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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 **Ashley Foltz**, individually and on behalf of all
13 similarly situated individuals,

14 Plaintiff,

15 vs.

16 **Space Exploration Technologies Corp d/b/a**
17 **SpaceX**, a Delaware corporation; and **Does 1-**
18 **10**, inclusive;

19 Defendants.

CASE NO. 23STCV24097

REPRESENTATIVE COMPLAINT FOR:

1) **PAGA Penalties (Labor Code §§ 2698,
et seq.)**

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1 Plaintiff Ashley Foltz, in her representative capacity, hereby brings this action on behalf of
2 herself and all other similarly situated current and former employees and alleges as follows, by and
3 through her counsel of record:

4 **INTRODUCTION**

5 1. Plaintiff brings this representative action on behalf of herself and on behalf of a group
6 of Aggrieved Employees defined as all women and minorities employed by Space Exploration
7 Technologies Corp d/b/a SpaceX (collectively the “Defendants”).

8 2. Overall, in the United States, women are paid fewer cents for each dollar a man is
9 paid.¹ In 2014, the U.S. Census data indicated that women in the United States who work full time,
10 year-round are paid \$10,876 less annually than men who work full time, year round – or just 78 cents
11 for every dollar.² By 2018, the wage gap had hardly moved, with white women earning 79 cents to
12 every dollar men did, and minority women earning significantly less—as low as 54 cents per dollar
13 for Latina women.³

14 3. In response to this pay inequity, the California Legislature passed Labor Code §
15 1197.5, which by and large prohibits paying different genders and races differently for similar work.

16 4. California’s Equal Pay Act is unambiguous: “[a]n employer shall not pay any of its
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18 ¹ Numerous structural biases contribute to this history wage gap, which is exacerbated for women
19 who have children or are minorities. *See, e.g.*, Stephen Benard and Shelley J. Correll, *Normative*
20 *Discrimination and the Motherhood Penalty*, 24 *Gender & Society* 616, 621 (Oct. 2010) (describing
21 the tension between prescriptive norms of mothers always prioritizing their children and ideal work-
22 ers always prioritizing work). These biases are most significant for women in competitive fields that
23 require advanced degrees or significant skills, like auditing and accounting. *See* Elizabeth Ty Wilde,
24 Lily Batchelder, David T. Ellwood, *The mommy track divides: The impact of childbearing on wages of*
women of differing skill levels, National Bureau of Economic Research, Working Paper No. 16582
(2010); Amalia R. Miller, *The effects of motherhood timing on career path*, 24 *Journal of Population*
Economics 1071 (Dec. 2009).

25 ² *See* “An Unlevel Playing Field, National Partnership for Women and Families,” National Part-
26 nership for Women and Families (Apr. 2015) (*citing* U.S. Census Bureau, Current Population Sur-
27 vey, Annual Social and Economic (ASEC) Supplement: Table PINC-05: Work Experience in 2013
– People 15 Years Old and Over by Total Money Earnings in 2013, Age, Race, Hispanic Origin, and
Sex (2014)).

28 ³ *See, e.g.*, “Quick Facts About the Gender Wage Gap,” Center for American Progress (Mar. 2020),
available at <https://www.americanprogress.org/issues/women/reports/2020/03/24/482141/quick-facts-gender-wage-gap/>.

1 employees at wage rates less than the rates paid to employees of the opposite sex for substantially
2 similar work.” Lab. Code § 1197.5(a). There is no requirement that the employer intent to
3 discriminate; it is sufficient to show that an employee was paid less than employees of other genders
4 or races who occupied comparable positions. *Green v. Par Pools, Inc.*, 111 Cal. App. 4th 620, 629
5 (2003).

6 5. The Equal Pay Act sets forth only four justifications for pay differentials: (1) a
7 seniority system, (2) a non-discriminatory merit system, (3) a quantity or quality system, or (4) a
8 bona fide non-race factor, such as education, training, or experience. Lab. Code § 1197.5(b).

9 6. The bona fide justification only applies if it is consistent with a “business necessity,”
10 which is defined as a “an overriding legitimate business purpose such that the factor relied upon
11 effectively fulfills the business purpose it is supposed to serve” —and only if there is no alternative
12 business practice that satisfies the legitimate business purpose without imposing the same
13 discriminatory impact. Lab. Code § 1197.5(b)(1)(D). Further, “prior salary shall not, by itself,
14 justify any disparity in compensation.” Lab. Code § 1197.5(b)(3).

15 7. Despite the passage of Labor Code § 1197.5, pay inequities persist throughout
16 California. Practices like those perpetrated by Defendants is part of the reason for the persistent pay
17 gap and the reasons for the passage of Labor Code § 1197.5.

18 8. Defendants have discriminated and continue to discriminate against their female and
19 minority employees by systematically paying them lesser compensation than what is paid to male
20 and/or white employees performing substantially similar work under similar working conditions, in
21 violation of the California Equal Pay Act, Labor Code § 1197.5. Upon information and belief,
22 Defendants’ failure to provide equal remuneration for work requiring equal skill, effort, and
23 responsibility is not justified by any lawful reason.

24 9. Defendants have no legitimate justification for their discriminatory pay
25 practices. Throughout her employment, Ms. Foltz has been paid less than other male engineers for
26 performing the same or substantially similar work. Although all of Defendants’ engineers perform
27 similar job duties, Ms. Foltz was one of a few female engineers for Defendants, and was paid
28 substantially less than her male co-workers.

1 Article VI, section 10 of the California Constitution. No federal question is at issue; Plaintiff relies
2 solely on California statutes and law, including the Labor Code, IWC Wage Orders, Code of Civil
3 Procedure, and the Business & Professions Code.

4 16. Venue as to Defendants is proper in this Superior Court pursuant to California Code
5 of Civil Procedure section 395. Defendants’ principal places of business are located in Los Angeles
6 County and Defendants are within the jurisdiction of the court for service of process. The unlawful
7 acts alleged have directly affected Plaintiff and similarly situated employees within Los Angeles
8 County.

9 17. Finally, Business & Professions Code section 17204 provides that any person acting
10 on her own behalf may bring an action in any court of competent jurisdiction. This court has
11 jurisdiction as set forth above. This Court maintains appropriate jurisdiction over this dispute.

12 **FACTUAL BACKGROUND**

13 ***Introductory Allegations Regarding the California Equal Pay Act***

14 18. The Aggrieved Employees are all women and minorities employed as engineers by
15 Defendants in California at any time during the PAGA Period.⁴

16 19. Throughout the PAGA Period and throughout California, Defendants have paid and
17 continue to pay female and minority employees lower compensation (including salary, stock,
18 bonuses, and all other forms of remuneration) than Defendants have paid and continue to pay male
19 counterparts in violation of the California Equal Pay Act (“EPA”), California Labor Code §1197.5.

20 20. Defendants have paid and continue to pay its female and minority employees less
21 than male or white employees in the same or substantially similar job positions, even though these
22 employees perform substantially equal or substantially similar work.

23 21. Defendants have either given male and/ or white employees higher salaries and other
24 compensation packages or have deliberately allowed prior pay discrepancies between male and
25 female employees and white and minority employees to be perpetuate amongst those employees by
26 failing to implement salary bands or take other steps ensuring that underpaid female and minority
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⁴ The “PAGA Period” is defined as September 23, 2020 through the date of trial.

1 employees are paid commensurately with their male and white peers upon hire and promotion.

2 22. At all relevant times, Defendants have known or should have known of this pay
3 disparity between its female and minority employees on the one hand and male and white employees
4 on the other, yet Defendants failed to take action to equalize its employees' pay. Defendants' failure
5 to pay female and minority employees the same compensation paid to male and white employees
6 for substantially equal or substantially similar work has been and continues to be willful and
7 unjustifiable.

8 ***Defendants Engage in Unequal Pay Practices***

9 23. Upon information and belief, Defendants maintained and continue to maintain a
10 centrally determined and uniform set of policies and/or practices for determining employees' initial
11 salaries and equities throughout California, as well as subsequent bonuses and raises. These policies
12 and/or practices result in compensating female and minority employees less than male and white
13 employees with similar qualifications and duties, and in promoting men and white employees more
14 frequently to better-compensated job positions and levels than women and minority employees with
15 similar qualifications and duties.

16 24. Under Defendants' organizational structure, jobs are sorted into positions and levels
17 (e.g. "technical writer," "engineer 1" and "engineer 2"). On information and belief, Defendants
18 have created a scheme in an attempt to create a facially neutral pay structure to insulate their illegal
19 pay practices from legal challenge and/or dissuade employees from realizing they have been paid
20 unlawfully.

21 25. To this end, upon information and belief, Defendants routinely start female and
22 minority employees as technical writers before they are offered positions as engineers. Technical
23 writers are paid significantly less than engineers even though they are performing similar or
24 substantially similar jobs as engineers. Female and minority employees are considered for a
25 "promotion" to engineer 1 after they have worked as a technical writer for a few years.
26 Comparatively, white and male employees are hired directly as engineers and corresponding higher
27 compensation levels despite performing the same or substantially same work or having the the same
28 or substantially same qualifications.

1 26. This has created a scheme that although on it face, employees seem to be paid equally
2 – which they are not – female and minority employees are not. Female and minority employees are
3 forced to work as engineers under a different title of technical writer to illegally justify a lower pay.

4 27. Upon information and belief, Defendants set the employees initial compensation
5 levels for each aggrieved employee at the lowest pay band and ignore their prior experience. For
6 years, Defendants hid their pay gap and routinely under paid female and minority employees.

7 28. However, Defendants were finally forced to raise female and minority employees’
8 salary after California instituted legislation that required employers to include pay scales for job
9 postings. On information and belief, Defendants only changed their salary bands but did not change
10 their scheme to pay female and minority employees less by starting them—and not equally qualified
11 white or male candidates—as technical writers.

12 29. As a result, the ranges of compensation provided to employees within the same po-
13 sition or between substantially similar positions are highly variable and dependent on which position
14 they started in. This is akin to paying female and minority employees based on prior pay histories
15 and is deeply skewed against women and minorities.

16 ***Defendants Routinely Failed to Promote Female and Minority Engineers***

17 30. Defendants routinely pay female and/or minority employees less even if they have
18 more education or more experience in the field. This frustrates their ability to be promoted forcing
19 women and minorities into less-compensated and less-favorable job positions and levels than men
20 and whites, despite possessing equal qualifications and performing substantially similar work.

21 31. On information and belief, female and minority employees are promoted from
22 engineer 1 to engineer 2 and/ or lead engineer at lower rates than male and white employees. Female
23 and minority employees are already disadvantaged because they are forced to start as technical
24 writers and even after that, Defendants are less likely to promote female and minority employees.

25 32. On information and belief, if a female or minority employee is promoted, their salary
26 begins at the lowest tier of the salary band of that position. Defendants make it extremely difficult
27 for Aggrieved Employees to be paid equally to their peers by creating obstacles at every point of
28 their career at SpaceX.

1 ***Plaintiff and Similarly Situated Employees Suffered Harm from Defendants' Policies***

2 33. Plaintiff worked as an engineer before joining SpaceX but was hired as a Propulsion
3 Engineer on a team of all male engineers and paid a salary of \$92,000 per year, the “engineer 1”
4 salary. When she attempted to negotiate her salary upon hire, she was told by a SpaceX internal
5 recruiter that SpaceX would not increase her offer because of “fairness in strategy and peer
6 comparisons.” This was untrue. Based on information and belief, Defendants’ male engineers with
7 less or similar experience were paid substantially higher salaries than Plaintiff, up to and including
8 \$115,000 per year.

9 34. Soon after she was hired, a new California law was instituted that required salary
10 ranges to be posted on all job openings. SpaceX was forced to add a salary range to all job postings
11 and was forced to give employees commensurate raises. Plaintiff’s salary band was \$95,000 to
12 \$115,000—*i.e.*, Plaintiff was being paid *less* than the lowest amount offered by SpaceX for her role.
13 Given the now public pay band, Defendants were forced to give her a raise—but still only paid her
14 \$95,000, the lowest tier of the salary band.

15 35. When Plaintiff made a complaint to her manager about being the lowest paid
16 engineer on her team, she was told “*you should be grateful*,” gave her a \$2,000 raise and was told her
17 not to make any more complaints, including to any managers above him—an implicit threat that her
18 complaints about pay equity were not welcomed by SpaceX and could cause her trouble at the
19 company should she persist.

20 36. Defendants also regularly unlawfully fail to pay women equally with men for
21 substantially equal or similar work is through bonuses and stock options. On information and belief,
22 male and white employees were given higher end of the year bonuses and additional stock options
23 that female and/or minority employees were not.

24 ***Defendants' Compensation Differentials Have No Legal Justification***

25 37. Forcing female and minority employees to start as technical writers when white and
26 male employees are not—and then using that as a means to justify lower pay—is discriminatory.
27 Upon information and belief, Defendants’ policies and practices regarding promotions then either
28 perpetuate this wage gap by use of lockstep promotions or exacerbate it by the use of discretionary

1 promotions that favor of male and white employees.

2 38. As a result, Defendants have paid women and minority employees less than men and
3 white employees for substantially equal or similar work, when viewed as a composite of skill, effort,
4 and responsibility, and performed under similar working conditions throughout the PAGA Period.
5 The cause of the disparity is legally immaterial. *Green*, 111 Cal.App.4th at 626; *Rizo v. Yovino*, 950
6 F.3d 1217, 1223 (9th Cir. 2020).

7 39. Defendants are required to maintain records of the wage rates, job classifications,
8 and other terms and conditions of employment of all its employees throughout California.
9 Defendants therefore knew or should have known that it paid female employees less than it paid
10 their male counterparts for performing substantially equal or similar work, yet Defendants took no
11 steps at any time during the PAGA Period to pay women equally to men as required by the Labor
12 Code, § 1197.5 *et seq.*

13 **FIRST CAUSE OF ACTION**

14 ***California Labor Code §2699, et seq.***

15 ***Private Attorneys General Act (“PAGA”) Penalties***

16 **(Plaintiff and Aggrieved Employees Against Defendants)**

17 40. Plaintiff repeats, repleads, and incorporates by reference, as though fully set forth in
18 this paragraph, all the allegations of this Complaint.

19 41. Labor Code section 1197.5(a) provides that “[a]n employer shall not pay any of its
20 employees at wage rates less than the rates paid to employees of the opposite sex for substantially
21 similar work.” Lab. Code § 1197.5(a).

22 42. Labor Code section 1197.5(b) provides that “[a]n employer shall not pay any of its
23 employees at wage rates less than the rates paid to employees of another race or ethnicity for
24 substantially similar work.” Lab. Code § 1197.5(b).

25 43. There is no intent requirement; it is sufficient to show that an employee was paid
26 less than employees of other races who occupied comparable positions. *Green v. Par Pools, Inc.*, 111
27 Cal. App. 4th 620, 629 (2003). Further, “prior salary shall not, by itself, justify any disparity in
28 compensation.” Lab. Code § 1197.5(b)(3); *Rizo v. Yonivo*, No. 16-15372 (Ninth Circuit Feb. 27,

1 2020).

2 44. Employers who fail to pay employees at wage rates less than employees of other races
3 or ethnicities for substantially similar positions are liable for the amount of wages unlawfully
4 withheld plus an equal amount as liquidated damages, interest, addition to attorneys' fees, and costs
5 of suit. Lab. Code § 1197.5(c).

6 45. Defendants have paid women and minority employees less than men and white
7 employees for substantially equal or similar work, when viewed as a composite of skill, effort, and
8 responsibility, and performed under similar working conditions throughout the PAGA Period.

9 46. Defendants' failure to pay women and minority employees less than men and white
10 employees equal compensation for substantially equal or similar work is not justified by any lawful
11 reason.

12 47. Defendants have willfully violated California Labor Code § 1197.5 by intentionally
13 knowingly, and/or deliberately paying women less than men for substantially equal or similar work
14 throughout the PAGA Period.

15 48. As a result of Defendants' ongoing conduct, violation of California Labor Code §
16 1197.5, and/or willful discrimination, Plaintiff and all other similarly situated current and former
17 employees have suffered and will continue to suffer harm, including but not limited to lost earnings,
18 lost benefits and other financial loss, as well as non-economic damages.

19 49. During the relevant period, Defendants willfully failed to pay Aggrieved Employees
20 their earned equal wages, as set forth above. Defendants' failure to timely pay Aggrieved Employees
21 earned equal wages violated Labor Code § 210. Plaintiff and all other similarly situated employees
22 are therefore entitled to recover from Defendants statutory penalties in the amount of \$100 per
23 initial violation per employee and \$200 per sub-subsequent violation per employee under Labor Code
24 § 210.

25 50. Entitlement to Penalties. Under the California Private Attorneys General Act
26 ("PAGA"), Labor Code § 2698, *et seq.*, an aggrieved employee may bring a representative action⁵

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28 ⁵ Class certification of the PAGA claims is not required, but Plaintiff may choose to seek certification of the PAGA claims. *Arias v. Superior Court*, 46 Cal. 4th 969 (2009).

1 as a private attorney general, on behalf of herself and other current or former employees as well as
2 the general public, to recover penalties for an employer’s violations of the Labor Code and IWC
3 Wage Orders.

4 51. These penalties may be “stacked” separately for each of Defendants’ violations of
5 the Labor Code. *See, e.g., Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at
6 *17, n.77 (C.D. June 22, 2012) (“[F]ederal courts applying California law have concluded that
7 stacking is appropriate.”); *see also O’Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL
8 3548370, at *7 (N.D. Cal. June 30, 2016) (“Finally, Plaintiff ignore[s] the potential for stacking of
9 PAGA penalties related to wage-and-hour claims other than the gratuities and expense reimburse-
10 ment claim, i.e., meal and rest breaks, minimum wage and overtime, and workers’ compensation.”).

11 52. Plaintiff, by nature of her employment with Defendants, is an aggrieved employee
12 for purposes of this Complaint with standing to bring an action under PAGA. Plaintiff, on behalf of
13 herself, and all other Aggrieved Employees, brings this representative action pursuant to Labor
14 Code section 2699, *et seq.*, seeking civil penalties for Defendants’ violation of Labor Code § 1197.5⁶
15 as described herein, plus attorneys’ fees and costs.

16 53. Per Labor Code § 2699(f), and based on the foregoing, Plaintiff and Aggrieved
17 Employees are entitled to civil penalties in an amount to be shown at trial subject to the following
18 formula:

- 19 a. In an amount set forth as a civil penalty in the underlying
20 statute; or
- 21 b. \$100 per initial violation per employee per pay period, and
22 \$200 for each subsequent violation per employee per pay
23 period.

24 54. These penalties shall be allocated seventy-five percent to the Labor and Workforce
25 Development Agency and twenty-five percent to the affected employees. These penalties may be
26 stacked separately for each of Defendants’ violations of the Labor Code. *See, e.g., Hernandez v.*

27 _____
28 ⁶ Pursuant to Labor Code § 2669.5, violations of Labor Code § 1197.5 are not subject to cure
by an employer and are governed by Labor Code § 2699.3(a).

1 *Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17, n.77 (C.D. Cal. June 22, 2012)
2 (“[F]ederal courts applying California law have concluded that stacking is appropriate.”); *see also*
3 *O’connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at *7 (N.D. Cal. June 30,
4 2016) (“Finally, Plaintiff ignore the potential for stacking of PAGA penalties related to wage-and-
5 hour claims other than the gratuities and expense reimbursement claim, i.e., meal and rest breaks,
6 minimum wage and overtime, and workers’ compensation.”).

7 55. Procedural Requirements Met. Plaintiff has satisfied all prerequisites to serve as a
8 representative to enforce California’s labor laws including without limitation the penalty provisions
9 identified above. *See Exhibit A.* As the LWDA took no steps within the prescribed time to intervene
10 and because the violations described herein are not subject to cure under Labor Code section 2699.3,
11 Plaintiff—as a representative of the People of the State of California—is entitled to seek any and all
12 penalties otherwise capable of being collected by the Labor Commission or Department of Labor
13 Standards Enforcement (“DLSE”).

14 PRAYER FOR RELIEF

15 WHEREFORE, Plaintiff respectfully prays for judgment as follows:

- 16 A. For an Order:
- 17 a. Appointing Plaintiff as representative of the Aggrieved Employees and the
18 State of California;
- 19 b. Appointing Plaintiff’s counsel as Class Counsel;
- 20 B. For statutory and civil penalties and special damages, according to proof at trial;
- 21 C. For pre- and post-judgment interest on monetary damages;
- 22 D. For preliminary and permanent injunctive relief;
- 23 E. For reasonable attorney’s fees and costs and expert fees and costs; and
- 24 F. For such other relief as this Court deems just and proper.
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Dated: October 3, 2023

Respectfully submitted,
KING & SIEGEL LLP

By: Elliot J. Siegel
Elliot J. Siegel
Julian Burns King
Erum Siddiqui
Attorneys for Plaintiff

Exhibit A

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October 3, 2023

Original filed online via the LWDA's PAGA Claim Notice Portal

Labor & Workforce Development Agency

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Copy Sent via certified mail to:

SPACE EXPLORATION TECHNOLOGIES CORP. D/B/A SPACE X

c/o CSC – Lawyers Inc. Service
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Sacramento, CA 95833

SPACE EXPLORATION TECHNOLOGIES CORP. D/B/A SPACE X

1 Rocket Road
Hawthorne, CA 90250

**Re: Ashley Foltz v. Space Exploration Technologies Corp. d/b/a Space X
California Labor Code § 2699.3 Notice of Intent to File Suit**

To Whom it May Concern:

We represent **Ashley Foltz** (“Plaintiff”) a former employee of **Space Exploration Technologies Corp. d/b/a Space X** (“Defendant”) in a lawsuit (the “Action”) filed against Defendant in Los Angeles County Superior Court. A copy of the Complaint filed in the Action is enclosed as **Exhibit A**.

This letter serves as notice pursuant to California Labor Code § 2699.3 that we intend to prosecute representative claims for civil penalties under the Private Attorney’s General Act (“PAGA”) on behalf of those of Defendant’s employees employed from one year prior to filing of this Notice through trial on the Complaint (the “Aggrieved Employees”).

As set forth in the Complaint, Defendant violated its obligations under the California Labor Code by violating the California Equal Pay Act Labor Code § 1197.5.

Together with this correspondence, the enclosed complaint serves as notice pursuant to Labor Code § 2699.3, *et seq.* that we intend to prosecute representative claims for civil penalties under the Private Attorney's General Act ("PAGA") on behalf the Aggrieved Employees. *See* Cal. Lab. Code §§ 2699, *et seq.*

Please feel free to contact us with any questions.

Sincerely,



Elliot J. Siegel

KING & SIEGEL LLP