



Legal Document

Superior Court of California, County of Alameda
Case No. RG20080233
Henkes v. Tesla Energy, Inc

Document 1



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CLERK OF THE SUPERIOR COURT
By *Janis P...*

Attorney for Plaintiff STEVEN HENKES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

11 STEVEN HENKES,

12 Plaintiff,

13 v.

14 TESLA ENERGY, INC., and DOES 1 through 100,

15 Defendants.

Case No. *Rg26086233*

COMPLAINT FOR DAMAGES

LABOR CODE SECTION 1102.5; LABOR CODE SECTION 6310; WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; ATTORNEYS FEES & COSTS; PUNITIVE DAMAGES REQUESTED

JURY TRIAL DEMANDED

FILE BY FAX

UNLIMITED CIVIL CASE

GENERAL ALLEGATIONS

23 Plaintiff STEVEN HENKES ("PLAINTIFF") alleges the following against Defendant TESLA ENERGY, INC. (hereafter referred to as "Defendant" and/or "TESLA"), , and DOES 1-100:

24 1. PLAINTIFF is informed and believes that at all times mentioned herein, each of the
25 defendants was the agent or employee of each of the other defendants and, in taking all of the actions
26 alleged herein, was acting within the course and scope, purpose, knowledge, approval and consent of such
27

28 **Complaint for Damages**

ORIGINAL



1 agency and employment, and with the ratification, permission.

2 2. PLAINTIFF, a natural person, was at all times relevant to this Complaint, employed by
3 DEFENDANT, and a resident of the County of ALAMEDA. DEFENDANT was, at all times relevant to the
4 Complaint, an private business employer doing business in the County of ALAMEDA.

5 3. PLAINTIFF does not know the true names of Defendants DOES 1 through 100, inclusive,
6 and therefore sues them by those fictitious names. PLAINTIFF will amend this Complaint to show their
7 true identities and capacities when they have been ascertained.

8 4. As set forth below, this Complaint arises from the parties' employment relationship. At the
9 time of PLAINTIFF's abrupt termination on August 3, 2020, he was a full-time employee of TESLA.

10 5. Mr. Henkes was originally hired by Solar City Corp. as a Senior Quality Engineer in April,
11 2016. Upon TESLA's acquisition of Solar City in August, 2017, Mr. Henkes became a Group Manager (M2)
12 in TESLA's Energy Supply chain. Based upon outstanding service, Mr. Henkes was promoted to Field
13 Quality Manager (M3) in December, 2018.

14 6. Sometime in 2017 (if not earlier), TESLA became aware that defective and dangerous
15 Amphenol H4 Connectors had been installed in thousands of residential and commercial solar power
16 systems by Solar City. This became public information through Walmart Inc.'s lawsuit against TESLA filed
17 in New York state court in August, 2019. However, for months prior to Walmart's suit, Mr. Henkes
18 forcefully advocated for the health and safety of TESLA's customers (over 60,000 residential customers
19 across the US plus over 500 commercial and government accounts). In his role Field Quality Manager for
20 TESLA's now-infamous "Project Titan", PLAINTIFF's job was to ensure that TESLA promptly and safely
21 report, notify, and shut down any/all solar systems using the defective and dangerous Amphenol H4
22 Connectors. To this end, Mr. Henkes took the following steps:

23 (a) Internal reports to TESLA management and attorneys. Mr. Henkes
24 recommended without equivocation that as part of it's Connector Replacement, Recall &
25 Remediation program, TESLA immediately inform in writing all TESLA customers of
26 the fire risks associated with continued use of the defective solar systems. Mr. Henkes'
27 belief that the public was not adequately notified and protected was borne out by the

1 many fires nationwide across TESLA's customer base. Mr. Henkes was quite outspoken
2 about his desire to protect public health, and openly shared his concerns with many
3 TESLA employees. In addition, Mr. Henkes publicly reported his safety concerns,
4 along with his belief that TESLA was required to "seek [R]egulatory 3rd party guidance"
5 by Section 15(b) of the Consumer Product Safety Act, in a Solar Field Issue Meeting held
6 at TESLA on April 11, 2019.

7 (b) Complaint to U.S. Consumer Protection Safety Commission. Deeply
8 concerned that his internal requests and complaints were being either ignored or
9 intentionally stifled by TESLA, Mr. Henkes took matters into his own hands and filed an
10 official complaint with the United States Consumer Protections Safety Commission on
11 April 19, 2019. Once again, this complaint highlights TESLA's intentional withholding
12 of information related to the severity of fire damage potentially caused by the defective
13 Amphenol H4 Connectors.

14 (c) Complaint to Security & Exchange Commission. In May, 2019, still
15 unsatisfied that TESLA had adequately ensured public safety, Mr. Henkes filed a
16 separate complaint with the US Securities and Exchange Commission, emphasizing that
17 with summer, 2019 fire season drawing closer, he could "no longer accept [that] 911
18 calls are being made from customer's homes for a fire".

19
20 7. Indeed, from as early as early as 2017 until his final days of employment at
21 TESLA, Mr. Henkes remained vocal and committed to protecting the health and safety of the
22 general public at risk from the faulty Amphenol H4 Connectors.

23 8. Rather than praising Mr. Henkes for his efforts to "raise the flag" of safety and
24 public health, TESLA began an orchestrated campaign of retaliation against Mr. Henkes,
25 ultimately resulting in his termination on August 3, 2020 without warning or good cause. Said
26 retaliation included but was not limited to removing Mr. Henkes from TESLA's Amphenol
27 meeting roster; discontinuing his weekly staff meeting with his direct supervisor; omitting Mr.

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1 Henkes from staff meetings announcing organizational changes; admonishing Mr. Henkes for
2 traveling overseas to develop Project Titan countermeasure tools to prevent future fires;
3 overwriting Mr. Henkes' purchase orders re: new installation tooling and standardization;
4 excluding Mr. Henkes from executive site visit at TESLA's Innovation Laboratory; pulling Mr.
5 Henkes as a presenter two hours before the Walmart Tactical Campaign team meeting and
6 altering his proposed presentation to eliminate the previously identified tooling defects (thus
7 not disclosing said defects to Walmart).

8 9. In March of 2020, Mr. Henkes further complained to Mr. Christ Ford that he
9 believed TESLA had committed Sarbane-Oxley Act violations when his direct supervisor Mr.
10 Marcus Meuller improperly overrode his purchase orders. In addition, in approximately June,
11 2020, Mr. Henkes complained to TESLA that it's workers were not provided Port-A-Potties at
12 Walmart remediation sites (Covid-19 concerns).

13 10. In July, 2020, Mr. Henkes continued his internal complaints of safety violations
14 by notifying TESLA's Supply Chain, Reliability and Human Resources Departments about
15 continuing customer safety concerns regarding further Walmart remediation (flat roof racking
16 components), stating that any modification to these component must be tested and approved
17 **prior to** installation. Mr. Henkes also voiced this concern directly to TESLA's Walmart
18 Campaign Tactical Team.

19 11. On August 3, 2020, only one month after his most recent complaint of public
20 safety, Mr. Henkes was wrongfully terminated without notice or good cause.

21
22 **FIRST CAUSE OF ACTION**
23 **[Labor Code Section 1102.5]**
AGAINST ALL DEFENDANTS

24 12. PLAINTIFF incorporates by reference paragraphs 1 through 11, inclusively, as if fully set
25 forth herein.

26 13. California Labor Code Section 1102.5 prohibits an employer from retaliating against an
27 employee for disclosing information, or because an employer believes an employee has disclosed

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1 information, to a government or law enforcement agency, to a person with authority over the employee, or
2 to another employee who has the authority to investigate, discover, or correct a violation where an employee
3 reasonably believes that the information discloses a violation of a state or federal statute, or a violation of or
4 noncompliance with a local, state, or federal rule or regulation. Yet this is precisely what occurred with Mr.
5 Henkes. He complained directly to TESLA's top management that he believed the Amphenol H4
6 Connectors were unsafe, and that TESLA had a legal obligation to report this fire safety hazard pursuant to
7 Section 15(b) of the Consumer Product Safety Act. When TESLA failed to act, he proceeded to file a formal
8 complaint with the U.S. Consumer Product Safety Commission in April, 2019. In addition, Mr. Henkes filed
9 a U.S. Securities & Exchange Commission complaint in May, 2019, and further asserted violations of the
10 federal Sarbane-Oxley Act of 2002. Finally, in July, 2020, only one month before his termination, Mr.
11 Henkes complained that the flat roof racking components that TESLA was installing were not safe, and that
12 the modifications must be tested prior to re-installation. Because of these and other disclosures and
13 complaints, Mr. Henkes was fired by TESLA in August, 2020.

14 14. As a direct, foreseeable and proximate result of DEFENDANT'S conduct, PLAINTIFF has
15 suffered and continues to suffer losses, including lost back and front pay and benefits, emotional distress,
16 and attorneys fees in an amount to be proven at trial. Plaintiff also seeks punitive damages for defendant's
17 reprehensible conduct which included malice, fraud and oppression.

18 15. PLAINTIFF claims these amounts, together with prejudgment interest pursuant to Civil
19 Code Section 3287, Code of Civil Procedure Section 685.010 and pursuant to any other provision of law
20 providing for prejudgment interest.

21 **SECOND CAUSE OF ACTION**
22 **[Labor Code Section 6310]**
23 **AGAINST ALL DEFENDANTS**

24 16. PLAINTIFF incorporates by reference paragraphs 1 through 15, inclusively, as if fully set
25 forth herein.

26 17. California Labor Code Section 6310 protects employees who complain about workplace
27 safety matters. In June, 2020, Mr. Henkes complained that TESLA did not provide its workers port-o-
28 potties while performing remediation at various Walmart locations. As a result, employees were required to
enter Walmart stores and use the public bathrooms inside. TESLA employees complained about this
Covid-19 safety concern to Mr. Henkes, who in turn relayed this complaint, along with his concern that the

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1 Walmart site remediations were not being performed safely, to TESLA. TESLA responded by firing Mr.
2 Henkes less than two months later.

3 18. As a direct, foreseeable and proximate result of DEFENDANT'S conduct, PLAINTIFF has
4 suffered and continues to suffer losses, including lost back and front pay and benefits, emotional distress,
5 and attorneys fees in an amount to be proven at trial. Plaintiff also seeks punitive damages for defendant's
6 reprehensible conduct which included malice, fraud and oppression.

7 19. PLAINTIFF claims these amounts, together with prejudgment interest pursuant to Civil
8 Code Section 3287, Code of Civil Procedure Section 685.010 and pursuant to any other provision of law
9 providing for prejudgment interest.

10 **THIRD CAUSE OF ACTION**
11 **[Wrongful Termination - Public Policy Tort]**
12 **AGAINST ALL DEFENDANTS**

13 20. PLAINTIFF incorporates by reference paragraphs 1 through 20, inclusively, as if fully set
14 forth herein.

15 21. California courts have long held that an employee may not be discharged in violation of the
16 public policy of the state. Peterman v. International Brotherhood of Teamsters, (1959) 174 CA2d. 184.
17 California Labor Code Section 1102.5 sets forth the public policy of the State of California that workers
18 cannot be fired because they complained about threats to public health and safety. Green v. Ralee
19 Engineering Co., (1998) 19 C.4th 66. See also, Foley v. Interactive Data Corp., (1988) 47 C.3d 654; Collier v.
20 Superior Court, (1991) 228 CA3d 1117; Tameny v. Atlantic Richfield Co., (1980) 27 C.3d 167. California
21 Labor Code Section 6310 also sets forth the fundamental public policy that California workers cannot be
22 fired for raising safety concerns at the workplace. The federal Sarbane-Oxley Act of 2002 sets for the
23 national public policy requiring accuracy in public companies' financial reporting, and prohibiting
24 retaliation by firing employees who assert Sarbane-Oxley Act violations. 15 U.S.C. Section 7201 et seq.
25 Section 806 of the federal Sarbanes-Oxley Act prohibits certain covered employers such as TESLA
26 from retaliating against employees who provide information to a covered employer or a federal agency or
27 Congress regarding conduct that the employee reasonably believes constitutes a violation of 18 U.S.C. §§
28 1341 (mail fraud), 1343 (wire fraud), 1344 (bank fraud), or 1348 (securities fraud), or any rule or regulation
of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against

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1 shareholders. Mr. Henkes filed a complaint with the Security & Exchange Commission in May, 2019,
2 asserting that TESLA failed to properly notify it's shareholders of the fire risks associated with faulty
3 Amphenol H4 Connectors, and/or that TESLA submitted material misstatements and/or omissions in it's
4 public filings related to these safety risks. In response, TESLA fired Mr. Henkes in retaliation for having
5 "blown the whistle" on this conduct By firing Mr. Henkes because he attempted to halt implementation of
6 the defective Amphenol H4 Connectors, filed complaints with appropriate regulatory agencies concerning
7 TESLA's unsafe practices, complained about violations of federal financial reporting laws, and/or
8 complained about unsafe working conditions, TESLA violated the public policy of the state of California and
9 his termination was illegal.

10 22. As a direct, foreseeable and proximate result of DEFENDANT'S conduct, PLAINTIFF has
11 suffered and continues to suffer losses, including lost back and front pay and benefits, emotional distress,
12 and attorneys fees in an amount to be proven at trial. Plaintiff also seeks punitive damages for defendant's
13 reprehensible conduct which included malice, fraud and oppression.

14 23. PLAINTIFF claims these amounts, together with prejudgment interest pursuant to Civil
15 Code Section 3287, Code of Civil Procedure Section 685.010 and pursuant to any other provision of law
16 providing for prejudgment interest.

17 PRAYER FOR RELIEF

18 PLAINTIFF prays for judgment against DEFENDANTS as follows:

- 19 1. For actual, compensatory and punitive damages according to proof;
- 20 2. For declaratory and injunctive relief;
- 21 3. For attorneys' fees and costs of suit;
- 22 4. For prejudgment interest on all amounts claimed; and
- 23 5. For any other and further relief that the Court considers proper.

24 Dated: November 6, 2020

ACCESS LEGAL SERVICES

25
26 By: 

Robert F. Wallace, Esq.

Attorney for PLAINTIFF STEVEN HENKES

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