

Settlement Agreement and Release of all Claims

This Settlement Agreement and Release of all Claims (“Agreement”) is made and entered into by and between Nalani Choy (“Choy”), Xavier Figueroa (“Figueroa”), and Saul Marquez (“Marquez”) (collectively, “PLAINTIFFS”) and Space Exploration Technologies Corp. (hereafter “SpaceX”) (PLAINTIFFS and SpaceX will be collectively referred to as the “Parties”).

Recitals

WHEREAS, certain disputes have arisen between PLAINTIFFS and SpaceX concerning their respective rights and liabilities arising out of PLAINTIFFS’ employment for SpaceX (hereinafter referred as the “Dispute”);

WHEREAS, in February 2020, SpaceX received three letters to the Labor Workforce Development Agency (“LWDA”) sent on behalf of PLAINTIFFS to the LWDA and SpaceX. The letters allege that, in the scope of their employment with SpaceX, PLAINTIFFS were subjected to violations of the Labor Code (the “LWDA Letters”). Among other things, the LWDA letters alleged that SpaceX failed, as to each Plaintiff, to: (i) compensate for all hours worked; (ii) compensate for all overtime hours worked; (iii) provide proper meal and/or premium pay for non-compliant meal periods; (iv) provide proper rest periods and/or premium pay for non-compliant rest periods; (v) pay all accrued vacation time; (vi) furnish complete and accurate itemized wage statements; and (vii) timely pay all wages due within the time permitted upon separation of employment;

WHEREAS, on March 4, 2020, SpaceX initiated arbitration with JAMS pursuant to arbitration agreements signed by PLAINTIFFS. In each respective arbitration demand, SpaceX sought a declaration that SpaceX did not violate the Labor Code as to these respective PLAINTIFFS as alleged in his or her LWDA letter (the “Arbitration Demands”);

WHEREAS, on or about April 14, 2020, PLAINTIFFS filed a civil lawsuit against SpaceX in the Superior Court of California, County of Los Angeles, entitled *Nalani Choy, et al. v. Space Exploration Technologies Corp.*, (Case No. 20STCV14438) alleging a single Cause of Action under the Private Attorneys General Act of 2004 (“PAGA”) (hereinafter referred the “PAGA Action”);

WHEREAS, on or about July 24, 2020, PLAINTIFFS filed a motion for judgment on the pleadings seeking to dismiss the declaratory relief actions SpaceX brought against them individually to determine liability as to victim-specific relief for Labor Code violations, and on or about September 14, 2020, the Arbitrator denied the PLAINTIFFS’ motion;

WHEREAS, in November 2020, the JAMS arbitration hearing on SpaceX’s Arbitration Demands was conducted. The arbitration hearing took place over four days in late November 2020. The arbitration hearing included opening and closing statements by the Parties, and examination of numerous witnesses, including PLAINTIFFS;

WHEREAS, in preparation for the JAMS arbitration hearing, the Parties engaged in significant substantive discovery, including the exchange of several thousand documents and depositions of numerous witnesses, including PLAINTIFFS;

WHEREAS, on January 8, 2021, following substantial post-arbitration briefing, the arbitrator, the Honorable Richard D. Aldrich (Ret.) issued his “Decision after Arbitration Hearing and Award” (the “Arbitration Award”). The Arbitration Award concluded that SpaceX complied with all of its obligations under the Labor Code, including providing compliant meal and rest periods to PLAINTIFFS. **A copy of the Arbitration Award is attached hereto and incorporated herein as Exhibit A.**

WHEREAS, on January 21, 2021, SpaceX filed and served a Petition to Confirm the Contractual Arbitration Award (“Petition to Confirm”) in the Superior Court of California, County of Los Angeles, entitled *Space Exploration Technologies Corp. v. Nalani Choy, et al.*, (Case No. 21STCP00175) (hereinafter the “Petition to Confirm Action”) (the Dispute, LWDA Letters, Arbitration Demands, PAGA Action, and Petition to Confirm Action will be collectively referred to as the “Collective Actions”);

WHEREAS, on January 22, 2021, SpaceX filed and served a Notice of Related Case in the PAGA Action and in the Petition to Confirm Action;

WHEREAS, on January 26, 2021, SpaceX filed and served a Notice of Motion and Motion to Strike PLAINTIFFS’ Complaint in the PAGA Action;

WHEREAS, on January 26, 2021, SpaceX served a Notice of Motion and Motion for Sanctions pursuant to California Code of Civil Procedure § 128.7 against PLAINTIFFS (the “Motion for Sanctions”);

WHEREAS, on January 28, 2021, during an Informal Discovery Conference in the PAGA Action, the Parties orally stipulated to relate the PAGA Action and the Petition to Confirm Action;

WHEREAS, on January 28, 2021, the Court in the PAGA Action ordered the PAGA Action and Petition to Confirm Action related;

WHEREAS, the Parties wish to resolve amicably all matters between PLAINTIFFS and SpaceX, including those concerning PLAINTIFFS’ employment and separation from SpaceX and the Collective Actions;

PLAINTIFFS and SpaceX hereby enter into this Agreement as follows:

Agreement and Release

1. Effective Date

This Agreement shall become effective and enforceable upon execution by the Parties (“Effective Date”).

2. Consideration for Settlement

In consideration for PLAINTIFFS' agreement to all of the terms, conditions and promises in this Agreement, SpaceX agrees to waive all costs and attorneys' fees associated with the Collective Actions, including, but not limited to, costs and attorneys' fees SpaceX may have received by way of its Motion for Sanctions against PLAINTIFFS. SpaceX further agrees it will not proceed with filing its Motion for Sanctions Pursuant to C.C.P. § 128.7 that was served on PLAINTIFFS on January 26, 2021. PLAINTIFFS agree and acknowledge that they are not entitled to recover any costs or attorneys' fees associated with the Collective Actions.

3. Acknowledgment of Consideration

PLAINTIFFS and SpaceX agree that the consideration outlined in Section 2 of this Agreement constitutes a benefit to which PLAINTIFFS and SpaceX are not otherwise entitled in the absence of this Agreement and that this benefit is adequate consideration for the execution of this Agreement.

4. Agreement to Take Steps Necessary to Secure Approval of PAGA Settlement and Confirmation of Arbitration Award and Judgment Thereon

PLAINTIFFS and their attorneys agree that PLAINTIFFS' attorneys will execute a Stipulation and [Proposed] Order Approving PAGA Settlement and Dismissing Action, a copy of which is attached hereto as **Exhibit B**. SpaceX's attorneys will file the signed Stipulation no later than three days after the Court enters an Order confirming the Arbitration Award.

PLAINTIFFS and their attorney also agree that PLAINTIFFS will sign a Stipulation and [Proposed] Order Confirming Arbitration Award and [Proposed] Judgment, and will not be opposing and/or responding to any resulting judgment thereon. A copy of the Stipulation and [Proposed] Order Confirming Arbitration Award and [Proposed] Judgment is attached hereto as **Exhibit C**.

Neither PLAINTIFFS nor SpaceX shall be considered a prevailing party in the PAGA Action. PLAINTIFFS and SpaceX agree to take all steps necessary, including but not limited to preparing and/or executing any documents necessary, to promptly dismiss their PAGA Action.

5. Non-Admission of Liability

PLAINTIFFS and SpaceX acknowledge that the foregoing consideration does not constitute an admission of wrongdoing or liability, express or implied, on the part of PLAINTIFFS, SpaceX or any of the Released Parties (as defined below) with respect to any fact or matter. PLAINTIFFS acknowledge that pursuant to the Arbitration Award, it has been determined that PLAINTIFFS did not suffer the alleged Labor Code violations during their employment with SpaceX, and thus may not be able to demonstrate they are "aggrieved employees" under PAGA for the PAGA Action, based on the Arbitration Award and findings of the Honorable Richard D. Aldrich (Ret.). PLAINTIFFS acknowledge that SpaceX continues to deny that it or any of the Released Parties ever acted towards PLAINTIFFS or any other individual in a manner which would constitute a violation of any constitutional, statutory, or common law right, whether that right arises under state or federal law. PLAINTIFFS further acknowledge that SpaceX is providing PLAINTIFFS

with the waiver of fees and costs described under Section 2 solely for convenience, peace of mind, and resolving all of the controversies which are the subject of the Collective Actions.

6. Release of all Claims

In exchange for the consideration set forth in Section 2, above, and other consideration in this Agreement, PLAINTIFFS, on behalf of PLAINTIFFS and PLAINTIFFS' spouses, heirs, executors, administrators, trustees, assigns and successors, and each of them, agree not to sue and fully release and discharge SpaceX and its subsidiaries, parents, affiliated companies and joint ventures, past and present, as well as its and their respective directors, officers, trustees, members, employees and agents (hereafter "Releasees"), with respect to and from any and all Claims which exist or may exist at the time PLAINTIFFS sign this Agreement. For purposes of this Agreement, the term "Claims" shall include, but not be limited to, any and all claims, demands, rights, liens, actions, suits, causes of action, complaints, grievances, charges, obligations, debts, costs, expenses, attorneys' fees, damages, and liabilities, whether now known or unknown, suspected or unsuspected, absolute or contingent, which PLAINTIFFS now own or hold or which PLAINTIFFS have at any time owned or held against Releasees, arising out of or in any way connected with PLAINTIFFS' employment with SpaceX, or separation therefrom, or arising from any other act or omission of Releasees committed or omitted prior to the date of this Agreement.

The Claims released by PLAINTIFFS are all those that may lawfully be released and shall include, but are not limited to, any claim of employment discrimination or harassment, retaliation, wrongful termination, breach of any express or implied contract, breach of fiduciary duty, fraud, defamation, invasion of privacy, and negligent or intentional infliction of emotional distress. The Claims released by PLAINTIFFS further include Claims under any federal, state or local statute, law, regulation or ordinance, including but not limited to Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, as amended, the California Fair Employment and Housing Act, the California Family Rights Act, the Family and Medical Leave Act, the California Labor Code, the Fair Labor Standards Act, the Employee Retirement Income Security Act of 1974, as amended (ERISA), the Internal Revenue Code of 1986, as amended, the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (COBRA), or the applicable Cal-COBRA provisions set forth in the California Insurance Code (Section 10128.50 et seq.) and the California Health and Safety Code (Section 1366.20 et seq.) and any applicable regulations under said laws, including under ERISA, the Code, COBRA or the California Codes.

PLAINTIFFS understand that PLAINTIFFS are not waiving any rights or claims that cannot legally be waived. This Agreement does not release: (1) any claim for workers' compensation benefits; (2) any claim for unemployment insurance compensation; (3) any claim for benefits under SpaceX's employee benefit plan that have accrued and vested as of PLAINTIFFS' termination date and that, by their express terms, survive any termination of employment; or (4) any claim that may not be released by private agreement without judicial or governmental supervision.

7. Legal Counsel

PLAINTIFFS and SpaceX each represent that they have thoroughly discussed all aspects of this Agreement with their own respective attorneys, that they have each carefully read and fully understand each of the provisions of this Agreement, and that they are voluntarily entering into this Agreement. Neither Party will reimburse each other for such legal expense.

8. Waiver of Unknown Claims

PLAINTIFFS intend that this release extend to any and all claims of whatever kind or character, known or unknown, and PLAINTIFFS therefore voluntarily elect to waive any and all rights granted by the California Civil Code section 1542, which states:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

9. No Existing Claims

PLAINTIFFS represent and warrant that other than the Collective Actions and the underlying allegations contained therein, PLAINTIFFS have not, prior to executing this Agreement, filed any complaints or charges or lawsuits with any court or governmental agency against Releasees based in whole or in part upon any matter covered, related to or referred to in this Agreement.

PLAINTIFFS affirm that SpaceX has granted PLAINTIFFS all rights, if any, it owed to PLAINTIFFS under the Uniformed Services Employment and Reemployment Rights Act, the Family Medical Leave Act or the California Family Rights Act. PLAINTIFFS further affirm that PLAINTIFFS have no known workplace injuries or occupational illnesses.

10. Right to Participate in Agency Investigations

Nothing in this Agreement shall be construed to prohibit PLAINTIFFS from filing a charge with or participating in any investigation or proceeding conducted by the EEOC or a comparable federal, state or local agency. Notwithstanding the foregoing, PLAINTIFFS agree to waive PLAINTIFFS' right to recover any remedy, monetary or otherwise, in any charge, complaint, or lawsuit filed by PLAINTIFFS or anyone else on PLAINTIFFS' behalf.

11. Assignment

PLAINTIFFS represent and warrant that no other person or entity has or has had any interest in the matters being resolved by this Agreement, and that PLAINTIFFS have the sole right and exclusive authority to execute this Agreement without approval or consent of any third party and PLAINTIFFS have not sold, assigned or transferred, conveyed, or otherwise disposed any of the Claims released in this Agreement. PLAINTIFFS hereby agree to indemnify, defend and hold harmless Releasees from and against any and all Claims based upon or arising from any such transfer or assignment or purported transfer or assignment.

12. Company Property

PLAINTIFFS agree not to disclose to anyone, directly or indirectly, or use in any fashion, employer proprietary materials or information of a confidential or sensitive nature that PLAINTIFFS have acquired or which has been disclosed to PLAINTIFFS as employees of SpaceX.

PLAINTIFFS represent that PLAINTIFFS do not have any SpaceX property, including but not limited to, equipment, keys, books, records, writings, computerized information in any format, customer information, customer lists, and any and all other documents or things relating to SpaceX. If PLAINTIFFS do have any SpaceX property as described above, it shall be returned to SpaceX Human Resources Director no later than five days after PLAINTIFFS sign this Agreement. PLAINTIFFS represent and agree that PLAINTIFFS have not made or retained duplicates, electronic copies or facsimiles of any of SpaceX's property.

13. Payment of Wages

PLAINTIFFS represent and acknowledge, based on the Arbitrator's Decision, that SpaceX has paid PLAINTIFFS all wages, included accrued but unused Paid Time Off (PTO), that are due and owing to PLAINTIFFS and that such payments were not conditioned upon the execution of this Agreement or any other release of claims.

14. Non-Disparagement

PLAINTIFFS agree not to do or say anything to disparage SpaceX or Releasees. PLAINTIFFS shall not make any oral or written derogatory or negative comments about SpaceX or Releasees concerning PLAINTIFFS' employment with SpaceX or separation of employment. PLAINTIFFS agree not to make, repeat, or authorize any statements, comments, remarks, or publications of any type or of any nature which would tend to disparage or actually disparage the reputation of SpaceX or Releasees. The Parties agree that, in regard to any requests for references for employment that SpaceX may receive from prospective employers of PLAINTIFFS, SpaceX will not make any disparaging remarks and will confirm the PLAINTIFF'S dates of employment, last job title, and last rate of pay. Plaintiffs shall direct all prospective employers to contact Lindsay Chapman at SpaceX.

15. Liquidated Damages

PLAINTIFFS agrees that if PLAINTIFFS violate the non-disparagement provision of this Agreement (Section 14), then the resulting damages would be impracticable or extremely difficult to determine because of the uncertain effect of the disclosure of such information on SpaceX's present and future business prospects. Because of the difficulty of determining the damages resulting from the breach of the non-disparagement provision of this Agreement by PLAINTIFFS, the Parties agree that in the event of such a breach by any of the PLAINTIFFS, the PLAINTIFF responsible for the breach will pay to SpaceX the amount of Five Hundred Dollars and Zero Cents (\$500.00) as liquidated damages for each breach. PLAINTIFFS and SpaceX represent and agree that the liquidated damages provision contained in this Section is fair and reasonable.

16. Limits on Participation in Other Claims

PLAINTIFFS agree not to provide assistance to any current, former, or future SpaceX employee with respect to any complaints, concerns, claims, or litigation of any kind against the Releasees, whether individual or class or collective action, unless compelled to do so by a valid subpoena or court order. If compelled to testify or otherwise provide evidence in any proceeding, PLAINTIFFS will provide SpaceX with immediate notice of receipt of an order or other demand for PLAINTIFFS' participation by giving notice to Chris Cardaci, 1030 15th Street, NW Suite 450, Washington DC, 20005 in sufficient time for SpaceX to oppose such testimony or participation. To the extent prohibited by law, this Section does not prevent PLAINTIFFS from participating in government investigations.

17. Re-Employment

PLAINTIFFS represent that they do not intend to apply for employment with SpaceX, and that SpaceX is relying on that representation as inducement for entering into this Agreement. PLAINTIFFS further understand that SpaceX (or any of the Released Parties as defined below) is not required to rehire or hire PLAINTIFFS if the decision is based on a legitimate business reason. A legitimate business reason is any business reason reached in SpaceX's sole business judgment that is not discriminatory and not retaliatory in violation of law. PLAINTIFFS understand that based on their performance history and circumstances surrounding their separation of employment from SpaceX, PLAINTIFFS are not eligible for rehire. PLAINTIFFS agree to accurately represent their employment history with SpaceX on any employment application with SpaceX or any Released Party in the future, and understand that failure to fully and accurately disclose such employment history will be grounds for termination when uncovered post rehire.

18. Voluntary Execution

PLAINTIFFS are signing this Agreement freely and voluntarily without duress or undue influence. PLAINTIFFS have carefully read this Agreement and PLAINTIFFS fully understand this Agreement's final and binding effect. PLAINTIFFS also understand and agree that the only promises made to PLAINTIFFS in connection with signing this Agreement are those made in this Agreement and that PLAINTIFFS are not relying and have not relied on any representation or statement made by SpaceX or by any of the Releasees, including their agents or employees, that are not included in this Agreement.

19. Entire Agreement Under California Law

This Agreement constitutes the entire agreement between PLAINTIFFS and SpaceX and controls all prior oral and written agreements or discussions with respect to PLAINTIFFS' employment and the separation of employment, except that this Agreement does not supersede any prior executed confidentiality and trade secrets agreements. Other than such prior confidentiality and trade secrets agreements there are no other agreements between PLAINTIFFS and SpaceX, concerning PLAINTIFFS' employment and the separation of

employment. This Agreement may be amended or modified only by agreement in writing, signed by all Parties. This Agreement is governed by California law.

20. Counterparts

This Agreement may be executed in counterparts, and each counterpart, when executed, shall be deemed an original, and all of which together shall be deemed one and the same instrument. Photographic copies of such signed counterparts may be used in lieu of the originals for any purpose.

21. Invalid Provision

Should any provision of this Agreement for any reason be declared invalid, void, or unenforceable, the validity and binding effect of any remaining portions shall not be affected and the remaining portions of this Agreement shall remain in full force and effect as if this Agreement had been executed with said provisions eliminated.

22. Attorneys' Fees and Costs

The Parties agree that they shall bear their own fees and costs, including attorneys' fees, arising in connection with the Collective Actions and Claims referenced therein.

23. Dispute Resolution

The Parties shall use their best efforts to resolve any disputes arising from this Agreement quickly and in a professional and business-like manner. If the Parties are unable to resolve the dispute after meeting and conferring, the Parties shall submit the dispute to binding arbitration with Hon. Richard D. Aldrich (Ret.) in accordance with the then prevailing rules of JAMS. The Parties to this Agreement shall bear the arbitrator's fees equally. The place of arbitration shall be Los Angeles, California, and judgment upon the award rendered may be entered and enforced in the appropriate state or federal court sitting in Los Angeles County, California.

[Remainder of Page Intentionally Left Blank – Signature Page Follows]

Dated: 2/11/2021 _____

PLAINTIFF

By  _____
Nalani Choy

Dated: _____

PLAINTIFF

By _____
Xavier Figueroa

Dated: _____

PLAINTIFF

By _____
Saul Marquez

Dated: _____

SPACEX

By _____
Chris Cardaci
Deputy General Counsel

[Signature Page to Settlement Agreement and Release of All Claims]

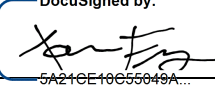
Dated: _____

PLAINTIFF

By _____
Nalani Choy

Dated: 2/11/2021

PLAINTIFF

DocuSigned by:
By  _____
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Xavier Figueroa

Dated: _____

PLAINTIFF

By _____
Saul Marquez

Dated: _____

SPACEX

By _____
Chris Cardaci
Deputy General Counsel

[Signature Page to Settlement Agreement and Release of All Claims]

Dated: _____

PLAINTIFF

By _____
Nalani Choy

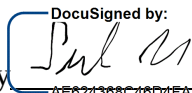
Dated: _____

PLAINTIFF

By _____
Xavier Figueroa

Dated: 2/11/2021

PLAINTIFF

By  _____
Saul Marquez

Dated: _____

SPACEX

By _____
Chris Cardaci
Deputy General Counsel

[Signature Page to Settlement Agreement and Release of All Claims]

Dated: _____

PLAINTIFF

By _____
Nalani Choy

Dated: _____

PLAINTIFF

By _____
Xavier Figueroa

Dated: _____

PLAINTIFF

By _____
Saul Marquez

Dated: February 13, 2021

SpaceX

By  _____
Chris Cardaci
Deputy General Counsel

[Signature Page to Settlement Agreement and Release of All Claims]

EXHIBIT A

JAMS ARBITRATION
JAMS Ref. No. 1100108330

SPACEX,
Claimant,

and

NALINI CHOY,
Respondent.

Consolidated with:

No. 1210037305
SpaceX,
Claimant,
v.
Xavier Figueroa,
Respondent.

and

No. 1210037306
SpaceX,
Claimant,
v.
Saul Marquez,
Respondent.

DECISION AFTER ARBITRATION HEARING AND AWARD

The arbitration hearing began on November 23, 2020 before the Honorable Richard D. Aldrich (Ret.), and live testimony (via Zoom audio/video application) concluded on November 30, 2020. The parties submitted post-trial briefs on December 18, 2020, and the matter was submitted for decision on that date. This arbitration is governed by the Federal Arbitration Act (FAA) (U.S.C. §1 et seq.).

The Arbitrator concludes that claimant Space Exploration Technologies Corp. (SpaceX) complied with its obligations under the Labor Code as construed by the California Supreme Court in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 (*Brinker*), to provide compliant meal and rest periods to respondents Nalani Choy, Xavier Figueroa, and Saul Marquez. Additionally, SpaceX did not violate its vacation pay policy or require Respondents to work “off-the-clock.” Therefore, SpaceX is entitled to declaratory judgment in its favor on all issues raised in these proceedings with respect to the Respondents. The Arbitrator’s conclusions are based upon the following.

I. SUMMARY OF PROCEDURAL BACKGROUND

A. The Demand

Claimant SpaceX submitted arbitration demands (collectively, “Demand”) for declaratory relief against Respondents, seeking a declaration that the company did not violate the Labor Code as to these three employees.¹ The Demand alleges that an actual controversy has arisen based upon the written notices that Respondents served on the Labor and Workforce Development Agency (LWDA), alleging numerous Labor Code violations against SpaceX. (Demand, ¶¶ 5, 6.) The notices were required before initiating their representative action under the Private Attorneys General Act of 2004 (PAGA) (Lab. Code, § 2698, et seq.).² As noted in the LWDA notice to the PAGA administrator, Respondents claimed that SpaceX allegedly failed to (1) compensate for all hours worked (§§ 204, 223, 1194, 1197, 1198); (2) compensate for all overtime hours worked (§ 510); (3) provide proper meal periods and/or premium pay for non-compliant meal periods (§§ 226.7, 512, 558, 1198, 1199); (4) provide proper rest periods and/or premium pay for non-compliant rest periods (§§ 226.7, 558, 1198); (5) pay all accrued vacation time (§ 227.3); (6) furnish complete and accurate itemized wage statements (§ 226, subd. (a)); and (7) timely pay all wages due within the time permitted upon separation of employment (§§ 201-203).

B. Pre-Hearing Motions

Respondents filed a judgment on the pleadings seeking to dismiss the declaratory relief actions SpaceX brought against them individually to determine liability as to victim-specific relief for Labor Code violations alleging unpaid wages. The Arbitrator denied the motion. The Respondents did not dispute that (1) they signed an arbitration agreement with SpaceX; (2) the arbitration agreement included wage claims; and (3) an individual claim is distinct from the civil penalties they seek in the PAGA action brought on behalf of the LWDA.

The Arbitrator concluded that under the FAA, the claims that are private disputes between SpaceX and its former employees must be arbitrated, and the claims brought by Respondents in their representative capacity for the State of California to collect civil penalties is a public dispute that cannot be arbitrated under California law. (*Iskanian v. CLS Transportation*

¹ The allegations in the Demand are identical as to all three Respondents, with the exception of the date they executed the arbitration agreement.

² Unless otherwise indicated, all further statutory references are to the Labor Code.

Los Angeles, LLC (2014) 59 Cal.4th 348, 378-389 (*Iskanian*). *Iskanian* defines the boundary between a PAGA lawsuit for civil penalties, and a non-PAGA claim for other relief. The declaratory relief action is a non-PAGA claim that is a private dispute and is arbitrable under the parties' arbitration agreement. Thus, Respondents did not meet their burden to establish that the Demand fails to state a cause of action.

Respondents brought a Motion for Reconsideration of the order denying the judgment on the pleadings, relying on recently published Court of Appeal decisions. The Motion was denied.

C. The Proceedings

The following witnesses testified in Claimant's case in chief regarding the meal and rest period claims. Unless otherwise indicated, witnesses testified live by using the Zoom audio/video application.

- **Nancy Quintanilla**, who was a former human resources representative at SpaceX from December 2017 through 2019.
- **Lindsay Chapman, J.D.**, is Director of Corporate Compliance and Senior Director of Human Resources. She is a lawyer who started her legal career at Cooley, LLP., working on wage and hour and meal and rest break cases.
- **Charles Blessing**, is a department supervisor, with responsibility for Environmental Thermal Control Systems (ETCS), Cleanline, and Ox-Nitrox (Oxygen-Nitrogen). Mr. Blessing supervised Respondents.
- **Saul Marquez** (Evid. Code, § 776), who is a named Plaintiff in a PAGA action filed against SpaceX that is currently pending in Los Angeles Superior Court, and who worked as a technician until he left the company October 22, 2019.
- **Xavier Figueroa** (Evid. Code, § 776), is a named Plaintiff in the PAGA action filed against SpaceX. He worked as a technician until he resigned in December 2019.
- **Nalani Choy** (Evid. Code, § 776), is a named Plaintiff in a PAGA action filed against SpaceX. She worked as a technician under the supervision of Mr. Blessing for approximately three months. Ms. Choy began working at SpaceX in 2018. She went on a leave of absence on October 8, 2019 and did not return to the company. Ms. Choy's employment ended in January 2020.
- **Brandon Leedy**, who is an Integration Technician at SpaceX, and his supervisor is Mr. Blessing. Mr. Leedy began working at SpaceX on January 13, 2020.

- **Scott Pauley**, who is a Lead Technician on the Dragon project. He works on environmental systems. Mr. Blessing has been his supervisor for more than three years.
- **Art Torres**, who is an Integration Technician at SpaceX in the ETCS department. Mr. Blessing is his supervisor. Mr. Torres began working at SpaceX on August 4, 2019 and worked with Ms. Choy and Mr. Marquez.

In Respondents' case in chief, **Edward T. Garcia**, an economic forensic analyst testified live by using the Zoom audio/video application.

II. STATEMENT OF FACTS³

A. Overview of SpaceX's Operations

SpaceX designs, builds, and launches spacecraft. In 2002, the company started in a small workshop in a warehouse, and it now has 8,000 employees. The company has designed and built more than 100 spacecraft, and successfully launched two spacecraft manned with astronauts. SpaceX also has designed and built the largest satellite modules in the world. The company has launched hundreds of satellites into space.

There are several different buildings at the SpaceX facility. Respondents worked in building HR 21 at the Hawthorne facility on the Dragon spacecraft. The Dragon spacecraft is capable of sending astronauts and cargo to and from space.

Employees who work in building HT 21 have several food options for meal and rest periods. There are food trucks close to their workspaces for grab and go meals. There also is a cafeteria on the premises that is approximately a 10-to-15-minute walk from building HT 21 to building HT 01 (Main). For those employees who eat in the main cafeteria, they are permitted to clock out when they reach the building HT01.

Respondents worked as Technicians. Ms. Choy and Mr. Marquez worked on the Cleanline. The Cleanline is the department where all the parts are funneled to be cleaned before further processing. The engineers dictate the cleaning method and solutions used for the

³ The recitation of facts is based upon the Arbitrator's credibility determinations as to material facts.

cleaning processes. Mr. Figueroa worked as an ETCS technician, assembling and testing hardware.

There is factory scheduling software at SpaceX that dictates work priority for the Cleanline. The software pulls in data from other sections and shows parts priority by identifying the stage of production and what parts are needed to maintain manufacturing schedules. A “hot part” is a part that has priority over all other parts in the queue.

In 2019, there were two shifts on the Cleanline. If a part was not finished at the end of the shift, the second shift completed the assignment. If a part was not finished at the end of the day, it was placed in a rack and was covered up until the next day. The department has production targets, but the department does not get penalized if it does not meet its targets.

B. SpaceX Meal and Rest Break Policies and Practices

1. Employee Handbook

The SpaceX employee handbook is available to all employees on an internal intranet site called “ShareX.” New employees attend an orientation program that includes a review of the employee handbook.

The employee handbook describes the company’s timekeeping and attendance policies. Nonexempt employees are not permitted to work off the clock. If they do so, employees must notify their supervisor or their manager.

The employee handbook also describes the company’s meal and rest period policy. The policy in the 2019 employee handbook provided in relevant part:

- “All nonexempt employees who work five or more hours in a day must take at least one 30-minute meal period.” Beyond what the law requires, SpaceX provides meal periods of 35 minutes.
- “The meal period must be taken within the first five hours of the shift.”
- “The employee cannot work more than five hours at any time during a work shift without a meal period.”
- “SpaceX provides a 15-minute rest period for every four hours for all nonexempt employees.” The law only requires a 10-minute rest period.
- “Employees are expected to schedule rest periods at their discretion, unless instructed otherwise by a supervisor.”

2. Additional Communications Regarding Meal And Rest Periods

SpaceX trained its employees regarding its meal and rest period policies at the new employee orientation meeting. SpaceX provided several additional communications regarding its meal and rest period policies, including:

- SpaceX emails employees to remind them that if they have a missed meal or rest period, they must notify their supervisor or Human Resources. The email also states that employees will not be retaliated for reporting a missed meal or rest period.
- SpaceX emails employees if they have missed any meal periods during a pay period. Respondents received these emails but did not address why they missed the meal period with either Human Resources or management.
- SpaceX set up an anonymous email so that employees could raise concerns to Human Resources without revealing their identities.
- SpaceX Human Resources conducts weekly “shop walks” in which they walk through various departments and are available to discuss with employees any concerns or issues.
- Human Resources conduct round tables with nonexempt employees without their supervisors to address issues and concerns. Employees were informed that if they did not feel comfortable bringing up issues before the group, they could schedule a meeting with Human Resources.
- SpaceX supervisors and managers are trained to remind their teams about the company’s meal and rest period policy on a regular basis during their team meetings. Supervisors are trained that if they ask an employee to work through a meal or rest period, then they should inform payroll that an employee is entitled to premium pay.

3. Tracking Meal and Rest Periods

Employees must clock in and clock out for their meal period using a database called “Multi-Pro.” Multi-Pro captures the time punch, and the overall hours worked, but it does not show whether the employee actually took a duty-free meal period. SpaceX retains records documenting the employees’ punches. Respondents’ supervisor did not audit the technicians’

time records at the end of the pay period for meal and rest period compliance. Instead, he sent an email to employees asking them if they had any corrections to their time records.

Employees' rest periods are also recorded by a computer program called "WARP" that tracks work orders. Employees log into the system when they come to work to find out their assignments and schedule. WARP informs the employee what part he or she is working on and how much time it should take to complete the assignment. WARP has a code for a rest period so that the vendor is not charged for the 15-minute rest period.

The data from Multi-Pro and WARP is merged and published in a bi-monthly report that coincides with the pay periods called "Tackle the Top Five," which is distributed to employees. The bi-monthly report provides the following information: (1) daily rest periods; (2) timely meal periods; (3) length of meal periods; (4) clock-in status; and (5) utilization. "Utilization" refers to how much time the employee took to work on a part. The report rates compliance by showing green when the employee complied with the SpaceX meal and rest period policy, and red when the employee was not compliant. Employees in compliance receive a gold star. Employees are urged to review the bi-monthly report for missed meal and rest periods.

4. Absence of Complaints About Meal and Rest Periods

SpaceX provided its employees multiple platforms through which they could report missed meal and rest periods. SpaceX communicated its policy to employees that if they did not inform their supervisor or take advantage of the other platforms to report a missed meal or rest period, the company would assume that the employee had voluntarily worked through the meal or rest period. If an employee reported a missed meal or rest period to Human Resources, Ms. Quintanilla testified that she had a legal responsibility to investigate. No one complained to Ms. Quintanilla about a missed meal or rest period during her tenure at SpaceX. Respondents' supervisor, Craig Blessing also testified that if an employee reported a missed meal or rest period, he had a responsibility to investigate. None of the Respondents complained to him about a missed meal or rest period at any time. Mr. Blessing testified, however, that Respondents raised other complaints with him.

Respondents testified that they were aware of the SpaceX meal and rest period policies, but they never informed their supervisor that they missed meal and rest periods. Respondents also testified that they received the Tackle the Top Five reports. Mr. Marquez never responded to the Tackle the Top 5 report. Mr. Marquez, however, reported several times that he failed to

punch out for lunch. He also testified that he was diligent about checking his time. Mr. Marquez was aware that Mr. Blessing relied upon him to report missed meal and rest periods.

Mr. Marquez and the other Respondents, however, complained to Human Resources about other issues that involved Mr. Blessing. In October 2019, Ms. Choy met with Human Resources to address a safety issue, and during that meeting she did not complain about missed meal and rest periods. In October 2019, Mr. Marquez complained to Human Resources that he was not getting along with Mr. Blessing, but he did not complain about missed meal or rest periods. Mr. Figueroa complained to Human Resources about a safety issue, but he did not complain about meal or rest periods.

5. The Workload and Their Supervisor

Respondents testified that their workload prevented them from taking compliant meal and rest periods because there were times that they could not stop a work order. Mr. Blessing assigned work to the Respondents. The software scheduler estimates how long it would take to complete a work order, but technicians were responsible for organizing their work to get it done.

Mr. Blessing also had the authority to designate an assignment as a “hot part.” A hot part went to the top of the list of work orders. It does not mean that the technicians had to work through their meal or rest periods. Mr. Marquez testified that his supervisor gave him deadlines to push the work orders through, but he never complained, even when he missed a break. Mr. Figueroa also testified that the culture at SpaceX was that when a hot part was assigned, you worked on it and finished the work order. Ms. Choy worked mostly on “hot parts.” She testified that she felt guilty about taking meal or rest periods because she was told by her supervisor that the “ ‘director will not be happy if you guys don’t get this work done by this time and this needs to get done now.’ ” Ms. Choy complained to Mr. Blessing about the workload and told him the company should hire more technicians. Ms. Choy testified that she wanted to increase her “utilization” score on her “Tackle The Top 5” report, so she worked through her rest periods. She testified, however, that she did not miss any meal periods.

Technicians often had to wait for clearance from an engineer or a supervisor and could not complete the work order, which Respondents claimed interfered with their ability to take compliant breaks. Mr. Marquez testified he missed meal and rest periods not by choice but to finish his work or to wait for verification. Mr. Figueroa also testified that some work orders required verification by witnesses or Quality Assurance inspectors. He also testified that once he

had to wait a whole shift for an inspection, and he had to wait from one to two hours for Quality Assurance, which caused him to miss breaks. Mr. Figueroa recalled one incident when an engineer approached him during a break about the part he was working on, which interrupted his rest break. When Mr. Figueroa was trained for his position, his trainer, who was a fellow technician and not a supervisor, told him that he should clock out of WARP for his rest period, but continue to work and then clock back in after 15 minutes.

Respondents testified that there were several work processes that are more time consuming than others, which interfered with their breaks. A process called “passivation,” which removes all foreign particles off a part, could take up to three or four hours to complete. Additionally, Mr. Marquez testified that once he started a “particle counter” test, he could not stop the machine. He acknowledged missing breaks when particle cleaning, or conducting an NVR verification.

SpaceX called three technicians who testified that despite the workload, they were not pressured into skipping their meal or rest periods. One witness, however, testified, that he voluntarily took late meal periods, and did not take a second meal period or a third rest period. All three company witnesses testified, as did the Respondents, that the SpaceX meal and rest period policy was communicated to them on a regular basis. One of the company witnesses testified that Respondents exaggerated the time it took for verification, inspection, and QA processes. He said it was possible to stop the test and take a break. It also was possible to cancel an inspection and call back when you came back from your break.

6. Respondents’ Experts Potential Meal and Rest Period Violations

Respondent retained an expert witness who analyzed time punch data for Ms. Choy, Mr. Figueroa, and Mr. Marquez. The expert assumed that there were no waivers, as there was no written waiver agreement. The expert identified 183 potential rest period violations. The expert identified that almost 70 percent of the Respondents’ collective shifts (1,538) involved a potential meal period violation. The expert could not tell from the data whether the Respondents voluntarily missed meal and rest periods. He also did not testify that the reason for any break being non-compliant was because the employee took a longer break than SpaceX policy allowed.

Vacation pay was paid to all three Respondents. Ms. Choy was paid overtime for the equivalent of four hours, but there are no records to indicate that Mr. Figueroa or Mr. Marquez received overtime or any premium pay.

7. Vacation Pay Policy

SpaceX employees receive 4.62 hours per pay period in vacation pay. Respondents received all the vacation pay they were entitled to under the policy, and were paid the accrued and vested vacation pay upon separation.

III. SUMMARY OF APPLICABLE LAW

A declaratory relief action requires application of both declaratory relief law and the underlying law on which Claimant premises its claims.

A. Relevant Declaratory Relief Law

Declaratory relief is a statutory remedy. (Code Civ. Proc., § 1060.) The remedy is available for a party that “desires a declaration of [its] rights or duties with respect to another,” and such party “may ask for a declaration of rights or duties . . . and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at that time.” (*Ibid.*) To establish a claim, an actual, present controversy must exist over a proper subject. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79.) A Labor Code violation is a proper subject for resolution in a declaratory relief action. (See, e.g., *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833, 838 [employer and employee sought declaratory relief as to the lawfulness of employer’s on-call compensation policy].)

The declaration may be either affirmative or negative in form and effect and has the force of a final judgment. (Code Civ. Proc., § 1060.) Unlike coercive relief, such as damages, specific performance, or an injunction, in which the court orders a party to do or to refrain from doing something, a declaratory judgment merely declares the legal relationship between the parties. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 897-898; *Gilb v. Chiang* (2010) 186 Cal.App.4th 444, 459.)

The burden of proof in a declaratory relief action is the same as in ordinary actions at law or suits in equity. The party seeking the declaratory judgment has the burden of establishing the existence of an actual case or controversy and an interest in the subject matter of the action. (Evid. Code, § 500.) Once jurisdiction is established, the party seeking declaratory relief has the burden of proving the allegations in the Demand, even if a negative declaration is sought. (1

Witkin Cal. Evid. (5th Ed. 2020) Burden, § 7.)⁴ The rules as to weight and sufficiency of evidence in a declaratory relief action are governed by the applicable rules as if it were a civil action. (*Ibid.*)

B. The Scope Of An Employer's Duty To Provide Meal Periods

Claimant premises this declaratory relief claim on its adherence to provide meal periods in accordance with California law. Wage and hour claims are governed by two complementary and occasionally overlapping sources of authority: the provisions of the Labor Code, enacted by the Legislature, and a series of 18 wage orders, adopted by the Industrial Welfare Commission (IWC). (*Brinker, supra*, 53 Cal.4th at p. 1026.) Here, Wage Order No. 1-2001 (Cal.Code Regs., tit. 8, § 11010), regulating the wages, hours, and working conditions in the manufacturing industry, applies in this case. Employers covered by this wage order have an obligation both to relieve its employees for at least one duty-free, meal period for shifts over five hours (*id.*, subd. 11(A)) and to record having done so (*id.*, subd. 7(A)(3)). The applicable wage order and several related statutes (§§ 226.7, 512, 516) address the duties imposed on employers to afford rest and meal periods.

“An employer’s duty with respect to meal breaks . . . is an obligation to provide a meal period to its employees. The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break and does not impede or discourage them from doing so.” (*Brinker, supra*, 53 Cal.4th at p. 1040.) “[T]he employer is not obligated to police meal breaks and ensure no work thereafter is performed. Bona fide relief from duty and the relinquishing of control satisfies the employer’s obligations, and work by a relieved employee during a meal break does not thereby place the employer in violation of its obligations and create liability for premium pay. . . .” (*Id.* at pp. 1040-1041.)

Proof an employer had knowledge of employees working through meal periods, as compared with employer’s knowledge that it has instructed the employee to work or take an otherwise impeded break, will not alone subject the employer to liability for a missed meal

⁴ SpaceX cites cases that address the Defendant’s burden on summary judgment (e.g., *Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1401-1402), not the plaintiff or in this case, claimant’s burden of proof at trial. Nevertheless, in the alternative, SpaceX argues that it met its burden of proof.

period. (*Brinker, supra*, 53 Cal.4th at p. 1040; see contra *Safeway, Inc. v. Superior Court* (2015) 238 Cal.App.4th 1138, 1155.) “[E]mployees cannot manipulate the flexibility granted to them by employers to use their breaks as they see fit to generate such liability. (*Brinker*, at p. 1040.)

When an employer fails to discharge its duty regarding meal breaks, section 226.7 requires the employer to compensate employees with “premium pay.” (*Brinker, supra*, 53 Cal.4th at p. 1039). In *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1102-1111, the California Supreme Court determined that the additional compensation established in section 226.7 is a “premium wage,” not a penalty. Thus, the failure to pay premium wages also triggers claims that the employer failed to provide accurate itemized wage statements in violation of section 226 and failed to provide employees with all wages earned and unpaid at termination in violations of sections 201, 202, and 203. A claim under section 226.7, however is not an action for the nonpayment of wages, within the meaning of section 218.5, which authorizes attorneys’ fees to the prevailing party. (*Kirby v. Immos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256-1257.)

Employers also have a duty to provide timely meal periods. (§ 512, subd. (a).) An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. (*Ibid.*)

C. The Scope Of An Employer’s Duty To Provide Rest Periods

California employers must authorize and permit their employees to take a 10-minute break. SpaceX’s rest period duties are defined solely by Wage Order No. 1, subdivision 12. Subdivision 12(a) provides in relevant part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” In *Brinker, supra*, the California Supreme Court confirmed that “major fraction thereof” means more than two hours. (*Brinker, supra*, 53 Cal.4th at p. 1029.) Under the basic calculation, an employee “is entitled to 10 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” (*Ibid.*)

IV. CONCLUSIONS OF LAW

A. An Actual Controversy Exists

Whether a claim presents an “actual controversy within the meaning of Code of Civil Procedure section 1060 is a question of law. (*Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 885.) When an actual controversy does exist, Code of Civil Procedure section 1061 gives the hearing officer discretion to determine whether it is “necessary” and “proper” to exercise the power to provide declaratory relief. (Code Civ. Proc., § 1061.)

“The ‘actual controversy’ referred to in [Code of Civil Procedure section 1060] is one which admits of definitive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion upon a particular or hypothetical state of facts. The judgment must decree, not suggest, what the parties may or may not do.” (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 117.)

In this case, the LWDA notices gave rise to an actual controversy between Respondents and SpaceX. Under PAGA, a private citizen intending to bring an enforcement action must serve notice before filing suit, and that notice must state the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation. (§ 2699.3, subd. (a)(1)(A).) The notices were sent to SpaceX and were unquestionably intended to comply with these pre-suit requirements.

Under these circumstances, a declaratory judgment establishing whether SpaceX violated labor laws as to the Respondents would resolve doubts with respect to any individual claims which might otherwise result in subsequent litigation. Because the Respondents indicated their intent to sue, the declaratory relief action was necessary to provide a guide for SpaceX’s future conduct in order to preserve its legal rights. Such a determination will not be based on a “hypothetical set of facts,” but on concrete facts that currently exist as to these Respondents, namely whether SpaceX complied with the noticed Labor Code provisions as to the Respondents during their employment.

The Arbitrator exercises his power under the statute to determine whether SpaceX is entitled to the declaratory relief it seeks. (Code Civ. Proc., § 1061.)

B. SpaceX Satisfied Its Obligations Under *Brinker* To Provide Meal Periods

SpaceX seeks a declaration that it complied with the Labor Code in providing compliant meal periods to Respondents. SpaceX's meal period policy complies with *Brinker*, both with respect to duration and to timing. (§ 226.7, subd. (c); 512, subd. (a).)

SpaceX did not have an informal anti-meal-break policy that was enforced through guilt, ridicule, or reprimand. SpaceX also did not exert coercion against the taking of, creating incentives to forego, or otherwise encourage the skipping of legally protected breaks. The evidence is to the contrary – SpaceX did more than the law requires.

Respondents testified that their supervisor never asked them to miss a meal period. Respondents were given reasonable opportunity to take compliant meal periods, but by choice they opted not to take them and failed to report the missed meal period even though the company made every effort to ensure compliance.

While Respondents criticize Mr. Blessing for not auditing time cards for meal and rest period violations, they completely ignore the evidence that SpaceX audited their time cards, reported to them every pay period whether they received compliant meal and rest periods in the “Tackle the Top Five” report. The Company encouraged Respondents to address any noncompliant meal periods with Human Resources or management. Respondents never did.

While Respondents contend that SpaceX never communicated to them a written policy on premium pay for missed meal periods, this is not a Labor Code violation. California law does not require that an employer have a premium pay policy. California law actually does not even require employees to have formal meal period policy. (See *Dailey v. Sears Roebuck and Co.* (2013) 214 Cal.App.4th 974, 1002 [“[T]he absence of a formal written policy explaining salaried managers’ rights to meal and rest periods does not necessarily imply the existence of a uniform or widespread practice of either depriving these employees of meal and rest periods or requiring them to work during those periods.”].)

SpaceX had a procedure for employees to report potential meal period violations, but Respondents did not use the procedure, or any other platforms available to them to complain about meal and rest period violations. This silence speaks volumes as Respondents complained about other aspects of their jobs while employed at SpaceX. A plaintiff cannot obtain premium pay for every short, missed or late meal period reflected in the employer's time punch data

absent proof of actual violations of the meal period statute. (*Serrano v. Aerotek, Inc.* (2018) 21 Cal.App.5th 773, 781 [court disagreed that Aerotek, a staffing agency, should have investigated potential violations as revealed in the time records, noting that Aerotek did nothing to prevent Serrano from taking breaks and she never complained about not receiving them.”].)⁵

Here, as in *Serrano*, the evidence presented at the hearing was that SpaceX provided compliant meal periods, did nothing to prevent Respondents from taking their meal periods, and Respondents never invoked the procedures to complain about a meal period violation, even after receiving time punch data in their “Tackle the Top 5” reports, along with numerous reminders from SpaceX related to compliant meal periods. SpaceX complied with its obligation to provide compliant meal periods under *Brinker*, and the company is entitled to declaratory relief that it complied with the Labor Code as to these Respondents.

C. SpaceX Satisfied Its Obligation Under *Brinker* to Provide Rest Periods

Even though Respondents’ expert testified that Respondents’ time cards indicated 183 potential rest period violations, there was no evidence presented of an **actual violation** of the rest period policy. SpaceX presented evidence that its rest period policy complied with the law and set forth the authorized rest periods. Respondents never complained as to missing one rest period, and never invoked the process SpaceX provided to report a missed rest period. Under these circumstances, SpaceX complied with its obligation to provide compliant rest periods under *Brinker*, and the company is entitled to declaratory relief that it complied with the Labor Code as to these Respondents.

D. SpaceX Compensated Respondents for All Hours Worked

In the LWDA notice, Respondents claimed that they were not compensated for all hours worked and were not paid for all overtime worked because SpaceX had a “policy of requiring employees to enter SpaceX’s premises through a security checkpoint, park their car in a lot, enter a SpaceX building and clock in for their shift in another area.” SpaceX presented evidence that employees were not under its control until they clocked in, which was undisputed. No additional

⁵ SpaceX also relies on *Donohue v. AMN Services* (2018) 29 Cal.App.5th 1068, review granted Jan. 22, 2019, S253677, and *David v. Queen of Valley Medical Center* (2020) 51 Cal.App.5th 653, which cites *Donohue*, for the same proposition. Review has been granted in *Donohue* by the California Supreme Court to address the following issue: “Can employers utilize practices upheld in the overtime pay context to round employees’ time to shorten or delay meal periods?”

evidence was presented on this issue, and it appears that Respondents have abandoned the issue. Therefore, SpaceX is entitled to declaratory relief that it was not obligated to pay wages to Respondents once they entered a SpaceX parking facility.

E. SpaceX Complied With Its Vacation Policy

Respondents' expert conceded at the hearing that SpaceX paid Respondents all accrued and vested vacation upon separation. Therefore, SpaceX is entitled to declaratory relief that it did not violate the Labor Code as to the Respondents.

F. SpaceX Is Entitled To Declaratory Relief On The Derivative Claims

In light of the above, SpaceX is entitled to declaratory relief that it was not required to pay meal period premiums, rest period premiums, or additional vested vacation pay to Respondents in their final paycheck.

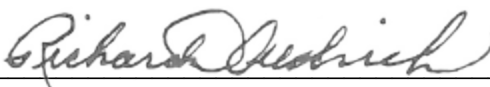
SpaceX also is entitled to declaratory relief that it provided accurate wage statements during Respondents employment, and the Company did not violate the Labor Code as to these Respondents.

V. CONCLUSION

For the foregoing reasons, SpaceX is entitled to a declaratory judgment as follows: SpaceX's meal and rest period policy complied with all applicable Labor Codes, the applicable wage order, and *Brinker*; SpaceX complied with the Labor Code by paying Respondents for all hours worked; SpaceX complied with Labor Code section 227.3 by paying Respondents all accrued and vested vacation pay upon termination; Space complied with Labor Code sections 201 through 203 by paying final wages upon Respondents' separation; and during Respondents' employment, SpaceX complied with Labor Code section 226 by providing Respondents with accurate itemized wage statements.

IT IS SO ORDERED.

DATED: December 23, 2020


Justice Richard D. Aldrich (Ret.)

PROOF OF SERVICE BY E-Mail

Re: SpaceX vs. Choy, Nalani et al.
Reference No. 1100108330

I, Reggie Joseph, not a party to the within action, hereby declare that on January 8, 2021, I served the attached DECISION AFTER ARBITRATION HEARING AND AWARD on the parties in the within action by electronic mail at Los Angeles, CALIFORNIA, addressed as follows:

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I declare under penalty of perjury the foregoing to be true and correct. Executed at Los Angeles, CALIFORNIA on January 8, 2021.



Reggie Joseph
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EXHIBIT B

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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF LOS ANGELES**

17 NALANI CHOY, XAVIER FIGUEROA, and
18 SAUL MARQUEZ, Aggrieved Employees of
19 Defendants, for the State of California's Labor
20 and Workforce Development Agency on Behalf
21 of All Aggrieved Employees of Defendants,

22 Plaintiffs,

23 v.

24 SPACE EXPLORATION TECHNOLOGIES
25 CORP., a California Corporation, and DOES 1-
26 100, Inclusive,

27 Defendants.

Case No. 20STCV14438

[Related to Case No. 21STCP00175]

[Assigned for all purposes to Hon. Rupert A.
Byrdsong, Dept. 28]

**STIPULATION AND [PROPOSED] ORDER
APPROVING PAGA SETTLEMENT AND
DISMISSING ACTION**

[Filed concurrently with Declaration of Andrew
Russell]

Complaint Filed: April 14, 2020

1 **STIPULATION**

2 **IT IS HEREBY STIPULATED** by and between Plaintiffs Nalani Choy, Xavier Figueroa, and
3 Saul Marquez (collectively, “Plaintiffs”) and Defendant Space Exploration Technologies Corp.
4 (“SpaceX”) (Plaintiffs and SpaceX will be collectively referred to as the “Parties”), through their
5 respective counsel, as follows:

6 WHEREAS, in February 2020, SpaceX received three letters directed to the California Labor and
7 Workforce Development Agency (“LWDA”) sent on behalf of Plaintiffs to the LWDA and SpaceX. The
8 letters were sent to provide written notice to the LWDA and Plaintiffs’ former employer, pursuant to Labor
9 Code section 2699.3(a)(1)(a) within the Private Attorneys General Act of 2004 (Cal. Lab. Code § 2699 *et*
10 *seq.*) (“PAGA”), of Plaintiffs’ allegations that in the scope of their employment with SpaceX, Plaintiffs
11 were subjected to certain, specified violations of the Labor Code by SpaceX (the “LWDA Letters”), and
12 Plaintiffs’ intent, as alleged aggrieved employees, to pursue a civil enforcement action under the PAGA
13 for civil penalties against SpaceX. Plaintiffs also paid the filing fee under Labor Code section
14 2699.3(a)(1)(B). Among other things, the LWDA Letters alleged that SpaceX failed, as to each Plaintiff,
15 to: (i) compensate for all hours worked; (ii) compensate for all overtime hours worked; (iii) provide proper
16 meal and/or premium pay for non-compliant meal periods; (iv) provide proper rest periods and/or
17 premium pay for non-compliant rest periods; (v) pay all accrued vacation time; (vi) furnish complete and
18 accurate itemized wage statements; and (vii) timely pay all wages due within the time permitted upon
19 separation of employment;

20 WHEREAS, the LWDA has 65 calendar days of receipt of a PAGA Letters to notify an employer
21 and aggrieved employee of its intent or non-intent to investigate alleged violations under Labor Code
22 section 2699.3, and if notice of non-intent is provided or no notice is timely provided, the aggrieved
23 employee may commence a civil PAGA action;

24 WHEREAS, on March 4, 2020, SpaceX initiated arbitration with JAMS pursuant to arbitration
25 agreements signed by Plaintiffs. In each respective arbitration demand, SpaceX sought a declaration that
26 SpaceX did not violate the Labor Code as to these respective Plaintiffs as alleged in his or her LWDA
27 letter (the “Arbitration Demands”);

28 WHEREAS, the LWDA did not timely notify Plaintiffs and SpaceX of its intent to investigate

the alleged violations and, on April 14, 2020, Plaintiffs filed their Complaint with this Court alleging a single representative PAGA cause of action on behalf of the LWDA based on SpaceX's alleged failure to: (1) compensate employees for all hours worked (Lab. Code §§ 204, 223, 1194, 1197, 1198); (2) compensate employees for all overtime hours worked (Lab. Code § 510); (3) provide proper meal periods and/or premium pay for non-compliant meal periods to employees (Lab. Code §§ 226.7, 512, 558, 1198, 1199); (4) provide proper rest periods and/or premium pay for non-compliant rest periods to employees (Lab. Code §§ 226.7, 558, 1198, 1199); (5) pay all accrued vacation time to employees (Lab. Code § 227.3); (6) furnish complete and accurate itemized wage statements to employees (Lab. Code § 226(a)); and (7) timely pay all wages due within the time permitted upon separation of employment to employees (Lab. Code §§ 201-203) (the "PAGA Action");

WHEREAS, on or about July 24, 2020, Plaintiffs filed a motion for judgment on the pleadings in the Arbitration proceeding, seeking to dismiss the declaratory relief actions SpaceX brought against them individually to determine liability as to victim-specific relief for Labor Code violations, which Plaintiffs contended were contrary to law precluding arbitration of any component of a PAGA action, and which SpaceX opposed, and on or about September 14, 2020, the Arbitrator denied the Plaintiffs' motion;

WHEREAS, the JAMS arbitration hearing on SpaceX's Arbitration Demands was conducted in front of the Arbitrator, the Honorable Justice D. Aldrich (Ret.), from November 23-25, 2020 and November 30, 2020. The arbitration hearing included opening and closing statements by the Parties, and examination of numerous witnesses, including Plaintiffs;

WHEREAS, on January 8, 2021, following substantial post-arbitration briefing, Justice Aldrich issued his "Decision after Arbitration Hearing and Award" (the "Arbitration Award"). The Arbitration Award concluded that SpaceX complied with its obligations under the Labor Code as to Plaintiffs with respect to meal and rest breaks, vacation pay, wage statements, and payment for all hours worked, and that Plaintiffs did not suffer the alleged Labor Code violations during their respective employment with SpaceX;

WHEREAS, pursuant to Labor Code section 2699(a), Plaintiffs must be "aggrieved employees" to bring a claim under PAGA. SpaceX contends that Justice Aldrich's findings of fact and Arbitration

Award precludes Plaintiffs from being “aggrieved employees” under PAGA. Plaintiffs acknowledge that, due to the Arbitration Award, they may not be able to establish that they are “aggrieved employees” to pursue this PAGA action;

WHEREAS, Plaintiffs have agreed to settle and dismiss the PAGA Action in exchange for a waiver of fees and costs, as outlined in the Settlement Agreement attached as **Exhibit A** to the accompanying Declaration of Andrew Russell;

WHEREAS, concurrently with the filing of this Stipulation, counsel for Plaintiffs have submitted a copy of the Settlement Agreement to the LWDA pursuant to Labor Code section 2699(l)(2);

WHEREAS, the settlement is fair and reasonable in light of the facts and circumstances specific to this case;

THEREFORE, IT IS HEREBY STIPULATED by and between Plaintiffs and SpaceX that this Court should approve the settlement of Plaintiffs’ PAGA claim and adopt the proposed order accompanying this stipulation dismissing Plaintiffs’ PAGA action with prejudice.

IT IS SO STIPULATED

Dated: February __, 2021

FOX ROTHSCHILD LLP

By: /s/

CHRISTOPHER CARDACI
ALEXANDER HERNAEZ
ANDREW RUSSELL
Attorneys for Defendant
SpaceX

Dated: February __, 2021

BOUCHER LLP

By: /s/

RAYMOND BOUCHER
ALEXANDER GAMEZ
MALLORY WHITELOW
Attorneys for Plaintiffs
Nalani Choy, Xavier Figueroa, and
Saul Marquez

1 **[PROPOSED] ORDER**

2 The Court, having reviewed the stipulation of the Parties, the Settlement Agreement, the
3 pleadings on file, and good cause appearing, the Court hereby orders as follows:

4 1. The Court approves the Parties' settlement of this action pursuant to Labor Code section
5 2699(1)(2) as fair and reasonable in light of the facts and circumstances specific to this case; and

6 2. This action is hereby dismissed with prejudice.

7 **IT IS SO ORDERED.**

8
9 Dated: _____

Hon. Rupert A Byrdsong

EXHIBIT C

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SPACE EXPLORATION TECHNOLOGIES CORP.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SPACE EXPLORATION TECHNOLOGIES
CORP.,

Petitioner,

v.

NALANI CHOY, SAUL MARQUEZ, and
XAVIER FIGUEROA,

Respondents.

Case No. 21STCP00175

[Lead Case: 20STCV14438]

[Assigned for all purposes to Hon. Rupert A.
Byrdsong, Dept. 28]

**STIPULATION AND [PROPOSED] ORDER
CONFIRMING ARBITRATION AWARD
AND [PROPOSED] JUDGMENT**

Complaint Filed: April 14, 2020

1 **STIPULATION**

2 **IT IS HEREBY STIPULATED** by and between Plaintiffs and Respondents Nalani Choy, Xavier
3 Figueroa, and Saul Marquez (collectively, “Plaintiffs”) and Defendant and Petitioner Space Exploration
4 Technologies Corp. (“SpaceX”) (Plaintiffs and SpaceX will be collectively referred to as the “Parties”),
5 through their respective counsel, as follows:

6 WHEREAS, in February 2020, SpaceX received three letters to the Labor Workforce
7 Development Agency (“LWDA”) sent on behalf of Plaintiffs to the LWDA and SpaceX. The letters allege
8 that in the scope of their employment with SpaceX, Plaintiffs were subjected to violations of the Labor
9 Code (the “LWDA Letters”). Among other things, the LWDA Letters alleged that SpaceX failed, as to
10 each Plaintiff, to: (i) compensate for all hours worked; (ii) compensate for all overtime hours worked; (iii)
11 provide proper meal and/or premium pay for non-compliant meal periods; (iv) provide proper rest periods
12 and/or premium pay for non-compliant rest periods; (v) pay all accrued vacation time; (vi) furnish
13 complete and accurate itemized wage statements; and (vii) timely pay all wages due within the time
14 permitted upon separation of employment;

15 WHEREAS, on March 4, 2020, SpaceX initiated arbitration with JAMS pursuant to arbitration
16 agreements signed by Plaintiffs. In each respective arbitration demand, SpaceX sought a declaration that
17 SpaceX did not violate the Labor Code as to these respective Plaintiffs as alleged in his or her LWDA
18 letter (the “Arbitration Demands”);

19 WHEREAS, on April 14, 2020, Plaintiffs filed their Complaint with this Court alleging a single
20 representative cause of action on behalf of California’s Labor and Workforce Development Agency
21 pursuant to California’s Private Attorneys General Act of 2004 based on SpaceX’s alleged failure to: (1)
22 compensate employees for all hours worked (Lab. Code §§ 204, 223, 1194, 1197, 1198); (2) compensate
23 employees for all overtime hours worked (Lab. Code § 510); (3) provide proper meal periods and/or
24 premium pay for non-compliant meal periods to employees (Lab. Code §§ 226.7, 512, 558, 1198, 1199);
25 (4) provide proper rest periods and/or premium pay for non-compliant rest periods to employees (Lab.
26 Code §§ 226.7, 558, 1198, 1199); (5) pay all accrued vacation time to employees (Lab. Code § 227.3); (6)
27 furnish complete and accurate itemized wage statements to employees (Lab. Code § 226(a)); and (7)
28 timely pay all wages due within the time permitted upon separation of employment to employees (Lab.

Code §§ 201-203) (the “PAGA Action”);

WHEREAS, on or about July 24, 2020, Plaintiffs filed a judgment on the pleadings seeking to dismiss the declaratory relief actions SpaceX brought against them individually to determine liability as to victim-specific relief for Labor Code violations, and on or about September 14, 2020, the Arbitrator denied Plaintiffs’ motion;

WHEREAS, on November 11, 2020, SpaceX filed an Answer to Plaintiffs’ Complaint in the PAGA Action;

WHEREAS, the JAMS arbitration hearing on SpaceX’s Arbitration Demands was conducted in front of the Arbitrator, the Honorable Justice D. Aldrich (Ret.), from November 23-25, 2020 and November 30, 2020. The arbitration hearing included opening and closing statements by the Parties, and examination of numerous witnesses, including Plaintiffs;

WHEREAS, on January 8, 2021, following substantial post-arbitration briefing, Justice Aldrich issued his “Decision after Arbitration Hearing and Award” (the “Arbitration Award”). The Arbitration Award concluded that SpaceX complied with all of its obligations under the Labor Code, and that Plaintiff did not suffer any Labor Code violations during their respective employment with SpaceX;

WHEREAS, on January 21, 2021, SpaceX filed and served a Petition to Confirm the Contractual Arbitration Award (“Petition to Confirm”) in the Superior Court of California, County of Los Angeles, entitled *Space Exploration Technologies Corp. v. Nalani Choy, et al.*, (Case No. 21STCP00175) (the “Petition to Confirm Action”);

WHEREAS, on January 22, 2021, SpaceX filed and served a Notice of Related Case in the PAGA Action and in the Petition to Confirm Action;

WHEREAS, on January 28, 2021, during an Informal Discovery Conference in the PAGA Action, the Parties orally stipulated to relate the PAGA Action and the Petition to Confirm Action;

WHEREAS, on January 28, 2021, this Court related the Petition to Confirm Action with the PAGA Action;

WHEREAS, the Parties agree that the Petition to Confirm met all procedural requirements for confirmation of the Arbitration Award under both the Federal Arbitration Act and California Arbitration Act and that Plaintiffs do not intend to ask the Court to correct or vacate the Arbitration Award;

1 WHEREAS, the Parties agree that further litigation and motion practice, other than the Parties'
2 forthcoming Stipulated Motion to Approve PAGA Settlement, is not necessary in the PAGA Action and
3 Petition to Confirm Action;

4 WHEREAS, the Parties agree that the April 19, 2021 hearing date set for SpaceX's Petition to
5 Confirm is not necessary and should be vacated;

6 THEREFORE, IT IS HEREBY STIPULATED by and between Plaintiffs and SpaceX that this
7 Court should grant SpaceX's Petition to Confirm, enter a final judgment consistent with the Arbitration
8 Award in the form attached below, and vacate the April 19, 2021 hearing date currently set for SpaceX's
9 Petition to Confirm.

10 **IT IS SO STIPULATED**

11 Dated: February __, 2021

FOX ROTHSCHILD LLP

13 By: _____

14 CHRISTOPHER CARDACI
15 ALEXANDER HERNAEZ
16 ANDREW RUSSELL
17 BRIAN CASILLAS
Attorneys for Defendant and Petitioner
SPACEX

18 Dated: February __, 2021

BOUCHER LLP

19 By: _____

20 RAYMOND BOUCHER
21 ALEXANDER GAMEZ
22 MALLORY WHITELAW
Attorneys for Plaintiffs and
23 Respondents
NALANI CHOY, XAVIER
FIGUEROA, AND SAUL MARQUEZ

1 **[PROPOSED] ORDER**

2 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

3 Based on the stipulation of the parties and **GOOD CAUSE** having been shown,

4 IT IS HEREBY ORDERED that the Petition to Confirm Arbitration Award of Space Exploration
5 Technologies Corp. is hereby **GRANTED** and the arbitration award of Justice Richard D. Aldrich (Ret.)
6 dated December 23, 2020 is confirmed in all respects and judgment shall be entered in conformity
7 therewith.

8
9 Dated: _____, 2021

10 Hon. Rupert A Byrdsong

1 **[PROPOSED] JUDGMENT**

2 The Court having granted Space Exploration Technologies Inc.’s (“SpaceX”) Petition to Confirm
3 Arbitration, hereby enters JUDGEMENT in favor of SpaceX and against Nalani Choy, Saul Marquez,
4 and Xavier Figueroa (collectively, “Respondents”) as follows:

- 5 1. SpaceX’s meal and rest period policy complied with all applicable Labor Codes, the
6 applicable wage order, and *Brinker*, and SpaceX met its obligation to provide
7 Respondents with compliant meal and rest periods;
8 2. SpaceX complied with the Labor Code by paying Respondents for all hours worked;
9 3. SpaceX complied with Labor Code section 227.3 by paying Respondents for all accrued
10 and vested vacation pay upon termination;
11 4. SpaceX complied with Labor Code sections 201 through 203 by paying final wages
12 upon Respondents’ separation; and
13 5. SpaceX complied with Labor Code section 226 by providing Respondents with accurate
14 itemized wage statements.

15
16 The clerk is ordered to enter judgment forthwith.

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19 Dated: _____, 2021

20 Hon. Rupert A Byrdsong
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