

No. A-_____

**In the Supreme Court of the United
States**

George Jarvis Austin,

Petitioner

v.

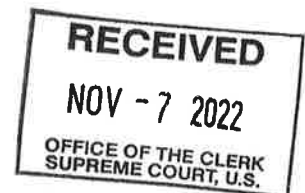
Tesla, et. al.

Respondent

On Appeal from the United States Ninth Circuit No. # 21 -
15151 & District Court
for the Northern District of California
No.3:20:00800
Hon. District Judge Chen

APPLICATION FOR 60 DAY EXTENSION (approx. 3/13/23)

George Jarvis Austin, Self Represented
2107 Montauban Ct., Stockton, CA
209.915.6304,
gaustin07@berkeley.edu
Petitioner in Supreme Court, Pro Se



**APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT (SELF REPRESENTED)**

To the Court, Chief Justice Roberts, and Justice Kagan (Ninth Circuit)

In accord with Supreme Court Rule 13 Mr. George Jarvis Austin, self represented Petitioner, applies with “good cause,” for a 60 day extension to file Petition on Writ of Certiorari. Final Judgment was entered on 10/13/22, after Motion for Reconsideration. Previously Petition for Rehearing (En Banc) by Mr. Austin was denied on 9/29/22 with Writ apparently due approximately 1/13/23 (90 days after Judgment entered). Mr. Austin is still recovering from severe injuries causing physical disability both in the workplace at Tesla, and a separate car accident creating strains on every part of life, study (Straight A’s, and A+’s last nine semesters), healing process and employment (working more than full time while representing himself) creating need for more time (*as physical injury causing temporary disability is creating additional challenges, and constraints, with caseload responsibilities similar to that of a corporate law firm associate, but done Pro Se (self represented) without the structural supports of research departments,*

information tech, paralegals, legal secretaries, nor a law degree, nor law license, or corporate law expenditure accounts).

Austin wants to be sheriff

Look out Tom Tramel, there may be a future sheriff in town.

Five-year-old George Jarvis Austin attends the Kindergarten Center and he wants to be a police officer or a sheriff when he grows up.

Son of Charlotte Hall-Austin, George has begun his school career with a positive attitude. "George is an enthusiastic learner and he is a well-liked and caring person," says one of his teachers.

His interests include T-ball and books, especially the Berenstain Bears series.

According to Principal Earl Watts, "George is a very smart child. He is totally involved in all classroom activities and loves school. With George's ability, I think he can accomplish his goals in life."



University of California

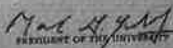
ON THE NOMINATION OF THE FACULTY OF THE
COLLEGE OF LETTERS AND SCIENCE
HAVE CONFERRED UPON

GEORGE JARVIS AUSTIN

THE DEGREE OF BACHELOR OF ARTS
WITH A MAJOR IN SOCIOLOGY
WITH ALL THE RIGHTS AND PRIVILEGES THERE TO PERTAINING

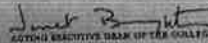
GIVEN AT BERKELEY
THIS NINETEENTH DAY OF DECEMBER IN THE YEAR
TWO THOUSAND AND NINE


GOVERNOR OF CALIFORNIA AND
PRESIDENT OF THE SENATE


PRESIDENT OF THE UNIVERSITY




CHANCELLOR AT BERKELEY


ACTING EXECUTIVE DEAN OF THE COLLEGE

CALIFORNIA
SENATE

EXPIRATION

09/30/2013

Eye Color

Brown

Height

6-0

Austin, George

Governance & Fin



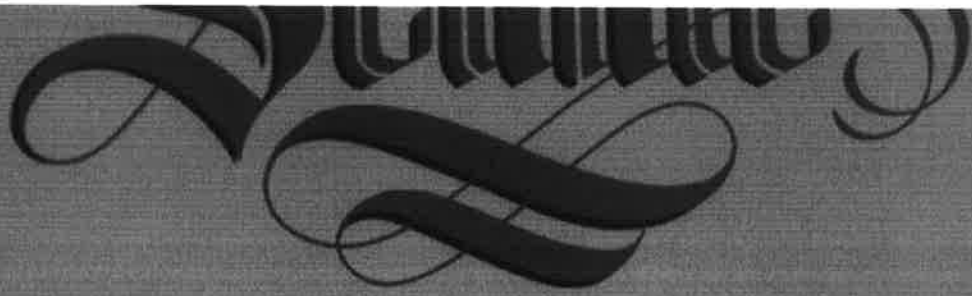
T E S L A



C

CONTRACTOR

GEORGE AUSTIN



RULES COMMITTEE

RESOLUTION

By
President pro Tempore of the Senate Durrell Steinberg
RELATIVE TO COMMENDING

George Austin

WHEREAS, George Austin was selected from a highly competitive group of outstanding college and university graduates from California and throughout the nation, and was appointed a 2012-2013 California Senate Fellow; and

WHEREAS, George Austin, from Stockton, graduated from the University of California, Berkeley, with a Bachelor of Arts degree in Sociology; and

WHEREAS, Through his service in the Senate Committee on Governance and Finance, George Austin had the unique opportunity of acquiring a deeper understanding of the legislative process and public policy formation, while also providing assistance to Senate Members, legislative committees, and their constituencies; and

WHEREAS, The California Senate Fellows program, established in 1973 and sponsored jointly by the Senate and California State University, Sacramento, enables 18 individuals to become full-time Senate staff members in the State Capitol for 11 months and receive six units of university graduate credit; and

WHEREAS, As a result of his outstanding service as a Senate Fellow, George Austin is better equipped to provide valuable leadership and contributions to educational institutions; local, regional, state, and federal governments; and professional, business, and community endeavors in the State of California and the nation; now, therefore, be it

RESOLVED BY THE SENATE RULES COMMITTEE, That George Austin, a 2013-2013 California Senate Fellow, be commended for his exemplary service on behalf of the Members of the Senate, and extended best wishes for every success in his future endeavors.

Senate Rules Committee Resolution No. 24 adopted this 12th day of August, 2013

Durrell Steinberg
CHAIR
Senators Est Civitatis



Libertatem Tuam •

Checkr

Report completed on Apr 3, 2022 9:55 PM UTC

Consumer Report for
George Jarvis Austin
(Consumer Name Only)

Requestor Company
[REDACTED]

Status

Checkr

California Candidates/Employees Only: The report does not guarantee the accuracy or truthfulness of the information as to the subject of the investigation, but only that it is accurately copied from public records, and information generated as a result of identity theft, including evidence of criminal activity, may be inaccurately associated with the consumer who is the subject of the report. An investigative consumer reporting agency shall provide a consumer seeking to obtain a copy of a report or making a request to review a file, a written notice in simple, plain English and Spanish setting forth the terms and conditions of his or her right to receive all disclosures, as provided in Section 1786.26.

Sólo para los Candidatos/Empleados de California: En el informe no se garantiza la exactitud o veracidad de la información en cuanto al tema de la investigación, sino sólo que se ha copiado exactamente de los registros públicos, y la información generada como resultado del robo de identidad, incluyendo las pruebas de una actividad delictiva, podría estar incorrectamente asociada con el consumidor que sea el sujeto del informe. Una agencia investigadora de informes de crédito deberá suministrarle a un consumidor que trate de obtener una copia de un informe o solicite revisar un archivo una notificación por escrito en inglés y español lisos y llanos, en la que se establezcan los términos y las condiciones de su derecho a recibir toda la información, como se dispone en la Sección 1786.26.

Report Information

First Name
George

Alphabet Name
Jarvis

Last Name
Austin

Date of Birth
[REDACTED] XXXX

Phone Number
(202) 912-8304

First ZIP
95210

Email
gaustin02@berkeley.edu

Spouse Security
Number
XXX-XX-XXXX

Consumer Address

Full Consumer Address
[REDACTED]

Report Information [Clear]

| | | | |
|---|---|---------------------------------|--|
| Full Name George | Alias Name Jared | Last Name Austin | Date of Birth [Redacted] XXXX |
| Phone Number (202) 810-6304 | Zip Code 95210 | Email jgustin07@berkeley.edu | Search Security Number XXXX XX [Redacted] |
| Current Address | Previous Address [Redacted] | | |
| Created At Jan 31, 2022 11:28 PM UTC | Completed At Apr 5, 2022 9:48 PM UTC | | |

SSN Trace [Compute]

Sex Offender Search [Compute]

Global Watchlist Search [Clear]

National Search [Compute]

County Searches [Clear]

San Joaquin, CA [Clear]

Alameda, CA [Clear]

District Of Columbia, DC [Clear]

Report Summary

| | | |
|-------------------------|--------------|-----------|
| SSN Trace | Jan 31, 2022 | [Compute] |
| Sex Offender Search | Jan 31, 2022 | [Compute] |
| Global Watchlist Search | Jan 31, 2022 | [Clear] |
| National Search | Jan 31, 2022 | [Compute] |
| County Searches | Jan 31, 2022 | [Clear] |

Mr. Austin seeks Cert., and 60 day extension, as the decision was in blatant disregard for a. the Supreme Court's *Kasten* FLSA anti-retaliation controlling standard (*adverse action within days of escalating Mr. Austin's good faith documented formal complaints, in an entry level role outside of his responsibility to monitor, to HR and higher level management for unpaid overtime wage correction in a publicly documented hostile, and retaliatory work environment, especially toward Black men*), as well as b. controlling Ninth Circuit precedent including *Landers* FLSA unpaid, or late, overtime standard (*multiple weeks of unpaid, or late, overtime documented and complained about*). See *Kasten v. Saint-Gobain Performance Plastics*, 563 U.S. 1 (2011) See also *Landers v. Quality Communications, Inc.*, 771 F.3d 638 (9th Cir. 2014) See also e.g. (publicly documented retaliatory, hostile work environment, particularly for Black men):

<https://www.cnbc.com/2022/07/25/tesla-is-under-scrutiny-by-the-eeoc-10q-reveals.html>;
www.sec.gov/Archives/edgar/data/1318605/000095017022012936/tsla-20220630.htm (Tesla said in its second-quarter filing that the U.S. Equal Employment Opportunity Commission cause finding "closely parallels" complaints put forth in a lawsuit by California's civil rights agency, the Department of Fair Employment and Housing. Tesla's first U.S. vehicle assembly plant is based in Fremont, California...In February, that state agency revealed that it had engaged in a three-year investigation of Tesla, received hundreds of complaints from Black workers there and found evidence that the company routinely engaged in racist discrimination that harmed these workers...Among other things, the DFEH alleges that Tesla has kept Black workers in California in lower-level roles at the company even if they had the skills and experience for promotions or more senior roles; assigned Black workers more physically demanding, dangerous and dirty work in their facilities; and retaliated

against Black workers who complained formally about what they endured, including racist slurs used by managers in the workplace.)

<https://teslamotorsclub.com/tmc/threads/diversity-harrassment-issues-at-tesla.102005/>

(Black Workers Say Racism Is Rampant Inside Tesla. Now California Is Suing. - Horrific allegations of racism prompt California lawsuit against Tesla)

<https://www.civilrightsca.com/protocol-tesla-discrimination-lawsuits/> (Ex-workers Say Tesla is Still Racist, ...100-plus sworn statements from a class-action lawsuit and public records obtained by Protocol.

<https://www.google.com/amp/s/www.theverge.com/platform/amp/2021/8/5/22611725/tesla-paid-1-million-black-former-employee-racist-slur> (Tesla reportedly paid \$1 million to former employee who said supervisors called him a racist slur; Melvin Berry said the **company failed to act** when supervisors called him the N-word then retaliated - Berry is not the first worker to allege racism at Tesla's Fremont plant)

<https://www.latimes.com/business/autos/la-fi-hy-tesla-racism-lawsuit-20171115-story.html>

(Marcus Vaughn ... alleges that supervisors and co-workers called him the N-word, but his **written complaint to human resources about it was not investigated**....standard operating procedure at the Tesla factory is pre-civil rights era race discrimination," the lawsuit says. "Race harassment has continued at the Tesla factory, and became more widespread, because despite their knowledge of the harassment, defendants have done nothing that could be reasonably expected to stop it." Vaughn's legal action is the third lawsuit filed this year by [B]lack workers alleging that racial slurs were used against them and that the company ignored their complaints.)

<https://www.google.com/amp/s/www.cbsnews.com/amp/news/tesla-million-melvin-berry-fremont-california-n-word-racial-discrimination/> (Former Tesla employee who said supervisors called him the N-word awarded \$1 million ... complaint alleging he was called the N-word while working in the electric automaker's factory in California. Melvin Berry was hired by Tesla as a materials handler in 2015, but quit only 17 months later after being harassed on the job, ... KKK signs and swastikas The Berry case is one of three racial discrimination lawsuits filed by former employees against Tesla since 2017. In a class-action lawsuit representing more than 100 employees ... Another Black employee said in court documents that he had been called the N-word about 100 times and saw KKK signs and swastikas spray-painted on bathroom stalls. In a third lawsuit, two former Tesla employees, a Black father and son, Owen Diaz and Demetric Di-az, also said they were subject to "severe and pervasive racial harassment" while working at the Fremont factory...[and won]. See e.g.

www.npr.org/2021/10/05/1043336212/tesla-racial-discrimination-lawsuit ;

www.businessinsider.com/tesla-racial-abuse-lawsuit-payout-owen-diaz-2022-6?amp)

<https://www.bloomberg.com/news/articles/2020-09-09/tesla-is-under-pressure-to-end-arbitration-for-racism-claims> (Tesla has faced multiple allegations of racial discrimination and harassment at its factory in Fremont, California," ..In recent years, Tesla has faced high profile allegations of racial discrimination at its Fremont plant, where roughly 10,000 people work. In late 2017, a Black worker, Marcus Vaughn, filed a lawsuit saying the plant was a "hotbed of racist behavior."...In 2018, Owen Diaz and his son Demetric filed suit as well, alleging a pattern of racial harassment and hostility. Demetric dropped his suit voluntarily, but Owen's case is slated for trial before a U.S. district court judge in San Francisco in October. The company said in an emailed statement to Bloomberg at the time that it takes discrimination and harassment of all forms "extremely seriously" and has a dedicated team

focused on investigating and addressing workplace concerns. All three men were contract workers, so they never signed arbitration agreements.)

<https://www.reuters.com/article/us-tesla-lawsuit-racism-idUSKBN1YZ18E> (Tesla must have known about the harassment and "ratified" it, even if only lower level workers were directly involved.)

<https://www.claimsjournal.com/news/national/2020/09/09/299249.htm> (Since 2014, workers have filed 145 complaints with California's Department of Fair Employment and Housing alleging discrimination at Tesla on the basis of race, age, gender, disability, medical leave, pregnancy, sexual orientation, and national origin, according to a synopsis provided by the agency after a California Public Records Act request. This May, three separate people alleged they were forced to quit because of their race.)

<https://capitalandmain.com/tesla-workers-file-charges-with-national-labor-board-as-battle-with-elon-musk-intensifies-0419> (Tesla Workers File Charges With National Labor Board as Battle With Elon Musk Intensifies... Workers at Tesla's Fremont, California electric car factory have filed a complaint with the National Labor Relations Board, accusing Elon Musk's company of illegal surveillance, coercion, intimidation and prevention of worker communications.... Workers at Tesla's Fremont, California electric car factory have filed a unfair labor practice charge with the National Labor Relations Board (NLRB), accusing the company of illegal surveillance, coercion, intimidation and prevention of worker communications.)

<https://www.google.com/amp/s/www.nytimes.com/2018/11/30/business/tesla-factory-racism.amp.html> (Owen Diaz, right, and his son, Demetric, said they had heard racial slurs directed toward them while working at the Tesla factory in Fremont, Calif. Owen Diaz, right, and his son, Demetric, said they had heard racial slurs directed toward them while working at the Tesla factory in Fremont, Calif. Credit... Ryan Christopher Jones for The New York Times Menial Tasks, Slurs and Swastikas: Many Black Workers at Tesla Say They Faced Racism African-American workers have reported threats, humiliation and barriers to promotion at the plant. Owen Diaz had seen swastikas in the bathrooms at Tesla's electric-car plant, and he had tried to ignore racist taunts around the factory. "You hear, 'Hey, boy, come here,' 'N-i-g-g-e-r,' you know, all this," said Mr. Diaz, who is African-American. Then, a few hours into his shift running the elevators, he noticed a drawing on a bale of cardboard. It had an oversize mouth, big eyes and a bone stuck in the patch of hair scribbled over a long face, with "Booo" written underneath.... On that winter night in the factory, when, he said, a supervisor admitted drawing the figure as a joke, Mr. Diaz had had enough. He typed a complaint to a Tesla manager on his phone. "Racist effigy & drawing" was the subject. "When you really just look at it, you ask yourself at some point, 'Where is my line?'" said Mr. Diaz, 50, who worked at the factory as a contractor ... Interviews, internal communications and sworn legal statements filed by more than two dozen current or former Tesla employees and contractors describe a wide range of concerns among some African-American workers at the factory in Fremont, including threats by co-workers, demeaning assignments and barriers to advancement. Three lawsuits by former workers accusing Tesla of failing to curb racial discrimination and harassment have been filed ... The state's Department of Fair Employment and Housing says it has issued 10 "right to sue" letters ... — to employees complaining of racial bias at the Fremont plant. Dozens of other complaints against Tesla are pending, but the agency would not say how many involved race.)

<https://www.industryweek.com/leadership/article/22024555/teslas-a-hotbed-for-racist-behavior-worker-claims-in-suit> (Tesla's a Hotbed for Racist Behavior, Worker Claims in Suit - The

employee says he's one of more than 100 African-American Tesla workers affected and is seeking permission from a judge to sue on behalf of the group.... Tesla Inc.'s production floor is a "hotbed for racist behavior," an African-American employee claimed in a lawsuit in which he alleged black workers at the electric carmaker suffer severe and pervasive harassment. The employee says he's one of more than 100 African-American Tesla workers affected and is seeking permission from a judge to sue on behalf of the group. He's seeking unspecified general and punitive monetary damages as well as an order for Tesla to implement policies to prevent and correct harassment.... "Although Tesla stands out as a groundbreaking company at the forefront of the electric car revolution, its standard operating procedure at the Tesla factory is pre-Civil Rights era race discrimination," the employee said in the complaint, filed Monday in California's Alameda County Superior Court.... The lawsuit was filed on behalf of Marcus Vaughn, who worked in the Fremont factory from April 23 to Oct. 31. Vaughn alleged that employees and supervisors regularly used the "N word" around him and other black colleagues. Vaughn said he complained in writing to human resources and Musk.... Larry Organ, an attorney at the California Civil Rights Law Group, said that Vaughn reached out to him after the law firm sued Tesla on behalf of other African American employees who complained about racial harassment this year. A Tesla assembly line worker sued in March, claiming the company did little to stop coworkers from harassing him.)

<https://www.google.com/amp/s/www.businessinsider.com/tesla-workers-testimonies-recall-racism-being-called-n-word-slurs-2021-7%3famp> (A Tesla factory worker said he was called the N-word '100 times' by coworkers, according to a sworn testimony.... Former Tesla workers routinely used racial slurs against Black employees, according to sworn testimonies obtained by Protocol. Aaron Craven, a Black worker at Tesla's Fremont factory, said in a sworn statement he had been called the N-word "approximately 100 times," and saw KKK signs and swastika graffitied in bathroom stalls. Workers submitted 103 declarations in March 2021 as part 2017 lawsuit suing Tesla for racial harassment. "I was directly called n----- and n---- approximately 100 times at the Fremont factory," Craven said a sworn statement reviewed by Protocol. "I heard the terms n----- and n---- used over 100 times by coworkers, and by my lead Auggie, in the Tesla factory." Additionally, ex-contractor Aaron Minor stated he heard Tesla employees refer to the Fremont factory as a plantation and Black people as "cotton workers," Protocol reported.... Two separate lawsuits filed against Tesla in 2017 alleged racial harassment and discrimination at the Fremont plant. Former Tesla worker DeWitt Lambert said coworkers regularly called him the N-word and made sexually explicit comments. In 2019, Black and Latino workers at a Tesla factory in Buffalo, New York, filed discrimination complaints with the US Equal Employment Opportunity Commission (EEOC) and the New York Division of Human Rights. The six former workers said they heard racial slurs and racist comments at the factory.)

<https://www.protocol.com/workplace/tesla-fremont-racism-discrimination> (Racist graffiti, 'plantation' jokes and 100 potential lawsuits: Ex-workers say Tesla is still racist... The N-word, demeaning jokes and retaliation on the basis of race are all common at Tesla, according to 100-plus sworn statements from a class-action lawsuit and public records obtained by Protocol.... When Aaron Craven clocked in to work every day at the Tesla Fremont factory, he knew he might hear or be called the N-word. When he walked into the bathroom stalls, he knew he might see graffiti of "KKK" or a swastika. "I was directly called n----- and n---- approximately 100 times at the Fremont factory," Craven said in a sworn statement. "I heard the terms n----- and n---- used over 100 times by co-workers, and by my lead Auggie, in the Tesla factory. Former Tesla workers also called ex-contractor Aaron

Minor "n----," and Minor, too, found swastikas in the bathroom. Minor heard the factory called "the Plantation" and its Black employees "cotton workers." "My understanding is that people refer to the Tesla factory as the Plantation and call employees cotton workers because Tesla treats its Black employees like slaves," he wrote in a sworn statement. These sworn statements and 103 other declarations sworn under penalty of perjury comprise a 500-page exhibit filed in March 2021 as part of a 2017 lawsuit that alleges Tesla discriminates against Black people and has allowed a racially hostile work environment to fester in its factories. The lawsuit's allegations against the company are not unique:....Race-based complaints about Tesla are on average more common than the proportion of race-based complaints state-wide; while about 10% of all cases requesting right to sue were filed on the basis of race with the DFEH in 2020 (and less than that in previous years), more than 30% of the Tesla cases from 2018 to 2021 are based on allegations of racial discrimination.")

https://www.google.com/amp/s/www.latimes.com/business/technology/story/2021-08-05/ex-tesla-employee-called-racial-slur-wins-rare-1-million-reward%3f_amp=true (Ex-Tesla employee

called a racial slur wins rare \$1-million reward ... a Black former employee who won a ruling after alleging that supervisors called him the "N-word" Tesla Inc. has paid more than \$1 million to a Black former employee who won a ruling that the company failed to stop his supervisors from calling him the "N-word" at the electric-car maker's Northern California plant. The rare discrimination award by an arbitrator to Melvin Berry, which followed a closed-door proceeding, caps years of complaints from Black workers that Tesla turned a blind eye to the commonplace use of racial slurs on the assembly line and was slow to clean up graffiti with swastikas and other hate symbols scrawled in common areas. It ends a years-long and emotionally grueling fight launched by Berry, who was hired by the company as a materials handler in 2015 and quit less than 18 months later....Arbitration typically keeps disputes between employees and companies secret, but court filings reveal that the arbitrator found Berry's allegations more credible than Tesla's denials, though she called it a "difficult" case after hearing from witnesses on both sides. Berry claimed that when he confronted a supervisor for calling him the "N-word," he was forced to work longer hours and push a heavier cart...."I hope the world knows that an arbitrator found Tesla treats its employees like this," Berry, 47, told Bloomberg News in a phone interview Wednesday. He ..said he's now taking time off to focus on his mental health as he still hasn't "gotten over the healing process.".....," arbitrator Elaine Rushing said in her May 12 ruling, which hasn't been previously reported. Rushing, a former judge in Sonoma County Superior Court for almost two decades..... Rushing "was clearly troubled by the facts, culture at the company and the tone of the defense.".....After his supervisors turned against him, Berry alleged, he suffered from sleepless nights, panic attacks, depression and anxiety, prompting him to seek help from a psychologist for the first time, according to the ruling. He broke down during the arbitration proceeding as he recalled how he "became quiet and cried a lot" and "questioned his sanity," Rushing wrote....."This is a case of a 23-year-old White man with only a high-school education supervising a 43-year-old African-American man with a college degree, a classic invitation for serious resentment," she wrote.....In 2020, 31 complaints were filed with California's Department of Fair Employment and Housing alleging discrimination at Tesla on the basis of race, age, gender expression, disability and pregnancy, according to data obtained from public records. The state agency issued right-to-sue letters in a majority of the cases; a handful were closed with insufficient evidence. In July, Valerie Workman, Tesla's vice president of people, posted on the company's blog to remind employees about the use of slurs and epithets as they prepared to return to offices.")

<https://www.google.com/amp/s/mobile.reuters.com/article/amp/idUSKBN1YZ18E> (A federal judge rejected Tesla Inc's effort to dismiss claims by two former workers that the California electric car factory where they worked was a hotbed of racial hostility, clearing the way for a possible trial....In a decision on Monday, U.S. District Judge William Orrick in San Francisco found open questions over whether Owen Diaz and his son Demetric Di-az faced "severe and pervasive racial harassment" in 2015 and 2016 at Tesla's factory in suburban Fremont, which employs more than 10,000 people. The plaintiffs, who are black, said they were subjected to repeated racial epithets dozens of times, as well as racist cartoons, and that supervisors engaged in or did little to stop the racism....Orrick said Diaz could pursue claims that Tesla allowed and did not take reasonable steps to stop racial harassment.)

<https://www.google.com/amp/s/futurism.com/tesla-pays-racial-slur/amp> (TESLA PAYS FORMER EMPLOYEE \$1 MILLION FOR CALLING HIM HORRIFIC RACIAL SLUR... "I HOPE THE WORLD KNOWS THAT AN ARBITRATOR FOUND TESLA TREATS ITS EMPLOYEES LIKE THIS." A former Tesla employee named Melvin Berry was awarded over \$1 million in an arbitration hearing earlier this year after he filed complaints about racist harassment at work — including his direct supervisor calling him the N-word and then punishing him with longer hours of harder work for speaking out about it. ...Toxic Culture.....Arbitrator Elaine Rushing decided that the evidence that Berry — who quit after 18 months and dealt with panic attacks, depression, and anxiety as a result — was harassed was clear....."Racial discrimination awards are rare and it seems this was especially hard-fought," employment lawyer Cliff Palefsky, who wasn't involved in the case, told Bloomberg News. Rushing, he added, "was clearly troubled by the facts, culture at the company, and the tone of the defense.")

Whereas Mr. Austin's, (*a Black man in a publicly documented retaliatory, hostile work environment*), plead facts are far above *Landers* articulated standards where he specified multiple weeks of unpaid overtime (versus at least one week standard in *Landers*) and made formal complaints about this issue (*management/supervisors admitted willfully unpaid or late, after complaints*) for multiple weeks leading to adverse Employer actions, and where (although not required by *Landers*), he provided independently verified approximate minimum amount of unpaid overtime by State of California Auditor (after State

Auditors auditing the company and their wage information three times and calling Mr. Austin personally to apologize for delay). This application is being filed 10 days prior to the due date (and in fact it is more than 60 days before the due date for Petition for Writ of Cert), and Mr. Austin is attaching copies of opinions. See attached. To be extra-cautious on the date in January (approx. 1/13/23) the Petition for Writ of Cert. is due Mr. Austin motioned for clarification per the Ninth Circuit Court's accounting system as to the exact date (to ensure on the same page.) Have not received an answer, yet.

Jurisdiction is proper per 28 U.S.C. § 1254 and Supreme Court Rules 10(a)(c). ((a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals (and the controlling precedent itself ruled upon i.e. *Landers*) on the same important matter; and has ... has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power; ... (c) ... a United States court of appeals has decided an important question of federal law ... in a way that conflicts with (and directly contradicts *Kasten*) relevant (and controlling) decisions of this

Court.) Because the Ninth Circuit's court of appeals blatant disregard of Supreme Court & the Ninth Circuit's own controlling precedent on the related issues of FLSA anti-retaliation, and pay (willful) violations the following questions are ripe for Writ of Certiorari:

1. Under *Kasten* was adverse action by Joint Employer Tesla retaliation when only days (*within week*) after escalated good faith reporting FLSA overtime wage violations to HR Officer after multiple formal reports to management (by Mr. Austin)? Was admitted adverse action even more blatantly retaliatory in violation of FLSA's anti-retaliation statute when management admitted willful non, or late, payment, with a. type of complaints (formal vs. informal), b. timing (within week), c. lack of process (no investigation of, or response to, Mr. Austin's complaints) all strongly suggesting pretext, and retaliatory animus (*especially when employed in entry level, whose role was not to monitor nor correct these company issues, who reported internally up the latter including to direct supervisors, head of department, and HR manager (up to Elon Musk directly); especially when employers feedback and reviews were excellent toward him*)?

2. Under Ninth Circuit's *Landers* (at least one week of uncompensated overtime), and this Court's *Tyson* (uncompensated overtime), and *Perez* (non-exempt entry level role) was joint employer Tesla's admitted (willful) non, or late, payment of several weeks of plead owed, complained about, but unpaid, or late, overtime (for which Tesla admitted they retaliated days after Mr. Austin made formal good faith complaints) an FLSA overtime pay violation? Was the violation(s) especially egregious, or blatant when rooted in independently verifiable facts as supervisor, and management, admitted they had not paid several weeks of overtime when Mr. Austin escalated complaints to HR and upper management about labor code FLSA overtime wage violations (especially as State of California's Auditing Department confirmed the substance, and provided specific amount of Tesla's violations independently verified approximate minimum amount of unpaid overtime by State of California Auditor (after State Auditors auditing the company and their wage information three times and calling Mr. Austin personally to apologize for delay before making

*benefit payments after a car accident when unable to work at all
for approximately a year due to severity of injury).*

WHEREFORE, the Court should grant Petitioner, Mr. George Jarvis Austin a 60-day extension of time to file petition for a writ of certiorari (moving deadline from 1/13/23 to 3/13/23).

October 27, 2022

Respectfully submitted,

[s] George Jarvis Austin

Self-Represented

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Petitioner in Supreme Court, Pro Se

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 28 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

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| <p>GEORGE JARVIS AUSTIN,</p> <p>Plaintiff-Appellant,</p> <p>v.</p> <p>TESLA, INC.; et al.,</p> <p>Defendants-Appellees.</p> |
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No. 21-15151

D.C. No. 3:20-cv-00800-EMC

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Edward M. Chen, District Judge, Presiding

Submitted June 15, 2022**

Before: SILVERMAN, WATFORD, and FORREST, Circuit Judges.

George Jarvis Austin appeals pro se from the district court’s judgment dismissing his action alleging federal and state law violations stemming from his employment termination. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(6). *Hebbe*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

v. *Pliler*, 627 F.3d 338, 341 (9th Cir. 2010). We affirm.

The district court properly dismissed Austin’s action because Austin failed to allege facts sufficient to state a wage theft or retaliation claim under the Fair Labor Standards Act (“FLSA”). *See Landers v. Quality Commc’ns, Inc.*, 771 F.3d 638, 645 (9th Cir. 2015) (“[A] plaintiff asserting a violation of the FLSA overtime provisions must allege that she worked more than forty hours in a given workweek without being compensated for the hours worked in excess of forty during that week”); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” (internal quotation marks omitted)).

The district court did not abuse its discretion in denying Austin leave to amend because amendment would have been futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and stating that leave to amend may be denied where amendment would be futile); *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009) (“[W]here the plaintiff has previously been granted leave to amend and has subsequently failed to add the requisite particularity to its claims, the district court’s discretion to deny leave to amend is particularly broad.” (internal quotation marks omitted)).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

All pending motions and requests are denied.

AFFIRMED.

UNITED STATES COURT OF APPEALS

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GEORGE JARVIS AUSTIN,

Plaintiff-Appellant,

v.

TESLA, INC., Organization; et al.,

Defendants-Appellees.

No. 21-15151

D.C. No. 3:20-cv-00800-EMC
Northern District of California,
San Francisco

ORDER

Before: SILVERMAN, WATFORD, and FORREST, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See Fed. R. App. P. 35.*

Austin's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 50) are denied.

No further filings will be entertained in this closed case.