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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

TESLA, INC.,

Defendant.

Case No. 23-cv-04984-JSC

**ORDER RE: MOTION TO DISMISS
AND MOTION TO STAY**

Re: Dkt. Nos. 22, 27

The Equal Employment Opportunity Commission (the Commission) sues Tesla, Inc. (Tesla) under Title VII of the Civil Rights Act of 1964 for claims arising from Tesla’s race-based employment practices. (Dkt. No. 1.)¹ Before the Court is Tesla’s motion to dismiss for failure to state a claim and motion to stay pending “virtually identical” state court proceedings. (Dkt. Nos. 22, 27.) Having carefully considered the briefing, and with the benefit of oral argument on March 28, 2024, the Court DENIES Tesla’s motions to dismiss and stay.

BACKGROUND

The Commission alleges Tesla has subjected Black employees at its Fremont, California manufacturing facilities (Fremont Factory) to severe or pervasive racial harassment and has created and maintained a hostile, race-based work environment there since May 2015. (*Id.* ¶ 16.) The N-word and other racial slurs, epithets, and stereotyping “permeated Tesla’s Fremont Factory.” (*Id.* ¶ 17.) Non-Black managers, non-managerial employees, and temporary workers directly addressed Black employees individually and collectively using the N-word. (*Id.* ¶ 21.) Other race-based slurs and insults were frequently used too. (*Id.* ¶¶ 24-25.) At work, Black

¹ Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

1 employees encountered racist graffiti—including swastikas, death threats, and nooses—on
2 bathroom walls, desks, elevators, and equipment. (*Id.* ¶¶ 26, 28-29.) Black employees describe
3 the use of slurs and racist imagery as “casual and normal,” “frequent,” “constant,” “a regular
4 thing,” and occurring “too many times to count.” (*Id.* ¶¶ 23, 27.)

5 Non-Black employees used slurs and epithets openly in high-traffic work areas and hubs.
6 (*Id.* ¶ 33.) Supervisors and managers witnessed racially offensive conduct but failed or refused to
7 intercede. (*Id.* ¶ 34.) Black employees reported the slurs, insults, graffiti, and misconduct to
8 Tesla’s human resources, employee relations, and managerial personnel. (*Id.* ¶ 35.) Tesla failed
9 to investigate complaints of racial misconduct, adopt policies or practices to ensure its temporary
10 workforce did not perpetuate racial harassment at the Fremont Factory, or otherwise take remedial
11 action to end the ongoing racial harassment. (*Id.* ¶¶ 37-39.) Tesla’s supervisors and human
12 resources officials retaliated against Black employees by changing their schedules, assigning them
13 less desirable duties, writing them up without justification, and firing them within weeks of
14 reporting the ongoing racial harassment and discrimination. (*Id.* ¶¶ 40-43.)

15 In this enforcement action, the Commission brings hostile work environment and
16 retaliation claims against Tesla under § 706 of Title VII. (Dkt. No. 1 ¶¶ 4, 9, 44-51, 52-57.)

17 DISCUSSION

18 I. Motion to Stay

19 Tesla requests a stay under the *Colorado River* doctrine and on the grounds the
20 Commission failed to engage in pre-suit conciliation.

21 A. *Colorado River* Doctrine

22 Generally, as between state and federal courts, the pendency of a state court action is no
23 bar to federal proceedings concerning the same matter. *Ernest Bock, LLC v. Steelman*, 76 F.4th
24 827, 835 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 554 (2024). However, in *Colorado River*, the
25 Supreme Court recognized “in exceptional circumstances, considerations of wise judicial
26 administration, giving regard to conservation of judicial resources and comprehensive disposition
27 of litigation can support a stay of federal litigation in favor of parallel state proceedings.” *Id.* at
28 836 (cleaned up); *see Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800,

1 818 (1976) (“[T]he circumstances permitting the dismissal of a federal suit due to the presence of
2 a concurrent state proceeding for reasons of wise judicial administration are considerably more
3 limited than the circumstances appropriate for abstention. The former circumstances, though
4 exceptional, do nevertheless exist.”). “[A] stay of federal litigation in favor of state court
5 proceedings is the exception, not the rule. Only the clearest of justifications will warrant a stay,
6 and the circumstances justifying a stay are exceedingly rare.” *Ernest Bock, LLC*, 76 F.4th at 836
7 (cleaned up).

8 The Ninth Circuit weighs eight factors to determine whether a *Colorado River* stay is
9 justified:

10 (1) which court first assumed jurisdiction over any property at stake;
11 (2) the inconvenience of the federal forum; (3) the desire to avoid
12 piecemeal litigation; (4) the order in which the forums obtained
13 jurisdiction; (5) whether federal law or state law provides the rule of
14 decision on the merits; (6) whether the state court proceedings can
15 adequately protect the rights of the federal litigants; (7) the desire to
16 avoid forum shopping; and (8) whether the state court proceedings
17 will resolve all issues before the federal court.

18 *Id.* Courts apply the factors “in a pragmatic, flexible manner with a view to the realities of the
19 case at hand. The weight to be given to any one factor may vary greatly from case to case.” *Id.* at
20 836-37 (cleaned up). “The underlying principle guiding this review is a strong presumption
21 *against* federal abstention. Any doubt as to whether a factor exists should be resolved against a
22 stay, not in favor of one.” *Id.* at 837.

23 **i. Parallelism**

24 “Parallelism is a threshold requirement for a *Colorado River* stay.” *Ernest Bock, LLC*, 76
25 F.4th at 838.

26 When a district court decides to dismiss or stay under *Colorado River*,
27 it presumably concludes that the parallel state-court litigation will be
28 an adequate vehicle for the complete and prompt resolution of the
issues between the parties. If there is any substantial doubt as to this,
it would be a serious abuse of discretion to grant the stay or dismissal
at all.

Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 28 (1983). “[T]he decision to
invoke *Colorado River* necessarily contemplates that the federal court will have nothing further to
do in resolving any substantive part of the case, whether it stays or dismisses.” *Id.*; *see also*

1 *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 278 (1988) (“[T]he granting of a
 2 *Colorado River* motion necessarily implies an expectation that the state court will resolve the
 3 dispute.”). Exact parallelism is not required; it is enough if the state and federal proceedings are
 4 substantially similar. *Ernest Bock, LLC*, 76 F.4th at 838. “Proceedings are substantially similar
 5 when substantially the same parties are contemporaneously litigating substantially the same issues
 6 in another forum.” *Goodin v. Vendley*, 356 F. Supp. 3d 935, 944 (N.D. Cal. 2018) (cleaned up);
 7 *see id.* (“state and federal proceedings are substantially similar if they arise out the same alleged
 8 conduct and seek to vindicate the same rights.”).

9 Tesla insists this action is substantially similar to two state court actions now before
 10 Alameda County Superior Court Judge Grillo: *Department of Fair Employment and Housing v.*
 11 *Tesla, Inc.*, Alameda County Superior Court No. 22CV006830 (“Civil Rights Department Case”),
 12 and *Vaughn, et al. v. Tesla, Inc., et al.*, Alameda County Superior Court No. RG 17882082
 13 (“Vaughn Case”). In the *Vaughn* Case, filed July 2021, the plaintiffs sue Tesla for race-based
 14 harassment and discrimination and failure to prevent race-based harassment and discrimination in
 15 violation of California’s Fair Employment and Housing Act (“FEHA”). (Dkt. No. 22-9 ¶¶ 63-
 16 92.)² In the Civil Rights Department Case, filed in March 2022, California’s Department of Fair
 17 Employment and Housing initiated an enforcement action for group relief against Tesla on behalf
 18 of California and aggrieved Black Fremont Factory workers, alleging racial harassment,
 19 employment discrimination based on race, retaliation, failure to prevent racial harassment and
 20 discrimination, and recordkeeping violations. (Dkt. No. 22-10 ¶¶ 28, 35-192.) Tesla asserts the
 21 state court actions are substantially similar to this action because 1) “the putative class in the
 22 Vaughn Case and the alleged aggrieved group in the [Civil Rights Department] Case include all
 23 African American workers at the Factory within the statutory periods,” and 2) the Commission’s

24 _____
 25 ² Tesla requests the Court take judicial notice of the operative complaints in both state court cases.
 26 (Dkt. No. 22-5 at 4). A court can take judicial notice of facts “not subject to reasonable dispute”
 27 because they are “generally known within the court’s territorial jurisdiction” or can be “accurately
 28 determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).
 This includes “undisputed matters of public record, including documents on file in federal and
 state courts.” *Harris v. Cty. of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012). So, the Court takes
 judicial notice of the operative complaints in the state court cases as a matter of public record.

1 complaint is based on the same factual allegations and seeks to vindicate the same legal rights as
2 some claims in the state court actions. (Dkt. No. 22 at 19-20.)

3 The parallelism factor requires Tesla to demonstrate the identified state court actions “will
4 be an adequate vehicle for the *complete* and prompt resolution of the issues between the parties.”
5 *Ernest Bock, LLC*, 76 F.4th at 841; *United States v. State Water Res. Control Bd.*, 988 F.3d 1194,
6 1204 (9th Cir. 2021) (“We have repeatedly emphasized that a *Colorado River* stay is inappropriate
7 when the state court proceedings will not resolve the entire case before the federal court.”). If
8 there is any substantial doubt as to whether the state court actions will completely and promptly
9 resolve the issues between the parties, “it would be a serious abuse of discretion to grant the stay
10 or dismissal at all.” *Moses H. Cone Mem’l Hosp.*, 460 U.S. at 28.

11 The state court actions, regardless of outcome, will not resolve this case. The Commission
12 is not a party to either state court case. Here, the Commission sues Tesla in its own name for
13 violations of Title VII. (Dkt. No. 1 ¶ 9); *see Gen. Tel. Co. of the Nw.*, 446 U.S. at 324 (“Given the
14 clear purpose of Title VII, the EEOC’s jurisdiction over enforcement, and the remedies available,
15 the EEOC need look no further than § 706 for its authority to bring suit in its own name for the
16 purpose, among others, of securing relief for a group of aggrieved individuals.”). The
17 Commission’s claims are not “merely derivative” of an aggrieved employee’s claim, *Waffle*
18 *House, Inc.*, 534 U.S. at 297, because the Commission “is not merely a proxy for the victims of
19 discrimination.” *Gen. Tel. Co. of the Nw.*, 446 U.S. at 326. Neither state court case involves Title
20 VII claims; instead, both involve FEHA claims. So, the state court actions will not completely and
21 promptly resolve the issues between Tesla and the Commission.

22 Tesla insists “a federal court considering a Title VII discrimination claim is required to
23 give preclusive effect to a state court judgment on a similar state discrimination claim.” (Dkt. No.
24 22 at 20.) Tesla relies on *Kremer v. Chem. Const. Corp.*, 456 U.S. 461 (1982) and *Acuna v.*
25 *Regents of Univ. of California*, 56 Cal. App. 4th 639 (1997) to argue the Commission would be
26 precluded from bringing its Title VII claims after resolution of the state court cases. Both cases
27 involved individual plaintiffs who were barred by res judicata from relitigating in a second forum
28 employment discrimination claims that had failed in the first forum. *Kremer*, 456 U.S. at 463-65;

1 *Acuna*, 56 Cal. App. 4th at 648. A state court judgment dismissing an individual’s employment
2 discrimination claims precludes the individual’s federal Title VII employment discrimination
3 claims “when the state court’s decision would be res judicata in the State’s own courts.” *Kremer*,
4 456 U.S. at 463, 485. But “[i]n California, res judicata, or claim preclusion, prevents relitigation
5 of the same cause of action in a second suit between the same parties or parties in privity with
6 them.” *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 927 (9th Cir. 2006) (cleaned up). The Commission
7 is not a party in either state court action, and Tesla has not shown the Commission is in privity
8 with any party in either state court action. So, res judicata would not preclude the Commission’s
9 Title VII claims against Tesla after resolution of the state court actions.

10 Tesla fails to demonstrate the parallelism factor because Tesla fails to show the state court
11 actions will completely and promptly resolve the issues between the parties. *Ernest Bock, LLC*, 76
12 F.4th at 841. A *Colorado River* stay is thus inappropriate in this case because “the state court
13 proceedings will not resolve the entire case before the federal court.” *State Water Res. Control*
14 *Bd.*, 988 F.3d at 1204; *Intel Corp. v. Advanced Micro Devices, Inc.*, 12 F.3d 908, 913 (9th Cir.
15 1993) (“Under the rules governing the *Colorado River* doctrine, the existence of a substantial
16 doubt as to whether the state proceedings will resolve the federal action precludes the granting of a
17 stay.”); *Moses H. Cone Mem’l Hosp.*, 460 U.S. at 28 (“If there is any substantial doubt as to
18 [whether the state court actions will be an adequate vehicle for the complete and prompt resolution
19 of the issues between the parties], it would be a serious abuse of discretion to grant the stay or
20 dismissal at all.”).

21 **B. Pre-Suit Conciliation**

22 Tesla also requests a stay on the grounds the Commission “failed to engage Tesla in the
23 pre-suit conciliation required by Title VII and the Supreme Court’s decision in *Mach Mining*.”
24 (Dkt. No. 34 at 8.) Tesla insists “this Court should stay this proceeding until EEOC has fulfilled
25 its conciliation mandate.” (*Id.* at 21.)

26 Before suing an employer for employment discrimination under Title
27 VII of the Civil Rights Act of 1964, the Equal Employment
28 Opportunity Commission (EEOC or Commission) must first
“endeavor to eliminate the alleged unlawful employment practice by
informal methods of conference, conciliation, and persuasion.” Once

1 the Commission determines that conciliation has failed, it may file
2 suit in federal court.

3 *Mach Mining, LLC v. E.E.O.C.*, 575 U.S. 480, 480 (2015). This means the Commission 1) “must
4 inform the employer about the specific allegation” by describing “both what the employer has
5 done and which employees (or what class of employees) have suffered as a result,” and 2) “must
6 try to engage the employer in some form of discussion (whether written or oral), so as to give the
7 employer an opportunity to remedy the allegedly discriminatory practice.” *Id.* at 494. “A sworn
8 affidavit from the EEOC stating that it has performed the obligations noted above but that its
9 efforts have failed will usually suffice to show that it has met the conciliation requirement.” *Id.* at
10 494-95. But if Tesla presents credible evidence indicating the Commission failed to “provide the
11 requisite information about the charge or attempt to engage in a discussion about conciliating the
12 claim, a court must conduct the factfinding necessary to decide that limited dispute.” *Id.* at 495.

13 The Commission notified Tesla of its determination there is reasonable cause to believe
14 Tesla violated Title VII

15 by subjecting a class of Black employees to a hostile work
16 environment and retaliating against a class of employees who
17 engaged in protected activity. The aggrieved persons include all
18 Black employees who were employed at [Tesla’s] Fremont, CA
19 facilities at any time since May 29, 2015 to the present, who have
20 been adversely affected by such unlawful employment practices.

21 (Dkt. No. 22-19 at 2.) So, the Commission informed Tesla of the specific allegations against it
22 and the class of employees who suffered as a result. Between July 2022 and June 2023, the
23 Commission engaged in conciliation efforts with Tesla, including a seven-hour, in-person
24 conciliation session on June 13, 2023. (Dkt. No. 32 ¶¶ 11-17.) So, the Commission tried to
25 engage Tesla in discussions to provide Tesla the opportunity to remedy the allegedly
26 discriminatory practice. *Mach Mining, LLC*, 575 U.S. at 494 (“[A] court looks only to whether the
27 EEOC attempted to confer about a charge, and not to what happened (*i.e.*, statements made or
28 positions taken) during those discussions.”) In sum, review of these two requirements
demonstrates the Commission engaged in pre-suit conciliation.

Tesla claims the Commission failed to comply with Title VII’s conciliation mandate
because the Commission “consistently refused to provide Tesla any specific facts or evidence

1 from its investigation.” (Dkt. No. 22 at 27.) Without citing any authority, Tesla argues the
2 “details” the Commission provided were insufficient because they failed to “include any facts
3 allowing Tesla to understand what problematic practices it purportedly implemented, and what
4 class of employees suffered as a result, beyond potentially every Black employee at the Fremont
5 facility since 2015.” (Dkt. No. 34 at 20.) Not so. The Commission was not required to provide
6 Tesla with facts “allowing Tesla to understand what problematic practices it purportedly
7 implemented” or define the class of employees any further. *See U.S. Equal Emp. Opportunity*
8 *Comm’n v. MJC, Inc.*, 400 F. Supp. 3d 1023, 1043 (D. Haw. 2019) (“The EEOC was not required
9 to provide Defendants with a list of all its factual allegations during the conciliation process.”).
10 The Commission, “to meet the statutory condition, must tell the employer about the claim—
11 essentially, what practice has harmed which person or class—and **must provide the employer with**
12 **an opportunity to discuss the matter in an effort to achieve voluntary compliance.**” *Mach*
13 *Mining, LLC*, 575 U.S. at 488 (emphasis added). Indeed, the Commission “need only ‘endeavor’
14 to conciliate a claim, without having to devote a set amount of time or resources to that project.
15 Further, the attempt need not involve any specific steps or measures.” *Id.* at 492 (cleaned up). It
16 is undisputed the Commission provided Tesla an opportunity to discuss the Commission’s claims.
17 (Dkt. No. 32 ¶¶ 11-17.)

18 Tesla insists the conciliation was not “meaningful” or “good faith” on the grounds the
19 Commission did not provide Tesla with enough information to remedy the allegedly
20 discriminatory practices. (Dkt. Nos. 22 at 9-10, 34 at 18-19.) In *Mach Mining*, the Supreme Court
21 expressly rejected imposing a “good faith” requirement on Title VII pre-suit conciliation, ruling
22 “[s]uch judicial review extends too far.” *Mach Mining, LLC*, 575 U.S. at 492; *U.S. Equal Emp.*
23 *Opportunity Comm’n v. MJC, Inc.*, 306 F. Supp. 3d 1204, 1213 (D. Haw. 2018) (“The EEOC is
24 not subject to a ‘good faith’ bargaining requirement.”) A “good faith” requirement does “not
25 properly apply to a law that treats the conciliation process not as an end in itself, but only as a tool
26 to redress workplace discrimination.” *Mach Mining, LLC*, 575 U.S. at 491. So, Tesla fails to
27 show the Commission failed to meet Title VII’s pre-suit conciliation requirements.

28 * * *

1 Accordingly, Tesla’s motion to stay is DENIED.

2 **II. Motion to Dismiss**

3 Dismissal under Rule 12(b)(6) “may be based on either a lack of a cognizable legal theory
4 or the absence of sufficient facts alleged under a cognizable legal theory.” *Johnson v. Riverside*
5 *Healthcare Sys.*, 534 F.3d 1116, 1121 (9th Cir. 2008) (cleaned up). For the Commission’s
6 challenged claims to survive, the complaint’s factual allegations must raise a plausible right to
7 relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554-56 (2007). Though the Court must accept
8 the complaint’s factual allegations as true, conclusory assertions are insufficient to state a claim.
9 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim is facially plausible when the plaintiff pleads
10 enough factual content to justify the reasonable inference the defendant is liable for the
11 misconduct alleged. *Id.*

12 Federal Rule of Procedure 8(a) requires a plaintiff’s complaint to give the defendant fair
13 notice of the plaintiff’s claims and the grounds on which those claims rest. *Earth Island Inst. v.*
14 *United States Forest Serv.*, 87 F.4th 1054, 1071 (9th Cir. 2023). “Rule 8’s pleading standard is
15 liberal, but still requires that the defendant receives notice as to what is at issue in the case.” *Id.*
16 (cleaned up). Rule 8 does not require the Commission to plead specific facts establishing a prima
17 facie case of discrimination to bring employment discrimination claims against Tesla under Title
18 VII. *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 514 (2002). “A complaint containing
19 allegations and factual statements that clearly put the defendant on notice that the instant action is
20 based on the defendant’s alleged discrimination on a particular protected basis against the
21 charging party and other similarly situated employees beginning at a specific point in time is
22 sufficient to survive a motion to dismiss.” *U.S. E.E.O.C. v. Farmers Ins. Co.*, 24 F. Supp. 3d 956,
23 967 (E.D. Cal. 2014).

24 Under § 706, the Commission is authorized to bring suit in its own name “to prevent any
25 person from engaging in any unlawful employment practice” prohibited by Title VII. 42 U.S.C. §
26 2000e-5(a); see *Gen. Tel. Co. of the Nw. v. Equal Emp. Opportunity Comm’n*, 446 U.S. 318, 324
27 (1980) (“Given the clear purpose of Title VII, the EEOC’s jurisdiction over enforcement, and the
28 remedies available, the EEOC need look no further than § 706 for its authority to bring suit in its

1 own name for the purpose, among others, of securing relief for a group of aggrieved
 2 individuals.”). In such actions, the Commission can act as “a proxy for the victims of
 3 discrimination” or “to vindicate the public interest in preventing employment discrimination,” or
 4 both. *Gen. Tel. Co. of the Nw.*, 446 U.S. at 326.

5 **A. Hostile Work Environment**

6 To bring a hostile work environment claim, the Commission must show 1) discrimination
 7 by an employer on account of membership in a protected group, and 2) the offensive conduct was
 8 sufficiently severe or pervasive to alter the conditions of employment. *Sharp v. S&S Activewear,*
 9 *L.L.C.*, 69 F.4th 974, 978 (9th Cir. 2023). Individual targeting is not required to establish a Title
 10 VII violation; it is enough if such hostile conduct pollutes the victim’s workplace, making it more
 11 difficult for the victim to do their job, take pride in their work, and desire to stay in their position.
 12 *Id.* The Ninth Circuit has “consistently sustained Title VII claims challenging a workplace
 13 polluted with insult and intimidation.” *Id.* at 979. “When the workplace is permeated with
 14 discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the
 15 conditions of the victim’s employment and create an abusive working environment, Title VII is
 16 violated.” *Id.* (cleaned up).

17 Tesla moves to dismiss the Commission’s complaint, arguing it “fails to allege facts
 18 sufficient to establish the severity and pervasiveness element necessary to state a hostile work
 19 environment claim.” (Dkt. No. 27 at 12.) As a threshold matter, Tesla misstates the standard.
 20 The question is whether the alleged offensive conduct was sufficiently severe *or* pervasive to alter
 21 the conditions of employment. *Sharp*, 69 F.4th at 978. In any event, Tesla claims the
 22 Commission fails to meet the severity element on the grounds the complaint fails to 1) identify
 23 any member of the alleged group of victims, 2) identify an individual who perpetrated racial
 24 harassment, or 3) provide a date for any of the alleged incidents.

25 “Perhaps no single act can more quickly alter the conditions of employment and create an
 26 abusive working environment than the use of an unambiguously racial epithet such as [the N-
 27 word] by a supervisor in the presence of his subordinates.” *McGinest*, 360 F.3d at 1116; *see id.*
 28 (“It is beyond question that the use of the [N-word] is highly offensive and demeaning, evoking a

1 history of racial violence, brutality, and subordination. This word is perhaps the most offensive
2 and inflammatory racial slur in English, a word expressive of racial hatred and bigotry.”). The
3 Commission alleges exactly this act. (Dkt. No. 1 ¶¶ 21-22, 27, 43.) Since May 2015, non-Black
4 managers, non-managerial employees, and temporary workers have regularly addressed Black
5 current and former Tesla employees stationed at Tesla’s Fremont Factory individually and
6 collectively by the N-word, (Dkt. No. 1 ¶ 21); frequently used other racial slurs, epithets, and
7 insults openly in high-traffic work areas, (*id.* ¶¶ 24-25, 33); and graffitied swastikas, nooses, the
8 N-word, death threats and other abusive language and imagery directed at Black people across
9 desks, elevators, bathrooms, and equipment. (*Id.* ¶¶ 26, 28-29); *see Swinton v. Potomac Corp.*,
10 270 F.3d 794, 817 (9th Cir. 2001) (rejecting the benign characterization of the N-word, “perhaps
11 the most offensive and inflammatory racial slur in English, a word expressive of racial hatred and
12 bigotry.” (cleaned up)). Despite awareness of such racial misconduct, Tesla has failed to
13 investigate Black employees’ complaints, adopt policies or practices to ensure its temporary
14 workforce did not perpetuate racial harassment at the Fremont Factory, intercede when witnessing
15 racial misconduct, or otherwise take remedial action to end the ongoing racial harassment. (*Id.* ¶¶
16 35, 37-39.)

17 Direct verbal attacks and “the prevalence of graffiti containing a racial slur evocative of
18 lynchings and racial hierarchy are significant exacerbating factors in evaluating the severity of the
19 racial hostility.” *McGinest*, 360 F.3d at 1116. The Commission alleges frequent direct verbal
20 racial attacks against Black Tesla employees at the Fremont Factory and the “constant” presence
21 of racist graffiti evocative of lynchings. (Dkt. No. 1 ¶¶ 19-29.) These allegations support an
22 inference the Tesla Fremont Factory has been, since May 2015, “permeated with discriminatory
23 intimidation, ridicule, and insult,” sufficient to alter the conditions of Black Tesla employees’
24 employment. *Sharp*, 69 F.4th at 979 (“When the workplace is permeated with discriminatory
25 intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of
26 the victim’s employment and create an abusive working environment, Title VII is violated.”). So,
27 the Commission alleges facts sufficient to plausibly establish a hostile work environment claim
28 against Tesla for its racial discrimination against Black employees at the Fremont Factory.

1 Tesla's argument for dismissal based on the Commission's failure to identify any member
2 of the alleged group of victims fails because the Commission brings this enforcement action in its
3 own name, (Dkt. No. 1 ¶ 9), so the Commission is not required to identify an aggrieved individual
4 to survive Tesla's motion to dismiss. *See, e.g., Equal Emp. Opportunity Comm'n v. Rosebud*
5 *Restaurants, Inc.*, 85 F. Supp. 3d 1002, 1005-06 (N.D. Ill. 2015) (finding the Commission is not
6 required to name an aggrieved individual to bring a § 706 action in its own name); *E.E.O.C. v.*
7 *PBM Graphics Inc.*, 877 F. Supp. 2d 334, 347 (M.D.N.C. 2012) (“[T]he complaint is not deficient
8 for failing to identify the numerous alleged victims of discrimination or setting out the names of
9 specific employees at PBM who expressed a preference for Hispanic temporary workers.”). “The
10 EEOC’s civil suit was intended to supplement, not replace, the private action.” *Gen. Tel. Co. of*
11 *the Nw.*, 446 U.S. at 326. Indeed, the Supreme Court has “recognized several situations in which
12 the EEOC does not stand in the employee’s shoes.” *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279,
13 297 (2002). In *Waffle House*, the Supreme Court ruled a mandatory arbitration agreement
14 between an employer and an employee did not bar the Commission from pursuing victim-specific
15 judicial relief in an enforcement action because an agreement to which the Commission was not a
16 party could not limit the remedies available to the Commission. *Id.* In *Occidental Life Ins. Co. of*
17 *California v. E.E.O.C.*, the Supreme Court ruled the Commission did not have to comply with
18 state statutes of limitations because “the EEOC does not function simply as a vehicle for
19 conducting litigation on behalf of private parties.” 432 U.S. 355, 368 (1977). In *Gen. Tel. Co. of*
20 *the Nw.*, the Supreme Court ruled the Commission’s “enforcement suits should not be considered
21 representative actions subject to Rule 23” because the Commission “is not merely a proxy for the
22 victims of discrimination.” 446 U.S. at 326; *see PBM Graphics Inc.*, 877 F. Supp. 2d at 347
23 (“While a putative class action by an individual would require the naming of at least one plaintiff,
24 it bears noting that EEOC is not bound by the class action pleading rules in its claim under
25 sections 706 or 707.”).

26 Tesla's reliance on *Pioneer Hotel* and *Cazorla* to argue the Commission's complaint must
27 identify aggrieved employees is unavailing. In *U.S. E.E.O.C. v. Pioneer Hotel, Inc.*, the court held
28 “[w]hile an action pursuant to Section 706 without a single identified plaintiff will not lie, the

1 EEOC is not required to identify every aggrieved individual comprising the class.” No. 2:11-CV-
2 01588-LRH, 2013 WL 3716447, at *3 (D. Nev. July 15, 2013). But *Pioneer Hotel*’s only
3 authority for this holding is the ruling of a since-overturned case, *Bass Pro Outdoor World*. *Id.*;
4 see *E.E.O.C. v. Bass Pro Outdoor World, LLC*, 884 F. Supp. 2d 499, 520-21 (S.D. Tex. 2012), on
5 reconsideration, 35 F. Supp. 3d 836 (S.D. Tex. 2014), *aff’d sub nom. Equal Emp. Opportunity*
6 *Comm’n v. Bass Pro Outdoor World, L.L.C.*, 826 F.3d 791 (5th Cir. 2016). Moreover, the court
7 order reversing *Bass Pro Outdoor World* acknowledged the text of § 706 “suggests that
8 Commissioner charges perhaps do not need to be filed ‘on behalf of’ identifiable victims” and
9 found the Commission could bring suit on behalf of unnamed individuals because “Congress
10 wanted the Commission to have all the same rights as private litigants when it brings suit pursuant
11 to § 706.” *E.E.O.C. v. Bass Pro Outdoor World, LLC*, 35 F. Supp. 3d 836, 861-62 (S.D. Tex.
12 2014), *aff’d sub nom. Equal Emp. Opportunity Comm’n v. Bass Pro Outdoor World, L.L.C.*, 826
13 F.3d 791 (5th Cir. 2016). *Pioneer Hotel* also involved a private individual charging party,
14 whereas the Commission is the charge filer here. 2013 WL 3716447, at *1.

15 Tesla cites *Cazorla v. Koch Foods of Miss., LLC* to argue the Commission’s complaint is
16 required to identify members of the alleged class of victims and allege particularized facts as to
17 those persons and their claims. 2013 U.S. Dist. LEXIS 201174. Three years into the case and
18 after discovery, the *Cazorla* court dismissed with leave to amend the Commission’s second
19 amended complaint on the grounds the Commission failed to plead particularized facts as to the
20 111 named aggrieved individuals. 2013 U.S. Dist. LEXIS 201174, *23-24. However, *Cazorla* is
21 unpersuasive in light of numerous decisions holding the Commission “is not required to identify
22 or name every potential class member in its complaint” or “plead detailed factual allegations
23 supporting the individual claims of every potential member of a class.” *Equal Emp. Opportunity*
24 *Comm’n v. Geisinger Health*, No. CV 21-4294-KSM, 2022 WL 10208553, at *17 (E.D. Pa. Oct.
25 17, 2022) (cleaned up); see *Equal Emp. Opportunity Comm’n v. JBS USA, LLC*, 481 F. Supp. 3d
26 1204, 1216 (D. Colo. 2020) (“[T]he EEOC can give defendant fair notice of its claims, and the
27 grounds upon which they rest, without pleading specific, individualized facts establishing that
28 each charging party is entitled to relief.”); *Rosebud Restaurants, Inc.*, 85 F. Supp. 3d at 1005-06

1 (concluding the Commission can state a § 706 claim without identifying an aggrieved individual);
2 *E.E.O.C. v. United Parcel Serv., Inc.*, No. 09-CV-5291, 2013 WL 140604, at *6 (N.D. Ill. Jan. 11,
3 2013) (ruling the Commission is not required “to plead detailed factual allegations supporting the
4 individual claims of every potential member of a class. EEOC must merely ‘plead factual content
5 that allows the court to draw the reasonable inference’ that UPS violated provisions of the ADA as
6 to the unidentified individuals.”); *PBM Graphics Inc.*, 877 F. Supp. 2d at 347 (“[T]he complaint is
7 not deficient for failing to identify the numerous alleged victims of discrimination or setting out
8 the names of specific employees at PBM who expressed a preference for Hispanic temporary
9 workers. . . . It is sufficient that the facts, taken as true, allege different treatment among similarly
10 situated workers based on national origin.”); *E.E.O.C. v. U.S. Steel Corp.*, No. CIV.A. 10-1284,
11 2012 WL 3017869, at *10 (W.D. Pa. July 23, 2012) (“*Iqbal* and *Twombly* do not require the
12 EEOC to name all of the potential class members in its Amended Complaint.”).

13 Tesla also raises *E.E.O.C. v. La Rana Hawaii, LLC*, to argue the Commission’s complaint
14 fails to state a claim if it does not include the dates of the alleged discrimination or identities of the
15 alleged harassers. 888 F. Supp. 2d 1019 (D. Haw. 2012). In *La Rana Hawaii*, the dates of the
16 alleged discrimination were required to demonstrate one defendant employer was under contract
17 with another defendant employer at the time of the alleged discrimination. 888 F. Supp. 2d at
18 1046-47. Because the Commission’s complaint failed to identify the dates of the alleged
19 discrimination or distinguish between the two defendant employers, the district court was unable
20 to draw the reasonable inference one defendant employer was liable for the misconduct alleged.
21 *Id.* For the same reason, the district court required the Commission to identify the alleged
22 harassers. *Id.* at 1047-48 (“The EEOC must allege specifically what wrongdoing it is assigning to
23 each Defendant.”). Here, Tesla is the lone defendant employer. So, the Court can draw the
24 reasonable inference Tesla is “liable for the misconduct alleged” without the dates of the alleged
25 discrimination or identities of the alleged harassers. *Iqbal*, 556 U.S. at 678.

26 Finally, Tesla relies on *Arizona ex rel. Horne v. Geo Grp., Inc.*, 816 F.3d 1189 (9th Cir.
27 2016), to argue “[b]ecause [the Commission] fails to provide a date for *any* of the incidents
28 alleged in the complaint, those incidents are legally insufficient to state a claim for relief under

1 Section 706.” (Dkt. No. 27 at 12.) Title VII requires “a charge shall be filed by or on behalf of
 2 the person aggrieved within three hundred (300) days after the alleged unlawful employment
 3 practice occurred.” *Id.* at 1202. But in *Arizona ex rel. Horne*, the Ninth Circuit “doubt[ed] that
 4 the [Commission] is subject to the same strict timing requirements with respect to the exhaustion
 5 of remedies in Title VII as a private party before bringing class suit,” and did “not address whether
 6 the [Commission] is subject to the same strict timing requirements as private litigants.” *Id.* at
 7 1202 n.8. And here, the Commission brings this enforcement action in its own name, not on
 8 behalf of aggrieved persons. So, *Arizona ex rel. Horne* does not support Tesla’s argument the
 9 complaint is insufficient for failing to provide the dates of alleged incidents.

10 * * *

11 The Commission’s factual allegations are sufficient to support the inference the alleged
 12 racial harassment was sufficiently severe to pollute Tesla’s Fremont Factory and create an abusive
 13 workplace for Black employees. *Sharp*, 69 F.4th at 978-79 (“We have consistently sustained Title
 14 VII claims challenging a workplace polluted with insult and intimidation.”); *see JBS USA, LLC*,
 15 481 F. Supp. 3d at 1219 (denying motion to dismiss the Commission’s hostile work environment
 16 claim where the complaint “allege[d] that Black, Somali, and Muslim employees were subjected
 17 to harassment from management, supervisors, and co-workers, describe[d] the type of harassment
 18 that these employees faced, and describe[d] the time frame in which this harassment occurred.”
 19 (cleaned up)). Accordingly, Tesla’s motion to dismiss the Commission’s hostile work
 20 environment claim is DENIED.

21 **B. Retaliation**

22 The complaint is not required to plead a prima facie case of retaliation as long as it
 23 contains “a short and plain statement of the claim showing that the pleader is entitled to relief.”
 24 *Swierkiewicz*, 534 U.S. at 508 (quoting Federal Rule of Civil Procedure 8(a)(2)).

25 When a plaintiff does not plead a prima facie case, courts still look to
 26 the elements of the prima facie case “to decide, in light of judicial
 27 experience and common sense, whether the challenged complaint
 contains sufficient factual matter, accepted as true, to state a claim for
 relief that is plausible on its face.”

28 *Cloud v. Brennan*, 436 F. Supp. 3d 1290, 1300-01 (N.D. Cal. 2020) (cleaned up). To state a

1 cognizable retaliation claim, the Commission must allege facts sufficient to support the inference
2 Black Tesla Fremont Factory employees 1) engaged in activity protected under Title VII, 2) Tesla
3 subjected Black Tesla Fremont Factory employees to adverse employment action, and 3) a causal
4 link exists between the protected activity and the adverse employment action. *Thomas v. City of*
5 *Beaverton*, 379 F.3d 802, 811 (9th Cir. 2004).

6 As to the first element, internal complaints constitute protected activity when a reasonable
7 person would believe the conduct the complaint reports violates Title VII. *E.E.O.C. v. Go Daddy*
8 *Software, Inc.*, 581 F.3d 951, 963-64 (9th Cir. 2009). The Commission alleges “Black employees
9 reported the slurs, insults, graffiti, and misconduct to Tesla’s human resources, employee
10 relations, and managerial personnel.” (Dkt. No. 1 ¶ 35.) As discussed above, a reasonable person
11 would believe the alleged racial slurs, insults, graffiti, and misconduct violated Title VII. So, the
12 Commission’s allegation Black employees at the Fremont Factory complained to Tesla’s
13 management about the alleged harassment is sufficient to support the inference Black employees
14 engaged in a protected activity. Tesla’s argument the Commission “alleges **zero** facts to support
15 the ‘protected activity’ element of its retaliation claim” ignores this allegation. (Dkt. No. 27 at
16 16.)

17 As to the second element, an adverse employment action is one that “might have dissuaded
18 a reasonable worker from making or supporting a charge of discrimination.” *Burlington N. &*
19 *Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006). “[T]he significance of any given act of
20 retaliation will often depend upon the particular circumstances. Context matters.” *Id.* at 69.
21 “[T]ermination of employment is an adverse employment action.” *Little v. Windermere*
22 *Relocation, Inc.*, 301 F.3d 958, 970 (9th Cir. 2002). The Commission alleges Black employees
23 who complained of the racial harassment were terminated, subjected to schedule changes, assigned
24 less desirable duties, and written-up unjustifiably. (Dkt. No. 1 ¶¶ 40-43.) A Black employee who
25 reported her supervisor “for repeatedly telling Black employees not to stand together and saying
26 that ‘[N-word]s are lazy,’” was moved to a more demanding part of her assembly line. (*Id.* ¶ 43.)
27 Tesla fired Black employees within weeks of their complaints over the racial harassment, and
28 “fired one Black employee who had opposed harassment right after advising her of Tesla’s policy

1 not to retaliate.” (*Id.* ¶ 41.) The alleged employment actions by Tesla might have dissuaded a
2 reasonable worker from making or supporting a cause of discrimination. *Burlington N. & Santa*
3 *Fe Ry. Co.*, 548 U.S. at 68. So, these allegations are sufficient to support an inference Tesla
4 subjected Black Fremont Factory employees to adverse employment actions.

5 As to the third element, the Commission “may allege direct or circumstantial evidence
6 from which causation can be inferred, such as an employer’s ‘pattern of antagonism following the
7 protected conduct,’ or the temporal proximity of the protected activity and the occurrence of the
8 adverse action.” *Cloud*, 436 F. Supp. 3d at 1301 (cleaned up); *see Porter v. California Dep’t of*
9 *Corr.*, 419 F.3d 885, 895 (9th Cir. 2005) (“Although a lack of temporal proximity may make it
10 more difficult to show causation, circumstantial evidence of a ‘pattern of antagonism’ following
11 the protected conduct can also give rise to the inference.” (cleaned up)); *see also Pardi v. Kaiser*
12 *Found. Hosps.*, 389 F.3d 840, 850 (9th Cir. 2004) (“When adverse employment decisions closely
13 follow complaints of discrimination, retaliatory intent may be inferred.”). “[C]ausation can be
14 inferred from timing alone where an adverse employment action follows on the heels of protected
15 activity.” *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1065 (9th Cir. 2002). “Courts have
16 held that a 3-month gap is enough to give rise to a plausible inference of causation at the pleading
17 stage, but 9 months is too far apart to give rise to a plausible inference of causation.” *Lacayo v.*
18 *Donahoe*, No. 14-CV-04077-JSC, 2015 WL 3866070, at *12 (N.D. Cal. June 22, 2015). The
19 Commission alleges Tesla fired Black Fremont Factory employees within weeks of their
20 complaints about the racial harassment, reassigned a Black employee who reported her
21 supervisor’s racial harassment to a more demanding part of her assembly line, and repeatedly
22 wrote-up another employee for formerly acceptable conduct after they complained about the racial
23 harassment. (Dkt. No. 1 ¶¶ 40-43.) These allegations are sufficient to support the inference there
24 exists a causal link between Black employees’ complaints and Tesla’s adverse employment
25 actions.

26 * * *

27 In sum, the complaint alleges facts sufficient to plausibly state all three elements of a prima
28 facie retaliation claim. Accordingly, Tesla’s motion to dismiss the Commission’s retaliation claim

1 is DENIED.

2 **CONCLUSION**

3 For the reasons stated, Tesla’s motions to dismiss and stay are DENIED. The
4 Commission’s motion to strike is DENIED as moot. The Court will hold an initial case
5 management conference on May 9, 2024 at 1:30 p.m. via Zoom video. An updated joint case
6 management conference statement is due May 2, 2024.

7 This Order disposes of Docket Nos. 22, 27, 41.

8 **IT IS SO ORDERED.**

9 Dated: March 29, 2024

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11 _____
12 JACQUELINE SCOTT CORLEY
13 United States District Judge

United States District Court
Northern District of California

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