1

2

3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6

7 DEMETRIC DI-AZ, et al.,

Plaintiffs,

8

v.

9

10 TESLA, INC., et al.,

Defendants.

11

Case No. 3:17-cv-06748-WHO

**ORDER ON MOTIONS FOR
SUMMARY JUDGMENT**

Re: Dkt. Nos. 85, 91, 92, 116, 117, 118,

119, 120, 124, 125, 131, 135

12

13   The facts of this racial discrimination and harassment case are as complex and overlapping

14 as the employment structure the defendants have fabricated. According to plaintiffs (and father

15 and son) Owen Diaz and Demetric Di-az, the Tesla, Inc. factory in Fremont, California—where

16 they worked in 2015 and 2016—was a hotbed of racial hostility where they frequently heard the n-

17 word from supervisors and fellow employees. Owen Diaz brings harassment and discrimination

18 claims against Tesla, CitiStaff Solutions, Inc. (his temporary staffing agency), and nextSource,

19 Inc. (the liaison between Tesla and CitiStaff); Demetric Di-az brings claims only against Tesla.[1]

20   Before me are the defendants' motions for summary judgment. Material facts are in

21 dispute whether plaintiffs faced severe and pervasive racial harassment in the workplace and

22 whether Tesla, its staffing agency, and the on-scene liaison are joint employers. Owen Diaz did

23 not rebut defendants' evidence that he failed to return to work as promised after a leave, so his

24 other employment-related discrimination claims fail. For the reasons set forth below, I will grant

25 the motions in part and deny them in part. This case will proceed to trial.

26

27

[1] On December 18, 2019, I granted the parties' stipulation to dismiss defendant West Valley

BACKGROUND

A. Relationships between the Defendants

Before describing the environment at the Tesla factory that a jury could conclude was hostile in violation of 42 U.S.C. section 1981, it is necessary to discuss the employment structure Tesla created. I will start with defendant CitiStaff, which admits to being Owen Diaz's employer. It is a temporary staffing agency that provides contractors to clients for temporary work throughout California, including through a partnership with nextSource. Ledesma Decl. ¶ 2; McGinn Depo. 22:13-15. The application individuals fill out to become CitiStaff employees includes CitiStaff policies, from sexual harassment to job abandonment. De Leon Depo 40:2-15. New employees receive an Employee Handbook containing an anti-harassment policy that "sets forth examples of prohibited conduct including, but not limited to, the use of derogatory comments, statements, or innuendo in the workplace and requires employees to report conduct believed to violate this policy." Ledesma Decl. ¶ 3. Monica De Leon is the CitiStaff representative for Northern California. She handles onboarding and processes applications to ensure that candidates have "read and signed all [CitiStaff's] policies." De Leon Depo. 166:7-14. CitiStaff did not have an employee on-site at the Tesla factory during Diaz's time there; instead, he and other contractors were told to contact their staffing supervisor with any problems at work. Ledesma Decl. ¶ 2. De Leon tells contractors that if they have questions or concerns they can also call or email her. *See* De Leon Depo. 163:24-164:8.[2]

Defendant nextSource is a service provider that functions as a liaison between staffing agencies such as CitiStaff and nextSource's clients, including defendant Tesla. Jackson Depo. 16:1-8. When Tesla informs nextSource of its need for a particular service, nextSource contacts its suppliers to request individuals with the skills required to meet that need. *Id.* at 18:4-13; McGinn Depo. 20:2-12, 20:22-25 (noting that agencies recruit and onboard individual workers).

---

[2] According to one colloquy during De Leon's deposition: "Q: Did CitiStaff have a requirement that its contractors contact the CitiStaff personnel like yourself when it comes to complaints of harassment? Or can CitiStaff contractors make the complaints directly to the clients? A: So they would be able to report to me as well. And if for some reason they can't get ahold of me and they felt they needed to tell their supervisor -- they tell their supervisor about it, then yeah, yes." De

1   Once an individual is placed at the Tesla factory, Tesla gives them an orientation, directs their

2   day-to-day activities, and determines their rate of pay. *See* Diaz Depo. 81:24-82:10; McGinn

3   Depo. 20:19-22. NextSource facilitates "information flow": it communicates Tesla's needs or

4   wishes to suppliers, and it provides a technology platform where contract workers enter their

5   timesheets for Tesla's approval. McGinn Depo. 19:20-20:1, 24:4-23. Once timesheets have been

6   approved, nextSource prepares a consolidated bill for Tesla. *Id.* at 131:14-132:4. Tesla pays

7   nextSource, nextSource pays the staffing agencies, and the staffing agencies pay individual

8   contractors. *Id.*

9   Wayne Jackson was nextSource's program manager during the time period in question,

10   meaning that he acted as a liaison between Tesla and the contractors at the Tesla factory. Jackson

11   Depo. 15:18-25, 22:2-4, McGinn Depo. 42:19-43:7. When there was an issue with a contracted

12   employee, Jackson alerted the relevant agency along with Tesla.[3] *See* Jackson Depo. 19:12-24

13   (noting that "usually one of the first things [he] did" was to alert the agency), 19:25-20:18 (noting

14   that he would alert Tesla's HR department), 40:10-13, 68:23-69:13; *see also* McGinn Depo. 43: 2-

15   7 (indicating that Jackson would "communicate to the -- either party to the client side or to the

16   supplier side, based on the facts").[4] He might gather facts at Tesla's request and communicate

17   those facts to the staffing agency so that it could investigate. *See* McGinn Depo. 43:3-7; Jackson

18   Depo. 19:12-24, 24:14-24. Jackson was the highest-level nextSource employee at the Tesla

19   factory when the plaintiffs worked there. McGinn Depo. 43:19-22.

20   While working at Tesla, contractors are expected to comply with its safety rules and anti-

21   harassment and discrimination policies.[5] Quintero Depo. 19:10-25; Heisen Depo. 70:1-9, 72:5-18.

22   When an incident occurs at a Tesla factory, policy requires supervisors to inform their managers

23   and HR. Heisen Depo. 78:1-10, 79:7-15; Marconi Depo. 52:3-6, 118:4-21 (noting that she would

24

---

25   [3] Diaz was aware he could talk to Jackson of nextSource. Diaz Depo. 131:23-132:8.

26   [4] Jackson testified that Monica De Leon of CitiStaff "was really very difficult to reach." Jackson
27   Depo. 96:7-15. Erin Marconi of Tesla HR recalled "having to push on behalf of Tesla to get
    things from [nextSource]." Marconi Depo. 107:10-22.

1 expect Quintero to inform her about racist comments). Upon learning of an incident, Tesla HR

2 would inquire about the contractor's comfort level and then connect the contractor to the HR

3 representative in the relevant agency. Marconi Depo. 58:3-9. Tesla relied on agencies to conduct

4 investigations involving their employees, but Tesla's HR department communicated and

5 collaborated with the relevant agency to ensure that the issue was resolved. Heisen Depo. 112:8-

6 18, 170:9-15; Marconi Depo. 59:8-21 (noting that her preference "would not be to interview

7 someone else's employee, especially not without them present"), 87:20-25 (noting that she would

8 expect the agency to keep her informed on the findings of an investigation). Tesla generally

9 trusted the thoroughness of an agency's investigation process. *See* Marconi Depo. 59:1-5 ("-- if

10 West Valley investigated it and came back and said there wasn't actually an issue, I'm going to

11 believe that West Valley did their investigation thoroughly and if there was something to address,

12 addressed it.").

13 　　　Tesla has authority to exclude contract employees from the property and to end the

14 contract with an individual. Heisen Depo. 170:16-22; De Leon Depo. 118:10-20; *see* De Leon

15 Depo. 110:6-111:19 (testifying, "let's just say in the case the client tells us that a contractor has

16 violated a harassment policy or any policy, more than likely the client is going to end the person's

17 assignment"). De Leon did not have the authority to end a CitiStaff employee's assignment;

18 instead, she would have to follow up with HR. De Leon Depo. 160:11-16. Only the agency could

19 actually terminate an individual worker. Jackson Depo. 40:17-23 (noting that he could

20 recommend termination, but the final decision rested with the agency). NextSource and Tesla

21 were permitted to issue warnings to CitiStaff employees and give them performance evaluations.

22 De Leon Depo. 65:8-66:1.

23 　　　Various Tesla employees worked with and supervised contract workers during the time

24 period in question. In his role as contract services supervisor, Edward Romero escalated concerns

25 or complaints to the right people. Romero Depo. 88:3:11. Within Tesla, that meant manager

26 Victor Quintero or someone from Human Resources. *Id.* at 88:16-19. Where issues involved

27 contract workers, Quintero informed their representative or account manager for them to handle it.

28 *Id.* at 88:17-22.

1   **B. Plaintiffs' Employment and Assignments**

2   Diaz was recruited and hired on June 2, 2015. On that day, he signed CitiStaff's sexual

3   harassment policy and abandonment/walk-off policy.[6] Diaz Depo. 95:6-21, Ex. 33. He was

4   immediately assigned to work at Tesla's Fremont, California factory, and he began working as an

5   elevator operator. Diaz Depo. 90:6-11. In that role he loaded heavy material from one floor onto

6   the elevator and then unloaded it onto another floor as part of the construction of cars. *Id.* at

7   90:14-21; Romero Depo. 68:15-69:8. Tesla provided elevator operators with safety equipment.

8   Quintero Depo. 21:16-25. All individuals who worked in the Tesla factory had to take safety

9   orientation class. Quintero Depo. 19:22-25. Diaz's first supervisor was Tom Kawasaki, who

10   promoted him; later he reported to Edward Romero. Diaz Depo. 81:5-6, 18-20; *see* Kawasaki

11   Depo. 63:5-18.

12   On June 24, 2015 Diaz became team lead, meaning that he assumed more responsibility

13   and worked with other departments more often. Romero Depo. 76:7-23. Leads were expected to

14   move product efficiently and responsibly and to have "good communication, a spirit of

15   cooperation, an ability to resolve issues that came along that might impede the movement of

16   materials." *Id.* at 78:5-11.

17   **C. Owen Diaz's Experiences of Racism at the Factory**

18   According to Diaz, he frequently experienced racism at the Tesla factory. He testified that

19   two supervisors and around eight to ten employees called him the n-word. Diaz Depo. 55:4-17.

20   He estimated that the two supervisors, one of whom was Ramon Martinez, used the n-word more

21   than 60 times. *Id.* at 55:18-56:11. For example, Martinez once said, "I hate you n------s," and he

22   twice said, "Go back to Africa." *Id.* at 63:15-22, 68:7-10. Diaz also saw graffiti, including the n-

23   word, inside about four bathrooms. *Id.* at 48:2-11, 50:15-17. The following incidents also

24   occurred at the factory.

25   **1.   July 31, 2015**

26   On July 31, 2015 Diaz and that fellow elevator operator Judy Timbreza got into an

27

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

fastcase®
Smarter legal research.