

May 8, 2023

Mr. Elon Musk  
Chief Executive Officer and Product Architect  
Tesla, Inc.  
1 Tesla Road  
Austin, Texas 78725

Dear Mr. Musk,

We are incredibly troubled by Tesla's reported use of forced arbitration clauses in consumer and employee contracts. Such provisions deny consumers their right to bring cases in court and shield Tesla from public scrutiny and accountability. Several recent reports and lawsuits have described a culture of "severe and pervasive harassment" faced by workers at Tesla, and on February 15, the National Highway Traffic Safety Administration (NHTSA) found Tesla's Full Self-Driving Beta software could "infringe upon local traffic laws or customs" and increase the vehicle's crash risk.<sup>1</sup> We are deeply concerned that the arbitration agreements you impose on your workers and consumers have kept these reportedly deplorable and discriminatory conditions and potential safety flaws from the public eye and limited regulatory authorities' ability to protect Tesla customers and employees and hold Tesla publicly accountable.

**I. Employment arbitration agreements hindered public scrutiny of racial and gender discrimination claims against Tesla.**

Tesla appears to have long used arbitration agreements to provide itself effective immunity against a vast array of claims, from racial and gender discrimination to workplace sexual harassment.<sup>2</sup> According to California's Department of Fair Employment and Housing, Tesla received "numerous complaints by Black and/or African American workers about racial harassment, racial discrimination, and retaliation lodged over a span of **almost a decade.**"<sup>3</sup> These complaints, however, "have been futile," as Tesla has "turned, and continues to turn a blind eye" to the commonplace use of racial slurs and racist graffiti.<sup>4</sup>

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<sup>1</sup> *Vaughn v. Tesla, Inc.*, No. A154753, First Appellate District Division Five, at 2-3 (Jan. 4, 2023), <https://www.courts.ca.gov/opinions/documents/A164053.PDF> (denying motion to compel arbitration); *see also* Margot Roosevelt and Russ Mitchell, "Black Tesla employees describe a culture of racism: 'I was at my breaking point,'" LA Times (Mar. 25, 2022), <https://www.latimes.com/business/story/2022-03-25/black-tesla-employees-fremont-plant-racism-california-lawsuit>; *Dept. of Fair Employment and Housing (DFEH) vs. Tesla, Inc. et al.*, Case No. 22CV006830, California Superior Court, Alameda County, <https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/02/DFEH-vs-Tesla.pdf>; National Highway Traffic Safety Administration, Part 573 Safety Recall Report, recall number 23V-085, February 15, 2023, <https://static.nhtsa.gov/odi/rcl/2023/RCLRPT-23V085-3451.PDF>.

<sup>2</sup> *See, e.g.*, Jessica Silver-Greenberg & Robert Gebeloff, *Arbitration Everywhere, Stacking the Deck of Justice*, N.Y. TIMES (Nov. 1, 2015) ("Corporations said that class actions were not needed because arbitration enabled individuals to resolve their grievances easily. But court and arbitration records show the opposite has happened: once blocked from going to court as a group, most people dropped their claims entirely."); *accord* Estlund, *supra* note 1, at 708.

<sup>3</sup> *DFEH vs. Tesla*, *supra* note 1, at 5 (emphasis added).

<sup>4</sup> *See id.* at 5, 12-14.

Black Tesla employees report unconscionable and ubiquitous harassment at work. Workers recounted confronting racial slurs and racist graffiti on a daily basis and described the constant use of the n-word by coworkers and supervisors alike.<sup>5</sup> One worker reported hearing racial slurs as often as 50 to 100 times each day.<sup>6</sup> Racist drawings and slurs etched on the walls in common areas were allegedly ignored for months at a time, forcing workers to confront nooses, swastikas, and phrases comparing them to animals in their breakroom.<sup>7</sup> Moreover, workers report Tesla’s Fremont, California, factory as being racially segregated, with Tesla management relegating Black workers to the lowest-level and most physically demanding roles.<sup>8</sup> Workers allegedly referred to one area predominately staffed by Black workers with a derogatory and racist phrase.<sup>9</sup> If that were not enough, Black workers also reported being disproportionately disciplined and demoted, as well as facing further retaliation if they complained.<sup>10</sup>

Female Tesla employees also report facing inexcusable workplace conditions, describing pervasive and egregious instances of sexual harassment. Male employees allegedly groped female employees, took and distributed photos of their backsides, and constantly made sexually explicit statements, both about and to them.<sup>11</sup> One woman reported hearing a male coworker make graphic statements her, and another reported being propositioned by her supervisor.<sup>12</sup> Another woman begged to be separated from her harassers, but Tesla management reportedly “never listened” and fired her instead.<sup>13</sup>

Tesla’s confidential arbitration agreements – which appear to be mandatory for workers – significantly limit the extent to which the details of discriminatory conditions at the company may come to light. Such agreements may also permit the conditions leading to such complaints to be ignored. Workers from Tesla’s Fremont factory, for example, appear to have brought at least five times the number of discrimination lawsuits last year than workers at other companies’ comparable plants.<sup>14</sup> Only a few of these cases, however, have managed to survive in court, with most being forced out of court following Tesla’s motions to compel arbitration.<sup>15</sup> The details these cases allege – some of which we noted above – raise significant concerns about not only

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<sup>5</sup> *Id.* at 4-5, 13-14.

<sup>6</sup> *Id.* at 12.

<sup>7</sup> *Id.* at 4-5, 13-14.

<sup>8</sup> *Id.* at 15-16, 21.

<sup>9</sup> *Id.* at 12.

<sup>10</sup> *Id.*

<sup>11</sup> See Grace Kay and Aine Cain, “On the Tesla Production Line: Dozens of Former Employees Say They Faced Catcalls, Groping, Slurs, and Harassment on the Job,” INSIDER (Mar. 23, 2022) <https://www.businessinsider.com/tesla-lawsuits-former-workers-claim-racial-discrimination-sexual-harassment-2022-3>; Stephen Rodrick, “How Many Women Were Abused to Make That Tesla?,” ROLLING STONE (Sep. 19, 2022) <https://www.rollingstone.com/culture/culture-features/tesla-sexual-harassment-lawsuit-investigation-elon-musk-1234590697/>.

<sup>12</sup> See *id.*

<sup>13</sup> See *id.*

<sup>14</sup> See Kay and Cain, *supra* note 11.

<sup>15</sup> *DFEH vs. Tesla*, *supra* note 1 (suit brought by the government); *Vaughn v. Tesla*, *supra* note 1 (suit brought by employees who were hired through a staffing agency that did not include a forced arbitration clause in its initial employment agreements).

Tesla management's complicity and participation in the discriminatory conditions, but also the untold number of other complaints that remain confidential.

## **II. Consumer arbitration agreements have placed a black box around any concerns drivers may have on the safety of Tesla's vehicles.**

Although details have trickled out about how Tesla has – for years – tolerated racist behavior against its employees, no light has been shed on what private settlements Tesla may have made over the safety of its cars. However, NHTSA recently announced Tesla is recalling more than 360,000 vehicles because of increased crash risk during engagement of the Full Self-Driving Beta software. When engaged, NHTSA found that vehicles performed unsafe driving maneuvers such as running yellow lights, rolling through stop signs, disobeying posted speed limits, and disregarding lane markings.<sup>16</sup> Simply put, this is unacceptable. And this only reaffirms our repeated warnings about the safety of Tesla's software. On February 8, 2022, we wrote to you asking whether *any* of Tesla's features “fail[ed] to follow traffic safety laws or allow[ed] drivers to direct the vehicle to disobey traffic laws.”<sup>17</sup> Your response, unsurprisingly, failed to answer this question. Instead, you told us that Tesla's “software and homologation teams certify our products through a comprehensive safety validation review and rigorous internal development process to make certain that our technologies are safe. It is only after Tesla achieves a critical level of confidence that we then roll out our products to customers.”<sup>18</sup> Let us be clear: your so-called safety review is a sham. There is no “critical level of confidence” that could ever justify your software engaging in unsafe driving behavior.

The public deserves the full record of safety complaints about Tesla vehicles. Recent reporting highlights how Tesla includes provisions to compel arbitration in its contracts with vehicle buyers.<sup>19</sup> Although these contracts theoretically permit Tesla customers to opt-out of arbitration – a privilege not afforded to its employees – this is a distinction without any real difference.<sup>20</sup> Employees and consumers rarely opt out of such clauses even when provided the option.<sup>21</sup> Tesla's troubling track record on safety makes the inclusion of these provisions in vehicle order agreements even more concerning. NHTSA still has open investigations into Tesla – on “phantom braking” and gameplay while driving – in addition to the Engineering Analysis of Tesla's Autopilot system engagement during crashes at first responder sites.<sup>22</sup> Tesla's own

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<sup>16</sup> National Highway Traffic Safety Administration, *supra* note 1,

<sup>17</sup> Senators Richard Blumenthal and Ed Markey to Elon Musk, February 8, 2022, in author's possession.

<sup>18</sup> Rohan Patel to Senators Richard Blumenthal and Ed Markey, March 4, 2022, in author's possession.

<sup>19</sup> Jack Ewing, “Tesla's Direct Sales Model Helps It Thwart Customer Lawsuits,” *New York Times* (December 19, 2022), <https://www.nytimes.com/2022/12/19/business/tesla-class-action-lawsuit-arbitration.html>.

<sup>20</sup> Tesla, “Motor Vehicle Order Agreement,” <https://www.tesla.com/order/download-order-agreement> (accessed February 15, 2023).

<sup>21</sup> Jeff Sovern, “Why Allowing Pre-Dispute Arbitration Opt-Out Clauses Is Not Effective Consumer Protection,” Consumer Law & Policy Blog, *Public Citizen*, May 1, 2009, <https://pubcit.typepad.com/clpblog/2009/05/why-allowing-pre-dispute-arbitration-optout-clauses-is-not-effective-consumer-protection.html>.

<sup>22</sup> U.S. Department of Transportation, National Highway Traffic and Safety Administration, “Autopilot & First Responder Scenes,” <https://static.nhtsa.gov/odi/inv/2022/INOA-EA22002-3184.PDF> (accessed February 15, 2023); U.S. Department of Transportation, National Highway Traffic and Safety Administration, “Unexpected Brake Activation,” <https://static.nhtsa.gov/odi/inv/2022/INOA-PE22002-4385.PDF> (accessed February 15, 2023); U.S. Department of Transportation, National Highway Traffic and Safety Administration, “Tesla “Passenger Play,”” <https://static.nhtsa.gov/odi/inv/2021/INOA-PE21023-9605.PDF> (accessed February 15, 2023); David Shepardson, “Tesla recalls nearly 54,000 vehicles that may disobey stop signs,” *Reuters* (February 1, 2022),

engineers raised concerns about the safety implications of removing radar sensors from cars.<sup>23</sup> Beyond flawed design choices, Tesla’s vehicles appear to be plagued by myriad hardware and software issues: steering wheels in two Tesla vehicles fell off *during operation* because of a missing retaining bolt, which NHTSA recently opened an investigation into, while another vehicle appeared to spontaneously combust.<sup>24</sup> But because Tesla drivers, as a practical reality, are subject to confidential arbitration agreements, we and the public – including would-be buyers – have no visibility into what complaints may have already been made and what other potential safety issues with Tesla vehicles may exist.

Tesla previously asserted that “the interests of workers and fundamental fairness must come first.”<sup>25</sup> We agree. However, these words ring hollow when Tesla uses arbitration agreements to shield problematic behavior from public scrutiny. With limited visibility into the labor conditions at Tesla, the safety of Tesla’s vehicles, and the fairness of the arbitration proceedings, we – and the public – are restricted in our ability to ensure that American workers and consumers retain the ability to protect their rights and hold firms like Tesla accountable.

We respectfully request a written response to the following questions by June 8, 2023:

1. From 2012 to the present, how many racial harassment, discrimination, or retaliation complaints has Tesla received from its employees or contractors?
  - a. How many cases did Tesla settle prior to arbitration?
  - b. How many cases went to arbitration?
    - i. Of the cases that went to arbitration, what is the number of cases in which the arbitrator found for the employee or contractor?
  - c. How much has Tesla paid out in response to claims of racial harassment, discrimination, or retaliation complaints from either direct employees, contractors, or persons hired through a staffing agency, and whether pre- or post-arbitration?
2. From 2012 to the present, how many sexual harassment complaints has Tesla received from its employees, contractors, or those hired through staffing agencies?
  - a. How many cases did Tesla settle prior to arbitration?
  - b. How many cases went to arbitration?
    - i. Of those cases that went to arbitration, what is the number of cases in which the arbitrator found for the employee or contractor?
  - c. How much has Tesla paid out in response to claims of sexual harassment from either direct employees, contractors, or persons hired through a staffing agency, and whether pre- or post-arbitration?

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<https://www.reuters.com/business/autos-transportation/tesla-recalls-nearly-54000-us-vehicles-rolling-stop-software-feature-2022-02-01/>.

<sup>23</sup> Faiz Siddiqui, “How Elon Musk knocked Tesla’s ‘Full Self-Driving’ off course,” *Washington Post* (March 19, 2023), <https://www.washingtonpost.com/technology/2023/03/19/elon-musk-tesla-driving/>.

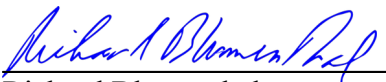
<sup>24</sup> U.S. Department of Transportation, National Highway Traffic and Safety Administration, “Steering wheel detachment,” <https://static.nhtsa.gov/odi/inv/2023/INOA-PE23003-5769.PDF> (accessed March 9, 2023); data from Tesla Fire, <https://www.tesla-fire.com/> (accessed February 15, 2023).

<sup>25</sup> Tesla, “The DFEH’s Misguided Lawsuit,” <https://www.tesla.com/blog/dfehs-misguided-lawsuit> (accessed February 15, 2023).

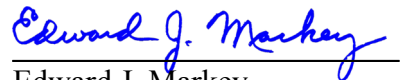
3. From 2012 to the present, how many complaints has Tesla received from its employees, contractors, or those hired through staffing agencies for claims not covered by questions 1 and 2? Please provide a breakdown of the types of other complaints received.
4. In the past ten years, how many cars has Tesla sold while the Motor Vehicle Order Agreement had an opt-out arbitration provision?
  - a. When did Tesla add the opt-out provision to its Agreement to Arbitrate?
  - b. How many consumers have opted out?
  - c. How many consumers have filed a complaint with Tesla regarding their car? Please provide a breakdown of the types of complaints received.
  - d. How many cases has Tesla settled prior to arbitration?
  - e. How many cases have gone to arbitration?
  - f. Of those that went to arbitration, how many have found for the consumer?
  - g. What is the average settlement for the consumer through arbitration?
5. For all safety-related complaints provided in the complaint breakdown required by Question 3(c), please list the associated vehicle hardware or software feature. Please note and describe each software or hardware feature in detail, including when it was first implemented, why it was designed and implemented, and whether there were any crashes or incidents associated with it. In addition, please describe any safety-critical and life-critical features or functions of associated vehicle electronic controls and the way their operational status is monitored and reported to assure safe operation.
6. Will Tesla commit to no longer:
  - a. including arbitration clauses in employee and consumer contracts?
  - b. filing motions to compel arbitration for new claims against it in court?

Thank you for your prompt attention to this important matter. We await your response.

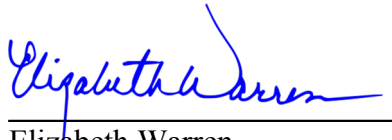
Sincerely,



Richard Blumenthal  
United States Senator

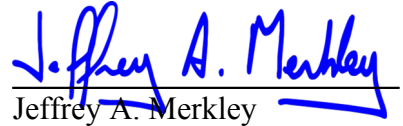


Edward J. Markey  
United States Senator



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Elizabeth Warren  
United States Senator



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Jeffrey A. Merkley  
United States Senator



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Richard J. Durbin  
United States Senator



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Bernard Sanders  
United States Senator



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Sherrod Brown  
United States Senator