, a co-worker kept staring at Ms. Barraza’s chest. She asked
14 him to stop. Her Supervisor at the time, Karlos Tapia, overheard this and said to Ms. Barraza,
15 “Maybe you shouldn’t wear shirts that draw attention to your chest.” Ms. Barraza replied that
16 she was wearing a work shirt provided by Tesla – the same shirt worn by many men on the line.
17 Mr. Tapia replied, “Well, for example, right now I’m staring at your chest, and I can see there’s a
18 car on your shirt and some wording.”

19 23. Ms. Barraza’s Supervisor from late 2020 to August 2021, Kris Panera, flirted
20 conspicuously with the women who reported to him. Ms. Barraza was not receptive to his
21 overtures. During a performance review, Mr. Panera asked her if she was interested in becoming
22 a Lead. He told her, “You know I control your job, right? I’m basically in charge of your
23 career.” Ms. Barraza responded that she was not interested. Around this time, Ms. Barraza was
24 standing and waiting for a group meeting to start, when Mr. Panera walked up from behind her
25 and said to her, “Hey girl.” She turned around in his direction, and he said “That’s not a married
26 woman’s reaction.”

27 24. When Ms. Barraza has to walk to and from her car in the Tesla parking lot during
28 her night shift, men make comments (*e.g.*, “You look really sexy driving that car”) to the point

1 that Ms. Barraza generally calls her husband while in the parking lot so that he is on the line with
2 her while she walks to her car at night. Ms. Barraza started calling her husband at these times
3 after feeling threatened by a male co-worker who followed her into the lot even though he did not
4 have a car.

5 25. Male co-workers also touch Ms. Barraza's body with impunity, often acting as
6 though such touching is accidental or necessitated by the close quarters in which they work.
7 Approximately several times a week, male co-workers have brushed up against Ms. Barraza's
8 body. This has included pressing their groins or hands against her back-side.

9 26. On occasions, the unwelcome physical conduct has been more brazen. In early
10 2020, Ms. Barraza was working at Station 182 and asked a co-worker, Kenneth (or "Kenny")
11 [last name unknown], to make room for her to go past him down the stairs to Station 180. Kenny
12 ignored her, and when she moved forward and tried to squeeze by, Kenny put his hands on the
13 sides of her waist, lifted her up with his hands pressing against her torso under her breasts, and
14 set her down on the other side of him. Having a male co-worker so freely place his hands on
15 private parts of her body without permission was extremely distressing to Ms. Barraza,
16 particularly in the sexually charged atmosphere of the factory. She shouted at Kenny and began
17 to cry.

18 27. As another example, a female employee, Evelyn, began flirting with Ms. Barraza,
19 culminating in asking Ms. Barraza if her "butt" was "real," and placing her hands on the bare
20 skin at the top of Ms. Barraza's lower back-side. Ms. Barraza reported this to her Supervisor at
21 the time, Mr. Panera, who concluded that it was just a "cultural difference," so he would not
22 report the incident to HR, despite her explicit objection that he should report it.

23 28. As another example, on or about September 28, 2021, a man snuck up behind
24 Ms. Barraza as she clocked in from her lunch break and positioned his leg between her legs so
25 that when she stepped away from the clock, she felt something between her thighs; she jumped
26 away in shock, shouting "What the fuck!?" The man chuckled and said, "Oh, my bad."

27 29. Other times, men were simply aggressive and offensive toward Ms. Barraza in a
28 way that they did not treat men. Around March 2020, a male co-worker, Jamar [last name

1 unknown], left the line without telling anyone. Ms. Barraza was unable to cover his spot on the
2 line because she was not tall enough. When Jamar returned, she said to him in a friendly tone,
3 “Hey, next time you leave the line, could you give us a heads up, so it’s covered?” He
4 responded, “You know where the fuck I was at.” Ms. Barraza asked him not to speak to her that
5 way. He responded, “Shut the fuck up.” Supervisor Tambo, followed by his boss, Area Manager
6 Meghan Gates, ran over because they heard yelling. Mr. Tambo walked Jamar out of the
7 building and sent him home for the night. Jamar returned the following work week and stayed in
8 the same work area (“Marriage”). Mr. Tambo re-assigned Ms. Barraza to a new area (“Front
9 Subframe”). To Ms. Barraza’s knowledge, no HR report was made.

10 30. Some of Ms. Barraza’s colleagues who witnessed the foregoing types of
11 comments and touching sympathized and commiserated with her, including her co-workers NG
12 and JR. When NG left Tesla, she told Ms. Barraza that she felt bad for leaving Ms. Barraza to
13 face this behavior without NG’s support. JR, a male co-worker who worked in Ms. Barraza’s
14 area for approximately a year, noticed that in that area, like in every other area he had worked in
15 during his six years at the factory, these types of comments, catcalls, and gratuitous touching
16 were rampant. In his experience, the male employees in the factory had an unapologetic locker
17 room mentality, which was widely known and tolerated, and which was often directed at
18 Ms. Barraza. When Ms. Barraza or another attractive woman walked across the catwalk or
19 overpass, JR heard men call out things like: “Check out that bitch over there with the big-ass
20 titties,” “Hey yo, hey bitch,” “Damn, look at that girl, check her out,” “Look at those tits,” or “Oh
21 man, I want to fuck the shit out of her.”

22 **B. Tesla Supervisors and HR Were on Notice of or Participated in the Harassing**
23 **Conduct.**

24 31. Ms. Barraza has had a series of Supervisors and Leads during her three years, and
25 all of them participated in, received complaints from her about, or observed the foregoing types
26 of harassing conduct toward Ms. Barraza

27 32. From several months after she joined Tesla through the first half of 2020, Ernie
28 Tambo was Ms. Barraza’s Supervisor. As noted above, Mr. Tambo referred to Ms. Barraza as a

1 complaining “bitch,” and reassigned her to work with Mr. Tambo’s friend who had a “crush” on
2 her. Ms. Barraza complained to Mr. Tambo about the incident in which Kenny put his hands on
3 her and lifted her up in early 2020. Ms. Barraza is not aware of any discipline for Kenny.

4 33. In mid- to late-2019, Ms. Barraza complained to her Lead, Daniel Mays, about a
5 male co-worker, Ali [last name unknown], persistently making sexualized comments to her, such
6 as “Oh, you’re sexy” and “Damn, girl.” Mr. Mays said he would talk to the offender, but the
7 behavior did not stop, so Ms. Barraza eventually had to pull Ali aside herself and ask him to stop
8 being disrespectful to her. Tesla promoted Ali to a Lead position.

9 34. Around the same time, Ms. Barraza complained to Mr. Mays about another male
10 colleague’s habit of getting uncomfortably physically close to her while they were working on
11 the line – so close that she could feel him breathing on her. Ms. Barraza is unaware of Mr. Mays,
12 who himself made inappropriate comments at times, reporting this conduct to upper management,
13 or if he did report it, Ms. Barraza is unaware of any steps Tesla took to discipline the male
14 colleague.

15 35. James [last name unknown], who propositioned Ms. Barraza by text message as
16 stated above, was a supervisory Lead at the time (and had previously been her Lead).

17 36. Supervisor Karlos Tapia not only witnessed Ms. Barraza complaining about a co-
18 worker staring at her chest, but chimed in saying that *he* was staring at her chest and that she
19 should not wear her (Tesla-provided) work shirt with a picture on the chest if she did not want
20 male co-workers to stare at her breasts. Ms. Barraza did not report the issue because she did not
21 know who the HR representative was at that time and, as her Supervisor, Mr. Tapia was the one
22 to whom she would normally report an issue.

23 37. Mr. Panera was Ms. Barraza’s Supervisor when he flirted with her and made
24 threats to her career during a performance review. Mr. Panera also commented that Ms. Barraza
25 did not respond like a married woman after he called “Hey girl” to her. Ms. Barraza also
26 reported Evelyn’s inappropriate touching of her back-side to Mr. Panera. When he told
27 Ms. Barraza that “cultural differences” were the issue and asked whether she was okay with him
28 not reporting it to HR. Ms. Barraza replied that she was *not* okay with Mr. Panera refusing to

1 escalate the complaint to HR.

2 38. Ms. Barraza reported the incident of the man placing his leg between her thighs on
3 September 28, 2021 to her acting Supervisor, Manny Yepiz, and her Lead, Tony Davis.

4 Mr. Yepiz told Ms. Barraza that he would investigate the situation and take her account of what
5 happened the next day she was scheduled to work, which was October 2, 2021. Prior to the start
6 of her shift that day, she also emailed HR to complain about it. Ms. Barraza worked her shift that
7 day and went home as usual, without any mention of the incident from Mr. Yepiz or HR. She
8 had assumed that there would be at least some form of an investigation, that management or HR
9 would review security camera footage of the incident, and that there would be repercussions for a
10 man placing his leg between her thighs from behind without her consent. As far as she knows, no
11 action was taken.

12 39. Ms. Barraza's current Supervisor is David Ihley. Ms. Barraza's understanding is
13 that Tesla is investigating him for allegations of sex discrimination, as she was interviewed by
14 HR in September 2021 in connection with the investigation. As she told HR, she has witnessed
15 Mr. Ihley show favoritism towards women who dress scantily and are flirtatious. He permits
16 them to use their phones on the line, leave early, and generally receive lenient treatment that
17 other women are not afforded, and it was generally understood among Ms. Barraza and her
18 female co-workers that putting up with sexually inappropriate behavior was a way to get on the
19 good side of certain Supervisors including Mr. Ihley. On the other hand, opposing harassing
20 comments and flirtations, as Ms. Barraza did, resulted in the denial of such workplace benefits.
21 During the interview with HR, Ms. Barraza stated that verbal harassment by male co-workers
22 was a daily occurrence, and that she herself was sexually accosted or cat-called "almost every
23 day." She asked whether complaints that she had previously emailed to hr@tesla.com had ever
24 been acted on – the HR representative told her that that address was no longer live, so any emails
25 sent to that address either were not read or were never received by Tesla.

26 40. Upon information and belief, the widespread nature of the inappropriate behavior
27 detailed here is well known to Supervisors on the factory floor.

28 ///

1 **C. Sexual Harassment at Tesla Severely Harmed Plaintiff.**

2 41. Ms. Barraza has been humiliated and embarrassed by being called names on a
3 daily basis that she can hardly stand to repeat. Her sense of security and power has been eroded
4 by being touched repeatedly against her will. Her self-image and self-respect have suffered.

5 42. After the September 28, 2021 incident of the coworker sliding his leg between her
6 legs, Ms. Barraza asked her Lead, Tony Davis, if she could use the restroom. There, she began
7 having a panic attack that felt life-threatening. She went to her car and sat in the parking lot.
8 Supervisor Yepiz called her, and she told him what happened. She also reported this assault to
9 HR via email on October 2, 2021. As far as she knows, Tesla has not done anything to
10 investigate her reports.

11 43. On October 3, 2021, Ms. Barraza and her coworkers were asked to do a group
12 stretching activity that involved bending over and touching their toes. The thought of bending
13 over surrounded by the men who were objectifying her triggered another anxiety attack.
14 Ms. Barraza left the stretching, went to her workstation, and started working. A Lead asked if
15 she was okay, and she started crying.

16 44. As the shift progressed, she could not stop crying, and began having chest pain
17 and trouble breathing. Ms. Barraza asked her Lead for permission to go to the Tesla health
18 center. When she got there, the center staff said they could not help. Ms. Barraza left the
19 building, went to her car, and drove away. She texted Mr. Yepiz to let him know. She could not
20 talk to him because she was sobbing and shaking. Ms. Barraza drove to the emergency room,
21 where she was prescribed medication for her acute anxiety. Mr. Yepiz, rather than take action on
22 her sexual harassment complaint, informed her that he would be creating a disciplinary report
23 against her for “job abandonment.”

24 45. Ms. Barraza, who started her career at Tesla as a strong, confident, ambitious
25 woman is currently on a medical leave until the end of the year, ordered by her doctor, in
26 treatment with a therapist who has diagnosed her with post-traumatic stress disorder, and on
27 anxiety medication.

28 ///

1 **D. Tesla's Arbitration Agreement is Unenforceable.**

2 46. Like many tech employers, Tesla has sought to shield itself from public
3 accountability by forcing employees, as a condition of employment, to waive their rights to a jury
4 or court trial and instead agree to have their legal claims shunted into private, confidential
5 arbitration. At the start of her employment, Tesla provided Plaintiff with an offer letter that
6 included a mandatory arbitration provision. (Exhibit A.) However, Tesla overreached and
7 sought to impose on Ms. Barraza an arbitration that is procedurally and substantively
8 unconscionable and, therefore, unenforceable. Ms. Barraza had no opportunity to attempt to
9 negotiate this provision – it was a take-it-or-leave adhesion contract required as a condition of
10 working for Tesla. The agreement is therefore procedurally unconscionable.

11 47. The arbitration agreement is also substantively unconscionable in several ways.
12 First, arbitration agreements imposed as a condition of employment must be mutual, but Tesla's
13 agreement lacks the required mutuality because it would require arbitration of any employment
14 law claim brought by Plaintiff, but it allows Defendant to bring in court any claim against
15 Plaintiff for violation of Tesla's proprietary information and inventions agreement. Such
16 lopsided arbitration agreements, which allow the employer to go to court on the claims most
17 likely to be brought by the employer, but which force employees to arbitrate their claims, are
18 unfair and unconscionable. In addition, the arbitration agreement unlawfully requires the parties
19 to keep the proceedings secret. Courts have held that such overbroad confidentiality provisions
20 in arbitration agreements favor companies over individuals and are unconscionable because such
21 requirements place the company in a "far superior legal posture," and "may prevent potential
22 plaintiffs from obtaining the information needed" to build their case. Finally, Tesla's agreement
23 also illegally implies that employees cannot bring claims before state agencies.

24 48. In short, the arbitration provision is permeated with unconscionability. Moreover,
25 it had long been clear under binding law when Tesla presented the arbitration agreement to
26 Ms. Barraza that the non-mutual requirement to arbitrate, the confidentiality provision, and the
27 implied prohibition on making complaints to a state agency were substantively unconscionable.
28 Therefore, these provisions were included in bad faith and may not be severed.

49. For the foregoing reasons, among others, Plaintiff seeks a declaration that the arbitration agreement is not enforceable.

FIRST CAUSE OF ACTION
(Sexual Harassment in Violation of FEHA, Gov. Code § 12940 *et seq.*)

50. Plaintiff hereby incorporates by reference the previous paragraphs as if fully set forth herein and alleges as follows:

51. Ms. Barraza is a woman employed by Tesla.

52. Ms. Barraza was subjected to severe and pervasive harassing conduct from her colleagues and managers because she is a woman.

53. As detailed above, this severe, pervasive, and harassing conduct included near-daily obscene comments and catcalls of an objectifying, demeaning, and sexual nature, ogling, propositioning, and unwanted touching, including the touching of her back-side, torso, and inner thighs.

54. Ms. Barraza's circumstances constituted a hostile work environment.

55. The sexual advances and comments directed to Ms. Barraza were unwelcome.

56. Ms. Barraza repeatedly reported the sexually harassing conduct directed at her to Supervisors, Leads, and HR, and took all reasonable steps to avoid the conduct at work.

57. Tesla is strictly liable for the sexual harassment because it was conducted by Tesla's Supervisors and Leads, who had authority to direct Ms. Barraza's work activities, evaluate her performance, and discipline her.

58. Tesla knew or should have known of the rampant sexual harassment directed at Ms. Barraza, both through her complaints, and because the behavior was committed and/or witnessed by Supervisors and Leads. Yet Tesla failed to take immediate and appropriate corrective action.

59. As a direct, foreseeable, and proximate result of Tesla's unlawful actions, Ms. Barraza has suffered physical injury, pain, and suffering and continues to suffer severe emotional distress, including shame, anxiety, embarrassment, stress, and indignity, all to her damage in an amount to be proven at the time of trial.

60. Tesla committed the aforementioned acts despicably, maliciously, and willfully, with the wrongful intention of injuring Ms. Barraza, from an improper and evil motive amounting to malice, and in conscious disregard of her rights and safety. Tesla managing agents were on notice of and ratified the offending conduct. Ms. Barraza is thus entitled to recover punitive damages from Tesla in an amount according to proof.

SECOND CAUSE OF ACTION

(Failure to Prevent Sexual Harassment in Violation of FEHA, Gov. Code § 12940(k))

61. Plaintiff hereby incorporates by reference the previous paragraphs as if fully set forth herein and alleges as follows:

62. Tesla failed to take immediate preventative and corrective steps reasonably calculated to prevent the sexual harassment of Ms. Barraza

63. Tesla failed to act on Ms. Barraza's reports of sexual harassment.

64. Tesla knew or should have known of the rampant sexual harassment in its workplace.

65. As a direct, foreseeable, and proximate result of Tesla's unlawful actions, Ms. Barraza has suffered physical injury, pain, and suffering and continues to suffer severe emotional distress, including shame, anxiety, embarrassment, stress, and indignity, all to her damage in an amount to be proven at the time of trial.

66. Tesla committed the aforementioned acts despicably, maliciously, and willfully, with the wrongful intention of injuring Ms. Barraza, from an improper and evil motive amounting to malice, and in conscious disregard of her rights and safety. Tesla managing agents were on notice of and ratified the offending conduct. Ms. Barraza is thus entitled to recover punitive damages from Tesla in an amount according to proof.

THIRD CAUSE OF ACTION

(Retaliation in Violation of FEHA, Gov. Code § 12940(h))

67. Plaintiff hereby incorporates by reference the previous paragraphs as if fully set forth herein and alleges as follows:

68. FEHA makes it unlawful for an employer to discriminate against a person because

1 she has opposed practices that are unlawful under the FEHA.

2 69. As set forth above, throughout her time at Tesla, Ms. Barraza engaged in protected
3 activity by opposing and reporting complaints of sexual harassment and discrimination to HR and
4 to her Supervisors and Leads. Ms. Barraza also repeatedly rebuffed the sexual advances or
5 invitations of Supervisors and Leads and made it clear that she objected to this inappropriate
6 conduct.

7 70. The conduct that Ms. Barraza reported, complained of, and objected to constituted
8 unlawful sexual harassment and discrimination under the FEHA.

9 71. After making these complaints and objecting to the above inappropriate conduct,
10 Ms. Barraza was retaliated against in various ways. She was denied certain privileges and
11 benefits that were afforded to women who did not object to Supervisors' sexual advances and
12 flirtations. Employees who did not object to this conduct were favored with perks and
13 promotions.

14 72. When Ms. Barraza objected to a male coworker aggressively yelling at and using
15 foul language toward her around March 2020 (*see supra* ¶ 29), Supervisor Tambo moved Ms.
16 Barraza to a new location at the factory, rather than moving the male coworker or otherwise
17 addressing his inappropriate conduct. This negatively affected her conditions of employment,
18 ability to succeed in her job, and prospects for career advancement.

19 73. In the days following Ms. Barraza's complaint to Supervisor Yepiz about a man
20 placing his leg between her thighs on September 28, 2021, Mr. Yepiz was aware that she was
21 suffering as a result of the incident she had complained to him about, yet rather than take action
22 on her complaint, he took disciplinary action against her for job abandonment. This adverse
23 action was caused by Ms. Barraza's complaints of harassment.

24 74. As a direct, foreseeable, and proximate result of Tesla's unlawful actions,
25 Ms. Barraza has suffered physical injury, pain, and suffering and continues to suffer severe
26 emotional distress, including shame, anxiety, embarrassment, stress, and indignity, all to her
27 damage in an amount to be proven at the time of trial.

28 75. Tesla committed the aforementioned acts despicably, maliciously, and willfully,

1 with the wrongful intention of injuring Ms. Barraza, from an improper and evil motive amounting
2 to malice, and in conscious disregard of her rights and safety. Tesla managing agents were on
3 notice of and ratified the offending conduct. Ms. Barraza is thus entitled to recover punitive
4 damages from Tesla in an amount according to proof.

5 **FOURTH CAUSE OF ACTION**
6 **(Declaratory Relief, Code of Civil Procedure § 1060)**

7 76. Plaintiff hereby incorporates by reference the previous paragraphs as if fully set
8 forth herein and alleges as follows:

9 77. Pursuant to California Code of Civil Procedure § 1060, Plaintiff requests that the
10 Court declare the arbitration provision in Plaintiff's offer letter (Exhibit A) to be unenforceable
11 because it is procedurally and substantively unconscionable.

12 78. Resolution of this declaratory relief action concerning contractual provisions
13 challenged will have concrete practical consequences: a dispute has arisen that causes these
14 provisions to come into play, and Plaintiff's right to pursue her employment law claims before
15 this Court depends on the resolution of this question.

16 **NOTICE OF INTENT TO ASSERT FIFTH CAUSE OF ACTION**
17 **(PAGA, Labor Code section 2698 *et seq.* by Plaintiff Individually and on Behalf of the
LWDA and All Aggrieved Employees)**

18 79. Plaintiff hereby incorporates by reference the previous paragraphs as if fully set
19 forth herein and alleges as follows:

20 80. Plaintiff intends to bring this claim individually and on behalf of all Aggrieved
21 Employees.

22 81. Plaintiff is in the process of satisfying the administrative exhaustion requirements
23 of PAGA pursuant to Labor Code section 2699(b). Upon completion of that process, Plaintiff
24 will seek leave to amend the complaint to add a PAGA cause of action and seek civil penalties on
25 behalf of herself and all other Aggrieved Employees, should the State decline to prosecute these
26 claims.

27 82. The amended cause of action will be based on Tesla's violation of Labor Code
28 sections 6400(a) and 6401.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Ms. Barraza prays for judgment against Tesla as follows:

3 1. For compensatory damages, including but not limited to, lost back pay (including,
4 but not limited to, salary and bonus wages), equity, fringe benefits, future lost earnings, and
5 emotional distress;

6 2. For a temporary, preliminary, and permanent injunction enjoining Tesla from
7 continuing to engage in the violations of California Government Code § 12940 described herein,
8 including by requiring Tesla to adopt training, monitoring, reporting, and enforcement policies
9 reasonably calculated to immediately end such unlawful practices;

10 3. For punitive damages as allowed by law;

11 4. For an award to Ms. Barraza of costs of suit incurred herein and reasonable
12 attorneys' fees;

13 5. For prejudgment interest and post-judgment interest permitted by law;

14 6. For an injunction to prevent future violations of Government Code § 12940;

15 7. For a declaration that Tesla's arbitration provision (Exhibit A) is unconscionable
16 and unenforceable; and

17 8. For an award of such other and further relief as the Court deems just and proper.

18 DATED: November 18, 2021

Respectfully submitted,

19 RUDY, EXELROD, ZIEFF & LOWE, LLP

20
21 By: 

22 DAVID A. LOWE
23 MEGHAN F. LOISEL

24 THE JHAVERI-WEEKS FIRM

25 WILLIAM C. JHAVERI-WEEKS
26 ALLY N. GIROUARD

27 *Attorneys for Plaintiff Jessica Barraza*
28

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a trial by jury on all causes of action and/or issues so triable.

3 DATED: November 18, 2021

Respectfully submitted,

4 RUDY, EXELROD, ZIEFF & LOWE, LLP

5
6 By: 

7 DAVID A. LOWE
8 MEGHAN F. LOISEL

9 THE JHAVERI-WEEKS FIRM

10 WILLIAM C. JHAVERI-WEEKS
11 ALLY N. GIROUARD

12 *Attorneys for Plaintiff Jessica Barraza*

EXHIBIT A



10/18/2018

Jessica Barnett

Modesto, California
United States of America

Dear Jessica:

Tesla, Inc. ("Tesla" or the "Company") is pleased to offer you the non-exempt, hourly position of Production Associate on the terms set forth below. As Production Associate, you will perform the duties customarily associated with this position. You will report to Ramiel Youman. Your duties, responsibilities, job title, and work location may be changed at any time by Tesla.

Your rate of pay will be \$19 per hour, subject to standard payroll deductions and withholdings. As a non-exempt employee, you will be entitled to overtime. You will be eligible for paid time off according to Tesla's standard policy. Subject to the rules of the applicable plan documents, you will also be eligible to receive other benefits Tesla may provide to its employees (e.g., health and dental insurance coverage) beginning on your date of hire. Tesla may consider you for bonuses, although the amount of such bonuses, if any, and the criteria for determining the award of such bonuses, if any, shall be in the sole discretion of Tesla. Of course, Tesla reserves the right to modify your compensation and benefits from time to time, as it deems necessary.

Tesla offers a competitive benefits package described below:

Equity Grant: Should you decide to accept the position, we will recommend to Tesla's Board of Directors, or committee thereof, that the Company grant you an equity award with the value of \$5,000.00 in the form of Restricted Stock Units ("RSUs"), which will vest as described below. This value is determined based on our standard equity granting policies, as further described below. This award shall be subject to the terms and conditions of Tesla's 2010 Equity Incentive Plan and your Award Agreement, including vesting requirements.

Specifically, the RSUs shall vest over a period of four years as follows: twenty-five percent (25%) of the award shall vest on the first anniversary of the vesting start date (the first March 5, June 5, September 5 or December 5, as the case may be, after the end of the month in which you were hired, such date to be indicated in your Award Agreement) and six and twenty-five hundredths percent (6.25%) shall vest each quarter thereafter for the following twelve quarters, in each case subject to your continuing eligibility through the applicable vesting dates and subject to the terms of your Award Agreement. No RSUs shall vest other than on the first anniversary and twelve subsequent quarterly vest dates, and no right to any vesting shall be earned or accrued prior to such date.

New Equity Awards will be visible in E*Trade approximately eight weeks from your hire date. Grants are generally scheduled for approval on the 15th day of the month following your hire date. On the grant approval date, the average monthly market value of Tesla's stock price during month of hire is used to determine the number of shares granted/equity award value / average price), for RSU grants. This RSU amount is multiplied by three (3) for stock options, if granted instead of RSUs.

Please be aware that Tesla makes no representation about the future value of the equity award granted herein, and you should be aware that the value of this award will fluctuate in the future. Finally, the receipt of this award is subject to your signing the appropriate Award Agreement through the E*Trade portal.

401K Program: You will be eligible to participate in Tesla's 401K program after your first pay check. Our 401K program is administered by Fidelity Investments.

Paid Time Off ("PTO") Program: You earn 10 hours of PTO per month for a total of 120 hours per calendar year. You may maintain a PTO balance of up to 240 hours. When the amount of PTO you have earned but not taken reaches the

maximum balance, you will not earn additional PTO until you take time off and your PTO balance goes below 240 hours.

The Company is excited about your joining and looks forward to a beneficial and fruitful relationship. Nevertheless, you should be aware that your employment with the Company is for no specified period and constitutes at-will employment. As a result, you are free to resign at any time, for any reason or for no reason, with or without notice. Similarly, the Company is free to conclude its employment relationship with you at any time, with or without cause, and with or without notice.

We ask that, if you have not already done so, you disclose to Tesla any and all agreements relating to your prior employment that may affect your eligibility to be employed by Tesla or limit the manner in which you may be employed. It is Tesla's understanding that any such agreements will not prevent you from performing the duties of your position and you represent that such is the case. We want to emphasize that we do not wish you to bring any confidential or proprietary materials of any former employer which would violate any obligations you may have to your former employer. You agree not to make any unauthorized disclosure to Tesla or use on behalf of Tesla any confidential information belonging to any of your former employers (except in accordance with agreements between Tesla and any such former employer). You also warrant that you do not possess any property containing a third party's confidential and proprietary information. Of course, during your employment with Tesla, you may make use of information generally known and used by persons with training and experience comparable to your own, and information which is common knowledge in the industry or is otherwise legally available in the public domain. Moreover, you agree that, during the term of your employment with the Company, you will not engage in any other employment, occupation, consulting or other business activity directly related to the business in which Tesla is now involved or becomes involved during the term of your employment, nor will you engage in any other activities that conflict with your obligations to Tesla.

As a Tesla employee, you will be expected to abide by all Tesla policies and procedures, and, as a condition of your employment, you will sign and comply with Tesla's standard confidentiality agreement which prohibits unauthorized use or disclosure of Tesla confidential information or the confidential information of Tesla's clients.

In addition, to ensure the rapid and economical resolution of disputes that may arise in connection with your employment with Tesla, you and Tesla agree that any and all disputes, claims, or causes of action, in law or equity, arising from or relating to your employment, or the termination of your employment, will be resolved, to the fullest extent permitted by law by final, binding and confidential arbitration in your city and state of employment conducted by the Judicial Arbitration and Mediation Service/Endispute, Inc. ("JAMS"), or its successors, under the then current rules of JAMS for employment disputes; provided that:

- a. Any claim, dispute, or cause of action must be brought in a party's individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding; and
- b. The arbitrator shall have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be permitted by law; and
- c. The arbitrator shall not have the authority to consolidate the claims of other employees and shall not have the authority to fashion a proceeding as a class or collective action or to award relief to a group or class of employees in one arbitration proceeding; and
- d. The arbitrator shall issue a written arbitration decision including the arbitrator's essential findings and conclusions and a statement of the award; and
- e. Both you and Tesla shall be entitled to all rights and remedies that you or Tesla would be entitled to pursue in a court of law; and
- f. Tesla shall pay all fees in excess of those which would be required if the dispute was decided in a court of law.

Nothing in this agreement is intended to prevent either you or Tesla from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Notwithstanding the foregoing, you and Tesla each have the right to resolve any issue or dispute arising under the Proprietary Information and Inventions Agreement by Court action instead of arbitration.

Arbitrable claims do not include, and this Agreement does not apply to or otherwise restrict, administrative claims you may bring before any government agency where, as a matter of law, the parties may not restrict your ability to file such claims (including discrimination and/or retaliation claims filed with the Equal Employment Opportunity Commission and unfair labor practice charges filed with the National Labor Relations Board). Otherwise, it is agreed that arbitration shall be the exclusive remedy for administrative claims. If one or more of the provisions in this arbitration agreement, or any portion thereof, are deemed invalid, unenforceable, or void under the Federal Arbitration Act or other applicable law, then the remaining

provisions, or portions thereof, shall not thereby be affected and will continue in full force and effect, and shall be given full effect without regard to the invalid, unenforceable, or void provision, or portion thereof.

You acknowledge and agree that: (i) in the course of your employment by the Company, it will be necessary for you to create, use, or have access to (A) technical, business, or customer information, materials, or data relating to the Company's present or planned business that has not been released to the public with the Company's authorization, including, but not limited to, confidential information, materials, or proprietary data belonging to the Company or relating to the Company's affairs (collectively, "Confidential Information") and (B) information and materials that concern the Company's business that come into the Company's possession by reason of employment with the Company (collectively, "Business Related Information"); (ii) all Confidential Information and Business Related Information are the property of the Company; (iii) the use, misappropriation, or disclosure of any Confidential Information or Business Related Information would constitute a breach of trust and could cause serious and irreparable injury to the Company; and (iv) it is essential to the protection of the Company's goodwill and maintenance of the Company's competitive position that all Confidential Information and Business Related Information be kept confidential and that you do not disclose any Confidential Information or Business Related Information to others or use Confidential Information or Business Related Information to your own advantage or the advantage of others.

In recognition of the acknowledgment above, you agree that until the Confidential Information and/or Business Related Information becomes publicly available (other than through a breach by you), you shall: (i) hold and safeguard all Confidential Information and Business Related Information in trust for the Company; (ii) not appropriate or disclose or make available to anyone for use outside of the Company's organization at any time any Confidential Information and Business Related Information, whether or not developed by you; (iii) keep in strictest confidence any Confidential Information or Business Related Information; (iv) not disclose or divulge, or allow to be disclosed or divulged by any person within your control, to any person, firm, or corporation, or use directly or indirectly, for your own benefit or the benefit of others, any Confidential Information or Business Related Information; and (v) upon the termination of your employment, return all Confidential Information and Business Records and not make or retain any copies or assets thereof.

If you accept our offer, your first day of employment will be 10/22/2018. This letter agreement constitutes the complete, final and exclusive embodiment of the entire agreement between you and Tesla with respect to the terms and conditions of your employment, and it supersedes any other agreements or promises made to you by anyone, whether oral or written. This Agreement cannot be changed, amended, or modified except in a written agreement signed by an officer of Tesla. This letter agreement shall be construed and interpreted in accordance with the laws of the State of California.

As required by immigration law, this offer of employment is conditioned upon satisfactory proof of your right to work in the United States.

Employment at Tesla is conditioned upon, and thus subject to, pre-employment screenings for employment verification, background, and reference checks. Candidates for safety-sensitive positions and for work on certain projects, as well as employees working in those positions, are also subject to pre-employment drug and alcohol screening, and random and other (such as reasonable suspicion and/or post-accident) drug and alcohol screening during the course of employment at the Company. Certain positions may also require successful completion of a pre-employment physical examination, which is designed solely to determine your physical ability to safely perform the essential functions of the job with or without reasonable accommodation. The Company reserves the right to periodically conduct background checks throughout any employee's tenure in accordance with the Fair Credit Reporting Act and applicable federal, state and local laws, consistent with business need. Your employment, therefore, is contingent upon a clearance of a background investigation, reference check, drug screen and/or physical examination, as applicable. In limited cases due to business necessity, the Company may permit a candidate to start work, contingent upon the successful completion or results of a background check and/or reference check (aka "contingent start"), in which case the individual's employment may be subject to termination if the Company receives negative information or results in connection with a background check or reference check, even where employment has conditionally begun pending the background or reference check results.

If you choose to accept our offer under the terms described above, please indicate your acceptance, by signing below and returning it to me prior to 10/18/2018 after which date this offer will expire.

We look forward to your favorable reply and to a productive and enjoyable work relationship.

Very truly yours,

Tesla, Inc.



Elon Musk
Chairman of the Board and CEO

Accepted by:

Signature: 

Name: Jessica Barriera
Date: Oct 17, 2018

Share Date: 10/22/2018