



October 15, 2024

Ms. Malia M. Cohen
State Controller of California
300 Capitol Mall, Suite 1850
Sacramento, CA 95814

Re: Divestment from Tesla, Inc.

Dear Controller Cohen,

LatinoJustice PRLDEF and the National Institute for Workers' Rights (NIWR) write to urge you, as State Controller and as a board member of the California Public Employees' Retirement System ("CalPERS"), to divest CalPERS from Tesla, Inc. Tesla's anti-inclusion, anti-opportunity, and anti-diversity stance as well as its record of discrimination against workers of color justify divestment of public employees' shares of the company.

For 52 years, LatinoJustice PRLDEF, a civil rights organization that uses laws to create a more just and equitable society, has worked to break down barriers and expand opportunity. LatinoJustice litigated the landmark case *ASPIRA of NY v. Bd. of Ed. of City of New York*, establishing the right to bilingual education in New York City public schools. LatinoJustice also has a long history of advancing diversity, equity, and inclusion. Most recently, before the Supreme Court handed down its 2023 ruling in *SFFA v. Harvard/UNC*, striking down race-conscious decision-making in college admissions, LatinoJustice filed an *amicus* brief arguing that the history, meaning, and purpose of the Fourteenth Amendment to the United States Constitution belie a colorblind paradigm, and that a colorblind approach masks racial disparities thereby entrenching inequalities. In the aftermath of the *SFFA* ruling, LatinoJustice has been assisting community-based organizations to strengthen programs that expand opportunities to underserved communities.

NIWR aspires to a future in which all workers are treated with dignity and respect, and have access to justice if their rights are violated. As part of NIWR's efforts to achieve that vision, NIWR has worked in recent months to hold companies accountable for their commitments to diversity, equity, and inclusion. This work has included [urging the SEC](#) to investigate Goldman Sachs for securities fraud based on telling investors it was committed to diversity, equity, and inclusion in its workforce without timely disclosure of its contributions to groups trying to make such practices unlawful.

Diversity, equity, and inclusion (“DEI”) matter. DEI initiatives date back to the 1960s when landmark civil rights laws were passed to integrate our society and to expand opportunity to previously excluded groups. Research confirms that high-diversity companies (i.e., those that robustly integrate diversity as a core value) outperform those with low levels of diversity.¹ High-diversity companies are better at attracting the next generation of employees, better at handling an increasingly diversified consumer and client base, and are better at enhancing cognitive performance of their employees.² Strikingly, a study found “leadership diversity is also convincingly associated with holistic growth ambitions, greater social impact and more satisfied workforces.”³ In the face of continued occupational segregation and wage disparities by race, national origin, and gender, DEI efforts are an economic and social imperative.

California’s public sector workforce is incredibly diverse, with 60% of civil service employees in the state being non-white.⁴ CalPERS itself has a workforce that is 58% non-white.⁵ You as a leader, and CalPERS as an institution, have both long been rightly committed to the values of DEI. You said in your run to become State Controller that “we need to have more conversations about equity, what that looks like in the distribution of tax dollars,”⁶ and that “California’s strength is its diversity.”⁷ CalPERS itself is a leading institutional force on DEI. Among numerous public commitments and initiatives, CalPERS is a signatory to the CFA Institute Diversity, Equity and Inclusion Code, one of the principles of which is that signatories “commit to using our position and voice to promote DEI.”⁸

Tesla’s values are misaligned with CalPERS’. In the wake of the *SFFA* ruling, Tesla has retracted its commitment to integrating diversity, equity, and inclusion principles and practices into its core values. It has turned its back on outreach to Hispanic Serving Institutions (HSIs) and Historically Black Colleges and Universities (HBCUs), and it has

¹ McKinsey & Company, *Diversity Matters Even More: The case for holistic impact*, (Dec. 5, 2023) <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-matters-even-more-the-case-for-holistic-impact>.

² New York State Bar Association, Report and Recommendations of the New York State Association Task Force on Advancing Diversity (2023) <https://nysba.org/app/uploads/2023/09/NYSBA-Report-on-Advancing-Diversity-9.20.23-FINAL-with-cover.pdf>.

³ See *supra*, n.1.

⁴ California Department of Human Resources, 2021 Annual Census of Employees in State Civil Service (August 2023) <https://www.calhr.ca.gov/state-hr-professionals/Documents/ocr-census-of-employees-2021.pdf>.

⁵ California Public Employees’ Retirement System, Charting Progress on Our Diversity, Equity & Inclusion Journey: Commitment to DEI Companion Report (2023) <https://www.calpers.ca.gov/docs/forms-publications/diversity-inclusion-companion-report-2022-23.pdf>.

⁶ Sameea Kamal, *What would Malia Cohen do as California controller?*, Cal Matters (May 2, 2022) <https://calmatters.org/politics/2022/05/malia-cohen-controller/>.

⁷ Malia Cohen: Democrat for Controller, Issues (2022) <https://malia-cohen.us/issues/>.

⁸ CFA Institute, CFA Institute Diversity, Equity, and Inclusion Code (2022) https://rpc.cfainstitute.org/-/media/documents/code/dei/DEI-Code_2022.pdf.

pulled back on sponsoring employee resource groups.⁹ Equally troubling, Tesla’s CEO equates diversity, equity, and inclusion with “racism,” claiming that it is “just as morally wrong as any other racism and sexism.”¹⁰ That claim is indefensible. While the *SFFA* decision undercuts the ability of colleges to consider race as one of many factors in admissions decisions, nothing in the decision precludes employers from taking action to ensure diverse and inclusive workplaces.¹¹ Indeed, commissioners of the Equal Employment Opportunity Commission have reaffirmed the value of programs that expand opportunity,¹² such as targeted recruitment and outreach to historically disadvantaged groups—a worthy endeavor that Tesla now disavows.

Moreover, Tesla’s record of discrimination against its own workers of color confirms its troubling values. After an investigation into conditions at Tesla’s Fremont plant, California’s Department of Fair Employment and Housing said Black workers were assigned physically difficult, menial jobs in segregated areas of the plant, subjected to racial slurs, and less likely to be promoted to management.¹³ Juries have repeatedly awarded multimillion-dollar verdicts against Tesla to compensate for racial discrimination,¹⁴ and state and federal agencies have faulted Tesla for failing to take racial harassment seriously.¹⁵

Tesla’s values are antithetical to CalPERS’. We therefore ask that CalPERS stand up for the values of diversity, equity and inclusion and divest public employee stock holdings from Tesla, Inc. Divesting from Tesla repudiates the company’s anti-inclusion position, condemns its CEO’s corrosive rhetoric, and sends a clear message to Tesla and other companies: responsible investors like CalPERS expect compliance with civil rights laws, including a continued commitment to diversity, equity, and inclusion, and such investors are prepared to put their money where their values are.

Thank you for your consideration.

⁹ See Ramishah Maruf, *Tesla erases references to DEI from its new 10-k following Elon Musk’s criticism*, CNN (Feb. 1, 2024) <https://www.cnn.com/2024/02/01/business/tesla-dei-elon-musk/>.

¹⁰ @elonmusk, X (Dec. 15, 2023, 7:38 PM), <https://x.com/elonmusk/status/1735821713688940843?lang=en>.

¹¹ American Bar Association, *Impact of SCOTUS Affirmative Action Ruling on Employers* (September 2023) https://www.americanbar.org/groups/labor_law/publications/labor_employment_law_news/issue-summer-2023/impact-of-scorus-affirmative-action-ruling-on-ers/

¹² Jocelyn Samuels & Zain Shirazi, *The High Court Didn’t Kill DEI at Work. Employers Shouldn’t Waver*, Bloomberg News (July 11, 2023) <https://news.bloomberglaw.com/us-law-week/the-high-court-didnt-kill-dei-at-work-employers-shouldnt-waver>.

¹³ Civil Rights Complaint, *Department of Fair Employment and Housing v. Tesla, Inc.*, No. 22CV006830 (Feb. 2022) <https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/02/DFEH-vs-Tesla.pdf>.

¹⁴ Ryan Golden, *Tesla, after two jury-trial losses, settles former employee’s racial discrimination suit*, HR Dive (Mar. 18, 2024) <https://www.hrdive.com/news/tesla-settlement-race-discrimination-suit-fremont-california-plant/710626/>.

¹⁵ Carmen Castro-Pagán, *Tesla Loses Bid to End EEOC Racial Harassment, Retaliation Suit*, Bloomberg News (Mar. 30, 2024) <https://news.bloomberglaw.com/litigation/tesla-loses-bid-to-end-eEOC-racial-harassment-retaliation-suit>.

Sincerely,



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LatinoJustice PRLDEF



Jason Solomon
Director
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