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10 Erica Cloud

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF ALAMEDA

13 ERICA CLOUD, an individual,

14 Plaintiff,

15 vs.

16 TESLA, INC. DBA TESLA MOTORS, INC.,
17 a Delaware corporation; ROGER
18 BONGATO, an individual; and DOES 1
19 through 50, inclusive,

20 Defendants.

Case No. **21CV003756**

COMPLAINT

1. **RETALIATION UNDER THE FAIR EMPLOYMENT & HOUSING ACT (“FEHA”) – GOVERNMENT CODE SECTION 12940, et seq.**
2. **HARASSMENT UNDER FEHA (INCLUDING UNWELCOME PHYSICAL TOUCHING)**
3. **FAILURE TO PREVENT VIOLATIONS OF FEHA**

[DEMAND FOR JURY TRIAL]

1 Plaintiff Erica Cloud (“Plaintiff”) alleges as follows on knowledge as to herself and her known
2 acts, and on information and belief as to all other matters:

3 **I.**

4 **PARTIES**

5 1. At all relevant times mentioned herein, Plaintiff was employed by Tesla, Inc. (the
6 “Company” or collectively with Defendant Roger Bongato, “Defendants”).

7 2. Defendant Roger Bongato is an individual who was also employed by the Company.

8 3. At all relevant times mentioned herein, the Company was an “employer” of Plaintiff as
9 such term is defined by California Government Code section 12926(d) in that it regularly employed five
10 (5) or more persons such that it was at all times subject to the Fair Employment and Housing Act (the
11 “FEHA”).

12 4. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES
13 1 through 50, inclusive, and therefore sue these defendants by such fictitious names. Plaintiff will amend
14 this Complaint to allege the true names and capacities of said defendants when the same has been
15 ascertained. Each of the fictitiously named defendants is responsible in some manner for the acts
16 complained of herein. Unless otherwise stated, all references to named defendants shall include DOE
17 defendants as well.

18 5. At all times mentioned herein, Defendants acted in concert, and/or as alter egos of each
19 other, or otherwise are jointly liable for the unlawful conduct complained of herein. Indeed, Plaintiff is
20 informed and believes and thereon alleges that Defendants handle certain aspects of their employer-
21 employee relationships jointly and are a single employer, joint employer and/or integrated enterprise.
22 Plaintiff further alleges that Defendants at the relevant times were a single employer, joint employer
23 and/or an integrated enterprise employing Plaintiff.

24 6. At all material times mentioned herein, Defendants and each DOE defendant was an
25 agent, employee and/or partner of the remaining Defendant, including the DOE Defendant, and, in doing
26 the things alleged herein, was acting within the scope of such agency, employment and/or partnership
27 with the permission, authority and/or consent of his, her or its co-Defendant.

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II.

JURISDICTION AND VENUE

7. Jurisdiction and venue are proper in this Court because all of the claims alleged herein arose in Alameda County and all of the defendants are doing or did business or reside in Alameda County, and/or their principal place of business is in Alameda County, in each case, at the times relevant herein. *See also* Govt. Code § 12965(b) (stating venue is appropriate in, *inter alia*, any county in the state in which the unlawful practice is alleged to have been committed).

8. The amount in controversy in this matter exceeds the jurisdictional limits of this Court, exclusive of interest and costs.

III.

FACTUAL ALLEGATIONS

9. Plaintiff started working for the Company on or around January 6, 2020 as an assembly line worker.

10. In February 2020, Roger Bongato, started working with Plaintiff. Bongato was Plaintiff's manager. Bongato managed at least 15 assembly line workers during his shift. Bongato was responsible for making decisions about all operations of his unit, and even managed other matters such as requests for time off.

11. Bongato started sexually harassing Plaintiff shortly after she started with the Company.

12. Shortly after he started, Bongato would tell Plaintiff that she was pretty, he would get on his knees and propose marriage to Plaintiff, he would blow kisses towards Plaintiff, he would hug and massage Plaintiff even though Plaintiff would take his hands off her and make clear that touching was unwelcome.

13. Plaintiff told Bongato to stop making advances towards her on about ten occasions in the month of February 2020 alone. She would tell him that he is being unprofessional and inappropriate.

14. Bongato did not stop his inappropriate behavior. Indeed, he retaliated against Plaintiff and made her hostile work environment even worse. From March to June 2020, Plaintiff was

1 subjected to Bongato's sexual harassment on a near-daily basis in the same manner as set forth in
2 Paragraph 12 above.

3 15. Bongato also would assert power and intimidate Plaintiff during this time. For
4 example, in early Spring 2020, Bongato told Plaintiff on several occasions that she is "blackenese" and
5 he "is big down there" referring to his penis. On one occasion, Bongato said this out loud knowing
6 that Plaintiff's mother was on the phone and that she would hear that said to her daughter.

7 16. Generally, Bongato's misconduct was highly aggressive and caused Plaintiff to fear for
8 her safety.

9 17. In June 2020, Plaintiff reported Bongato's misconduct to Human Resources. Before
10 then, she warned Bongato that she would have no choice but to report him if he didn't stop. Instead of
11 appreciating the warning, Bongato started to retaliate against Plaintiff, giving her more difficult work.

12 18. Despite Plaintiff's complaints, she was made to work with Bongato for two to three
13 months after her complaint to Human Resources. Bongato continued to act inappropriately in the same
14 way. Had Human Resources done a timely investigation, they could have saved Plaintiff that suffering.

15 19. Even though Plaintiff does not have to work with Bongato now, she is now
16 experiencing retaliation from her managers for complaining about Bongato. On a daily or near daily
17 basis, Plaintiff is scrutinized and intimidated in ways that she was not before complaints about Bongato
18 and in ways that other employees are not. For example, Plaintiff is sometimes sent home or told that
19 she cannot work for arbitrary reasons.

20 20. The misconduct, as described this Section III, was performed or ratified by managing
21 agents of the Company ("Managing Agents") including but limited to Bongato. The Managing Agents
22 were each responsible for overseeing a substantial portion of the Company's business operations, and
23 each exercised substantial discretionary authority over vital aspects of such operations, including making
24 significant decisions that affect the Company's internal policies. The Managing Agents engaged in
25 malicious, fraudulent, and oppressive conduct that justifies an award of punitive damages.

26 21. In committing the foregoing acts, the Managing Agents willfully disregarded Plaintiff's
27 right to be free from unlawful harassment and retaliation.
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1 33. California Government Code section 12940(j)(1) makes it illegal for an employer or any
2 person to harass an employee on the basis of sex or gender.

3 34. During the course of Plaintiff's employment, Defendants including Bongato engaged in
4 a pattern of continuous and pervasive harassment of Plaintiff on the basis of gender and sex, which acts
5 included, but were not limited to, those alleged in paragraphs 9-19 above. This harassment included
6 subjecting Plaintiff to a hostile work environment stemming from animus towards her gender, sexual
7 harassment, and quid pro quo sexual harassment when Plaintiff refused Bongato's advances.

8 35. The entity Defendants, or should have known, about such conduct but authorized, ratified
9 and/or failed to take appropriate corrective action with respect thereto.

10 36. As a proximate result of Defendants' conduct, Plaintiff has suffered and will continue to
11 suffer physical and emotional injuries, including nervousness, humiliation, depression, anguish,
12 embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff's damages
13 will be ascertained at trial.

14 37. The acts of oppression, fraud, and/or malice, were engaged in by Managing Agents
15 employees of Defendants. Defendants had advance knowledge of the unfitness of each employee who
16 acted with oppression, fraud, and/or malice, and/or authorized or ratified the wrongful conduct for which
17 an award of punitive damages is sought, and/or was personally guilty of oppression, fraud, and/or malice.
18 The advance knowledge and conscious disregard, authorization, ratification, or act of oppression, fraud,
19 and/or malice was committed by or on part of an officer, director, or managing agent of each of the
20 Defendant employers, thereby entitling Plaintiff to punitive and exemplary damages against each
21 Defendant employer in accordance with California Civil Code section 3294 in a sum appropriate to
22 punish and make an example out of Defendants.

23 38. The FEHA provides for an award of reasonable attorneys' fees and costs incurred by a
24 prevailing plaintiff in an action brought under its provisions. Plaintiff has employed, and will continue
25 to employ, attorneys for the initiation and prosecution of this action. Plaintiff has incurred and will
26 continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an award of attorneys' fees and
27 costs.

1 39. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this
2 Court.

3 **VII.**

4 **THIRD CAUSE OF ACTION**

5 **(Failure to Prevent Retaliation and Discrimination in Violation of the FEHA)**

6 **(On Behalf of Plaintiff Against the Company)**

7 40. Plaintiff realleges and incorporates by reference paragraphs 1-39, inclusive, of this
8 Complaint as though fully set forth herein.

9 41. California Government Code section 12940(k) makes it an unlawful employment practice
10 for an employer to “fail to take all reasonable steps to prevent discrimination and harassment from
11 occurring.” This provision also makes it unlawful for an employer to fail to prevent retaliation. *See,*
12 *e.g., Ortiz v. Georgia Pacific* (E.D. Cal. 2013) 973 F.Supp.2d 1162, 1184 (citing *Taylor v. City of Los*
13 *Angeles Dep’t of Water & Power* (2006) 144 Cal.App.4th 1216, 1240).

14 42. Defendants violated this provision by failing to prevent harassment and retaliation against
15 Plaintiff, including the harassment and retaliation set forth in paragraphs 9-19 above.

16 43. As a proximate result of the conduct of Defendants, Plaintiff suffered and continues to
17 suffer damages in terms of lost wages, lost bonuses, lost benefits, and other pecuniary loss according to
18 proof. Plaintiff has also suffered and will continue to suffer physical and emotional injuries, including
19 nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue,
20 and anxiety. The amount of Plaintiff’s damages will be ascertained at trial.

21 44. FEHA provides for an award of reasonable attorneys’ fees and costs incurred by a
22 prevailing plaintiff in an action brought under its provisions. Plaintiff has employed and will continue
23 to employ attorneys for the initiation and prosecution of this action. Plaintiff has incurred and will
24 continue to incur attorneys’ fees and costs herein. Plaintiff is entitled to an award of attorneys’ fees and
25 costs.

26 45. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this
27 Court.

1 **PRAYER FOR RELIEF**

2 1. For general damages, including emotional distress damages, according to proof on each
3 cause of action for which such damages are available.

4 2. For special damages, according to proof on each cause of action for which such damages
5 are available.

6 3. For compensatory damages, including emotional distress damages, according to proof on
7 each cause of action for which such damages are available.

8 4. For declaratory and injunctive relief, as appropriate.

9 5. For punitive damages and/or exemplary damages, as appropriate.

10 6. For pre-judgment interest and post-judgment interest according to law.

11 7. For reasonable attorneys' fees incurred in this action pursuant to the FEHA and California
12 Code of Civil Procedure section 1021.5.

13 8. For costs of suit incurred in this action.

14 9. For such other and further relief and the Court deems proper and just.

15 Dated: December 6, 2021

MEHTANI LAW OFFICES, P.C.

16 By: 
17 AANAND MEHTANI

18 Attorneys for Plaintiff
19 ERICA CLOUD

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff Erica Cloud hereby demands a trial by jury on all causes of action alleged herein in the
3 Complaint for Damages.

4 Dated: December 6, 2021

MEHTANI LAW OFFICES, P.C.

5 By: 
6 AANAND MEHTANI

7 Attorneys for Plaintiff
8 ERICA CLOUD