

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TESLA, INC.

and

MICHAEL SANCHEZ, an Individual

Case No. 32-CA-197020

and

JONATHAN GALESCU, an Individual

Case No. 32-CA-197058

and

RICHARD ORTIZ, an Individual

Case No. 32-CA-197091

and

**INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL WORKERS OF
AMERICA, AFL-CIO**

Case No. 32-CA-197197

Case No. 32-CA-200530

Case No. 32-CA-208614

Case No. 32-CA-210879

**RESPONDENT TESLA, INC.'S OPPOSITION TO THE GENERAL COUNSEL'S
MOTION TO STRIKE CERTAIN PORTIONS OF RESPONDENT TESLA, INC.'S
EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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I. INTRODUCTION

Although Counsel for the General Counsel (“GC”) made the decision to file the instant motion, nowhere in the motion does the GC represent he was unable to respond to Tesla, Inc.’s (Tesla) exceptions due to the purported issues raised in the motion. Likewise, nowhere in the GC’s Answering Brief in Opposition to Tesla, Inc.’s Brief In Support of Exceptions to the Administrative Law Judge’s Decision does the GC state he is unable to respond to any of Tesla’s exceptions or that he cannot identify the portion of the decision or the to which Tesla excepted. Instead, the GC’s brief identifies the specific exceptions to which he is responding, both in the Table of Contents and for each topic discussed in the brief. Based on that alone, the GC’s motion is moot.

Even if some of the exceptions did not themselves contain sufficiently specific citations to the record (to the extent such citations are necessary), Tesla’s Brief In Support of Exceptions to the Administrative Law Judge’s Decision tracked the ALJ’s decision. Specifically, Tesla’s brief separately identified each topic, the relevant allegations in the complaint for that topic, and then identified (by number) the exceptions which pertain to that specific topic. Each topic in Tesla’s brief (with the exceptions identified for that topic) also contains specific citations to the Administrative Law Judge’s Decision, the trial transcripts, trial exhibits, and also provides pertinent legal authorities. Therefore, the issues raised in the GC’s Motion as to Tesla’s exceptions are without merit and mooted by Tesla’s supporting brief.

The GC’s motion should be denied.

II. TESLA’S EXCEPTIONS AND SUPPORTING BRIEF IDENTIFY THE SPECIFIC PORTIONS OF THE ALJ’S DECISION AND CITATIONS TO THE RECORD AS WELL AS PERTINENT LEGAL AUTHORITIES

The GC’s cited case law interprets the meaning section 102.24 of the Rules and Regulations of the National Labor Relations Board, and demonstrates that none of the cases apply here or provide any authority for granting the GC’s motion.

The GC’s citation to *Worldwide Detective Bureau*, 296 NLRB 148 (1989) is inapposite because there Respondent chose to only file exceptions and not to provide a supporting brief.

The exceptions in *Worldwide Detective Bureau* did identify every finding Respondent wanted overturned, but they failed to provide any reasons or legal authorities to support the request and were thus disregarded.

Here, unlike in *Worldwide Detective Bureau*, Tesla filed a supporting brief which identified the portions of the ALJ's decision to which Tesla excepted (and the specific exceptions), record citations and legal authorities supporting the exceptions. Tesla's brief was arranged by topic and mirrored the structure of the ALJ's decision. For each topic, Tesla's brief identified the exceptions (by number) which were pertinent to these specific topics: (1) the June 7, 2017 meeting among Elon Musk, Gaby Toledano, Charging Party Jose Moran and Tony Vega (pp. 5-19); (2) Elon Musk's May 20, 2018 tweet from his personal account (pp. 19-29); (3) the discipline of Charging Party Jose Moran and the discharge of Charging Party Richard Ortiz (pp. 29-53); (4) the May 24, 2017 meeting among Liza Lipson, Charging Party Richard Ortiz and Charging Party Jonathan Galescu (pp. 54-58); (5) Tesla's Team Wear Policy (pp. 59-70); and (6) the ALJ's proposed remedy (pp. 70-74). For each of these topics, Tesla identified the applicable exceptions by number, Tesla provided operative facts with citations to the record, and Tesla provided pertinent legal authorities supporting each of their exceptions.

For the cases cited by the GC involving a party that filed both exceptions and a supporting brief, these cases are not applicable because, unlike Tesla, the party did not identify – either in its exceptions or the supporting brief – the specific error that is claimed and the basis for that error. *See BCE Construction, Inc.*, 350 NLRB 1047 (2007) (party failed to set forth specific arguments on the merits in its supporting brief though it did so for all other exceptions); *Oak Tree Mazda*, 334 NLRB 110, fn. 1 (1999) (party failed to allege either in exceptions or supporting brief the particular error in the decision and the grounds upon which the violation should be overturned); *Show Industries, Inc.*, 312 NLRB 447, fn. 2 (1993) (same). Likewise, *Holsum de Puerto Rico*, 344 NLRB 694, fn. 1 (2005) does not apply because although there Respondent identified the portions of the ALJ's decision to which it took exception, Respondent did not provide the grounds on which the finding should be overturned, while Tesla did so in its

supporting brief. As detailed above, Tesla's supporting brief provided the very information the GC asserts was not provided in the exceptions, and under the GC's cited case law, that is sufficient.

Accordingly, because together Tesla's exceptions and supporting brief provide citations to the ALJ's decision, citations to the record, and legal authorities supporting Tesla's exceptions, the GC's motion is without merit.

III. CONCLUSION

Tesla respectfully requests that the GC's motion be denied.

Dated: February 27, 2020

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By: _____



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CERTIFICATE OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is Four Embarcadero Center, 17th Floor, San Francisco, CA 94111-4109.

On February 27, 2020, I served a true copy of the document(s) described as:

**RESPONDENT TESLA, INC.'S OPPOSITION TO THE GENERAL COUNSEL'S
MOTION TO STRIKE CERTAIN PORTIONS OF RESPONDENT TESLA, INC.'S
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BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address dbacon@sheppardmullin.com to the person(s) at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 27, 2020, at San Francisco, California.

A handwritten signature in blue ink that reads "Doug Bacon". The signature is written in a cursive style with a large initial "D".

Doug Bacon