UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SPACE EXPLORATION TECHNOLOGIES CORP.	
and	**Cases 31-CA-307446** **31-CA-307532** **31-CA-307539** **31-CA-307546** **31-CA-307551** **31-CA-307555**
ANNE SHAVER	
and	**Case 31-CA-307514**
TOM MOLINE, an Individual	
and	**Case 31-CA-307525**
PAIGE HOLLAND-THIELEN, an Individual	

<u>RESPONDENT'S MOTION TO DISMISS</u>

On January 3, 2024, the National Labor Relations Board ("Board" or "NLRB") issued an order consolidating Cases 31-CA-307446, 31-CA-307532, 31-CA-307539, 31-CA-307546, 31-CA-307551, and 31-CA-307555, which are based on charges filed by Anne Shaver; Case 31-CA-307514, which is based on a charge filed by Tom Moline, and Case 31-CA-307525, which is based on a charge filed by Paige Holland-Thielen, respectively, against Respondent Space Exploration Technologies Corp. ("SpaceX" or "Respondent") into a Consolidated Complaint and Notice of Hearing, a copy of which along with SpaceX's Answer are attached as <u>Exhibit A</u> and <u>Exhibit B</u>.

Pursuant to Section 102.24(b) of the Board's Rules and Regulations, SpaceX hereby respectfully moves to dismiss the Consolidated Complaint for lack of jurisdiction because SpaceX is subject to the Railway Labor Act ("RLA") and therefore is excluded from the definition of an employer under Section 2(2) of the National Labor Relations Act ("NLRA") and, in turn, from the

NLRB's jurisdiction.[1] Respondent further requests an indefinite postponement of the hearing until the Board decides the threshold question of statutory jurisdiction.[2]

I. INTRODUCTION

The NLRB does not have jurisdiction over SpaceX because any person subject to the RLA is expressly excluded from the definition of an employer under Section 2(2) of the NLRA. The RLA covers every (1) "common carrier by air", that is (2) engaged "in interstate or foreign commerce." 45 U.S.C. § 181.

SpaceX meets both elements of this statutory definition. First, SpaceX is a "common carrier by air" because it offers to the public (i.e., holds itself out to the public as a provider of) space cargo transportation services and human spaceflight, and is regulated by the Federal Aviation Administration ("FAA"). Second, SpaceX is "engaged in interstate or foreign commerce"—indeed, it is engaged in commercial space transportation which certainly extends beyond the boundaries of a single state.

Because SpaceX is covered by the RLA and therefore excluded from the NLRA, the Consolidated Complaint should be dismissed. The fundamental nature and importance of this threshold jurisdictional issue further requires that the hearing and all other proceedings on the Consolidated Complaint should be stayed.

II. BACKGROUND AND FACTS

A. The Consolidated Complaint.

The Consolidated Complaint is based on eight charges filed by three Charging Parties against Respondent. Consol. Compl. ¶ 1. It alleges Respondent committed unfair labor practices

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[1] In filing this motion to dismiss, SpaceX is not consenting to the NLRB's jurisdiction to conduct this proceeding, nor is it conceding or waiving any rights, arguments, or defenses SpaceX has asserted or may assert to this proceeding, including in its Answer, *see* Ex. B, and SpaceX's constitutional challenges to this proceeding (*see Space Exploration Technologies Corp. v. NLRB et al.*, Case 1:24-cv-00001 (S.D. Tex.) (filed Jan. 4, 2024)) and/or any other challenges or objections SpaceX has asserted or will assert to this proceeding.

[2] Respondent has also filed a separate request for special permission to appeal and appeal of the Regional Director's ruling denying Respondent's motion to postpone the hearing based on the pending federal court constitutional litigation, as well as pre-existing scheduling conflicts for several of Respondent's key witnesses. *See* Respondent's Request for Special Permission to Appeal and Appeal (filed Jan. 24, 2024).

by interfering with, restraining, and coercing employees in the exercise of Section 7 rights in violation of Section 8(a)(1) of the NLRA. Consol. Compl. ¶¶ 29-30.

B. SpaceX's Commercial Space Transportation Services.

"Space transportation … is no longer the exclusive domain of the government.".[3] Instead, the "democratization of space" has allowed for a burgeoning "commercial space industry" that is regulated by the FAA under statutory authority of the Secretary of Transportation. *See* 51 U.S.C. ch. 509; 14 C.F.R. ch. III.

SpaceX is the undisputed leader in the commercial space transportation industry. Founded in 2002, SpaceX designs, manufactures, and launches advanced rockets and spacecraft to take satellites and humans to space.[4] SpaceX launches both commercial and government payloads with its rockets—including the Falcon 9 and Falcon Heavy—and spacecraft—including the Crew and Cargo variants of SpaceX's Dragon spacecraft.[5]

Falcon 9 is the world's first orbital class reusable rocket; it has successfully launched more than 300 times. Falcon Heavy is the most powerful rocket operating today. And SpaceX is currently developing Starship, the largest and most powerful launch system ever flown.[6] Starship

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[3] *See* FAA COMMERCIAL SPACE CONFERENCE, Former Administrator, Michael Huerta (Feb. 7, 2017), https://www.faa.gov/speeches/faa-commercial-space-conference?newsId=21434. The Board may take "judicial or administrative notice" of information from government websites. *See* F.R.E. 201(b); *Macys, Inc*., 372 NLRB No. 42, slip op. at 8 n.12 (Jan. 17, 2023) (taking administrative notice of information on city website) citing *Cota v. Maxwell-Jolly*, 688 F.Supp. 2d 980, 998 (N.D. Cal. 2010) ("Court may properly take judicial notice of the documents appearing on a governmental website."); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998–99 (9th Cir. 2010) ("It is appropriate to take judicial notice of this information, as it was made publicly available by government entities … and neither party disputes the authenticity of the web sites or the accuracy of the information displayed therein.").

[4] *See, e.g*., https://www.spacex.com/mission/ (last visited Jan. 29, 2024). The Board may take "judicial or administrative notice" of information provided on SpaceX's website. *See* F.R.E. 201(b); *United States Postal Service*, 365 NLRB No. 51, slip op. at 2 n.5 (Mar. 24, 2017) (taking "judicial notice" of Respondent's administrative structure as set forth on its website (citing *Doron Precision Systems, Inc. v. FAAC, Inc*., 423 F.Supp. 2d 173, 179 n.8 (S.D.N.Y. 2006) ("a court may take judicial notice of information publicly announced on a party's website, as long as the website's authenticity is not in dispute and it's capable of accurate and ready determination.")).

[5] *See* https://www.spacex.com/vehicles/falcon-9/; https://www.spacex.com/vehicles/falcon-heavy/; https://www.spacex.com/vehicles/dragon/ (last visited Jan. 29, 2024).

[6] *See* https://www.spacex.com/vehicles/starship/ (last visited Jan. 29, 2024).

will allow SpaceX to deliver humans and enough payload to establish a permanent base on the moon and Mars; deliver people and goods anywhere on Earth in an hour or less; launch more and/or larger and more sophisticated commercial payloads at even lower cost.[7]

As a commercial space transportation provider, SpaceX customers can arrange to have payloads launched into space either through a dedicated launch or as part of a rideshare program which launches multiple customers' payloads in one flight. Customers can make reservations directly through SpaceX's website:[8]

RESERVE YOUR RIDE ONLINE

Find all the information you need to make a reservation online, everything from plate configuration to technical specifications to licensing information. Once your reservation request is approved, SpaceX will provide you with a welcome package outlining next steps for launch.

Payloads are received at the launch site around L-30 and processed in a SpaceX facility. More details can be found in the Rideshare User's Guide.

PAYLOAD USER'S GUIDE

CAKE TOPPER USER'S GUIDE

PLACE ORDER ONLINE

WELCOME PACKAGE

SPACECRAFT DATA PACKAGE

LAUNCH PROCESSING

LAUNCH!

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[7] *See* SPACEX STARSHIP SUPER HEAVY PROJECT AT THE BOCA CHICA LAUNCH SITE (Nov. 17, 2023), https://www.faa.gov/space/stakeholder_engagement/spacex_starship.

[8] *See, e.g.*, SMALLSAT RIDESHARE PROGRAM, https://www.spacex.com/rideshare/ (last visited Jan. 29, 2024).

SpaceX also offers customers the opportunity to join human spaceflight missions, which can be booked through SpaceX's website as well:[9]

OUR MISSIONS

All Dragon and Starship missions have the ability to conduct scientific research to improve life back on Earth as well as raise awareness to a global audience.

EARTH ORBIT SPACE STATION MOON MARS

ORBIT FREQUENCY	Every 90 minutes
MISSION DURATION	3 - 6 days
ALTITUDE	300 – 500 km
SEATING	2 - 4 passengers
CUPOLA	46" diameter / 360° views
CARGO / SCIENCE	Up to 192 kg cargo Power / Data / Comm available

Book your flight to start exploring Earth orbit. Seats available starting late 2024. Inquire below.

JOIN A MISSION

C. The FAA Licenses and Regulates SpaceX's Commercial Space Activities.

The Commercial Space Launch Act of 1984, as amended and codified at 51 U.S.C. §§ 50901-50923, authorizes the Secretary of Transportation to oversee, license, and regulate commercial space transportation activities within the United States or as carried out by U.S. citizens. The Secretary of Transportation's authority is delegated to the FAA's Office of

[9] *See* HUMAN SPACEFLIGHT, https://www.spacex.com/humanspaceflight/ (last visited Jan. 29, 2024).

Commercial Space Transportation.[10] The Office of Commercial Space Transportation was established in order to:

- Regulate the U.S. commercial space transportation industry, to ensure compliance with international obligations of the United States, and to protect the public health and safety, safety of property, and national security and foreign policy interests of the United States;
- Encourage, facilitate, and promote commercial space launches and reentries by the private sector;
- Recommend appropriate changes in Federal statutes, treaties, regulations, policies, plans, and procedures; and
- Facilitate the strengthening and expansion of the United States space transportation infrastructure.[11]

This mission facilitates Congress' statutory purposes. *See* 51 U.S.C. § 50901.

According to the data published by the FAA's Office of Commercial Space Transportation, SpaceX is the operator with the most licensed launches in history: 294 out of 634 total licensed launches; with SpaceX conducting 94 of 117 FAA licensed launches in 2023 alone.[12] SpaceX has also conducted all 40 licensed reentries authorized by the FAA, including 9 human reentries.[13]

The FAA is forecasting a substantial increase in commercial space launches and reentries in the coming years, resulting from growing demand for space tourism and commercial satellite services.[14] Indeed, SpaceX's own launch cadence has increased dramatically in the last few years,

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[10] *See* 49 C.F.R. §§ 1.82(o), 1.83(b); 14 C.F.R. § 401.3. *See also* https://www.faa.gov/regulations_policies/faa_regulations/commercial_space#:~:text=50901%20%2D%2050923%20(the%20Act),vehicles%2C%20and%20the%20operation%20of (last visited Jan. 29, 2024).

[11] *See* ABOUT THE OFFICE OF COMMERCIAL SPACE TRANSPORTATION, https://www.faa.gov/about/office_org/headquarters_offices/ast (last visited Jan. 29, 2024).

[12] *See* COMMERCIAL SPACE DATA, https://www.faa.gov/data_research/commercial_space_data (last visited Jan. 29, 2024).

[13] *Id.* (there are separate tabs for data on licensed launches and licensed reentries, which can be sorted by date and operator).

[14] *See* https://www.faa.gov/sites/faa.gov/files/FY%202023-2043%20Full%20Forecast%20Document%20and%20Tables_0.pdf (last visited Jan. 29, 2024).

with the company performing fewer than ten launches per year through 2016, 30 launches by 2021, 60 in 2022, and nearly 100 launches in 2023, and forecasting 144 for 2024.[15]

III. ARGUMENT

As explained below, the Consolidated Complaint should be dismissed for lack of jurisdiction.

A. Respondent Is Subject to the RLA and, Therefore, Excluded from the NLRA.

Section 2(2) of the NLRA provides that the term "employer" shall not include "any person subject to the Railway Labor Act." 29 U.S.C. § 152(2). Likewise, Section 2(3) of the Act provides that the term "employee" does not include "any individual employed by an employer subject to the Railway Labor Act." 29 U.S.C. § 152(3).

The RLA covers, among other entities, every (1) "common carrier by air", that is (2) engaged "in interstate or foreign commerce." 45 U.S.C. § 181. The "Railway Labor Act does not limit its coverage to air carrier employees who fly and maintain aircraft" but "extends to virtually all employees engaged in performing a service for the carrier so that the carrier may transport passengers or freight." *Amerijet Int'l, Inc.*, 39 NMB 48, 51 (2011) (citing *Federal Express Corp.,* 23 NMB 32, 71 (1995)).

As explained below, SpaceX is subject to the RLA and excluded from the NLRA because it is (1) a "common carrier by air", that is (2) engaged "in interstate or foreign commerce."

1. Respondent is a "common carrier by air."

Although the RLA does not define the term "common carrier by air," the NMB has held that it should be defined in accordance with the common law. *Southern Air Transport*, 8 NMB 31, 33 (1980). The NLRB generally defers to the NMB's expertise on issues of RLA jurisdiction. *See United Parcel Service*, 318 NLRB 778, 780 (1995), *aff'd sub nom. United Parcel Serv., Inc. v. N.L.R.B.*, 92 F.3d 1221 (D.C. Cir. 1996).

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[15] https://www.oldrocketforum.com/attachment.php?s=3cf5a6d6b3738eb4a1c345aa71779116&attachmentid=69443 (last visited Jan. 29, 2024); https://www.space.com/spacex-starlink-launch-doubleheader-january-2024.

The NMB holds that "[t]he essential characteristic of a common carrier is its quasi-public character." *Southern Air Transport*, 8 NMB at 34. "[A] carrier which in fact 'holds itself out' as available to serve the public is a common carrier." *Id*. (citation omitted). "Holding out" includes "any conduct which communicates that a service is available to those who wish to use it." *Id.*

As illustrated above, SpaceX, through its website and general sales approach, offers its space transportation—whether for satellites (goods) or spaceflight participants (people)—to members of the public. It is immaterial that SpaceX serves only the segment of the public who has the need (and ability to pay) for these services. A common carrier's services can be specialized and available only to a fraction of the population, which may be limited based on the customers' ability to pay. *Southern Air Transport*, 8 NMB at 35. *See also Evergreen Helicopters, Inc.*, 8 NMB 505, 506 (1981) (finding that helicopter company was a common carrier subject to the RLA even though it was "geared to specialized types of service"); *Offshore Logistics, Inc.*, 10 NMB 477, 479 (1983) (finding that company was a common carrier subject to the RLA even though its services were "of a specialized nature"); *Mountain Air Helicopters*, 39 NMB 512, 515 (2012) (finding that carrier which provided helicopter flight utility services and held itself out to the public for hire was subject to the RLA, citing *Evergreen Helicopters* and *Offshore Logistics*).

That SpaceX offers its space transportation services to the public is sufficient to establish it is a common carrier under the RLA. Regulation by the FAA also supports this conclusion. Although possession of an FAA license is not a requirement for RLA jurisdiction, the fact that the FAA licenses a carrier may provide an additional, even sufficient, basis to conclude that a carrier is a common carrier by air. *Southern Air Transport*, 8 NMB at 35. The FAA licenses both SpaceX's commercial space launch and reentry activities. As stated above, SpaceX is the operator with the most commercial space launches licensed by the FAA.[16] Therefore, this factor also supports SpaceX's status as a common carrier by air.

[16] *See* COMMERCIAL SPACE DATA, https://www.faa.gov/data_research/commercial_space_data (last visited Jan. 29, 2024).

Because SpaceX offers to the public space transportation for both goods and people, SpaceX is a "common carrier by air" within the meaning of the RLA.

2. Respondent is engaged in "interstate or foreign commerce."

Courts have interpreted the RLA's jurisdictional scope based on the provisions of the Interstate Commerce Act ("ICA") as they existed when the RLA was amended in 1936 to cover common carriers by air. *See Air Line Dispatchers Ass'n v. Nat'l Mediation Bd.*, 189 F.2d 685, 690 (D.C. Cir. 1951); *Air Line Stewards & Stewardesses Ass'n, Int'l. v. Nw. Airlines, Inc.*, 267 F.2d 170, 173 (8th Cir. 1959); *Air Line Stewards & Stewardesses Ass'n, Int'l. v. Trans World Airlines, Inc.*, 273 F.2d 69, 71 (2d Cir. 1959). The ICA defined "air commerce" and "interstate and foreign air commerce" to include transportation of passengers or property:

> between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, and any point within the same State, Territory, or possession, or the District of Columbia, but through the airspace over any place outside thereof; or wholly within the airspace over any Territory or possession or the District of Columbia.

Air Commerce Act of 1926, § 1, ch. 344, 44 Stat. 568 (1926) (codified at 49 U.S.C. § 171).

Courts have interpreted this language to mean that transportation over "'the air space over any place' outside a state" constitutes interstate commerce. *Island Airlines, Inc. v. C. A. B.*, 352 F.2d 735, 742 (9th Cir. 1965). Indeed, while purely "intrastate" air transportation is not covered, transportation over any area outside a single state—such as over international waters—constitutes "interstate and foreign commerce" transportation under this provision. *Id.* (relying upon and approving of *C. A. B. v. Island Airlines, Inc.*, 235 F. Supp. 990, 994 (D. Haw. 1964)). In other words, air travel over any area "outside of the territorial limits of a state" involves travel "through the airspace over any place outside" that state and therefore constitutes "interstate and foreign commerce." *Island Airlines, Inc.*, 235 F. Supp. at 994.

Plainly, commercial space transportation goes far beyond "intrastate" travel. In enacting legislation to regulate commercial space transportation, Congress declared that commercial space

transportation "is an important element of the transportation system of the United States, and in connection with the commerce of the United States there is a need to develop a strong space transportation infrastructure with significant private sector involvement." 51 U.S.C. § 50901(a)(8).

SpaceX's flights, by their very nature, pass "through the airspace over a[] place outside" the state where the launch occurs. The data available on the FAA's website shows that SpaceX launches occur in multiple states (Florida, California, and Texas) and the reentry locations are outside of these states, in the Gulf of Mexico or in the Atlantic or Pacific Ocean.[17]

Furthermore, under the Outer Space Treaty, to which the United States is a signatory, outer space—like international waters—is internationally governed and "not subject to national appropriation by claim of sovereignty".[18]

It is therefore beyond dispute that SpaceX is engaged in interstate or foreign commerce.[19] Because SpaceX is a "common carrier by air" that is engaged in "interstate or foreign commerce" it is subject to the RLA and excluded from the NLRA. The Consolidated Complaint should be dismissed for lack of jurisdiction.

B. At a Minimum, the Board Should Refer the Jurisdictional Question to the NMB for an Advisory Opinion.

For the reasons stated above, the Board should find that SpaceX is subject to the RLA and dismiss the Consolidated Complaint. However, if the Board has any doubt about potential RLA coverage of SpaceX, it *must* at a minimum seek the NMB's opinion on this issue. Since 1956, the Board has followed a practice of referring cases to the NMB when a party raises a claim of arguable

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[17] *See* https://www.faa.gov/data_research/commercial_space_data (last visited Jan. 29, 2024).

[18] *See* TREATY ON PRINCIPLES GOVERNING THE ACTIVITIES OF STATES IN THE EXPLORATION AND USE OF OUTER SPACE, INCLUDING THE MOON AND OTHER CELESTIAL BODIES (Dec. 19, 1966), https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/outerspacetreaty.html.

[19] Indeed, the Consolidated Complaint also affirmatively states "Respondent has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act"—which includes "trade, traffic, commerce, transportation, or communication among" or "between" States, any foreign country, or "between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country." Consol. Compl. ¶¶ 3, 30.

RLA jurisdiction. In *Pan American World Airways, Inc.*, 115 NLRB 493 (1956), the Board deferred to the NMB's determination that it had jurisdiction over Pan Am's Guided Missiles Range Division, which was established "pursuant to a contract with the United States Air Force for the sole purpose of operating and maintaining a launching point and test range for guided missiles." *Id.* at 494. *See also, e.g.*, *Allied Aviation Serv. Co. of N.J. v. NLRB*, 854 F.3d 55, 62 (D.C. Cir. 2017) (finding that "the Board's stated practice" is "to refer close cases of arguable RLA jurisdiction to the NMB for its advisory opinion before the NLRB itself decides the issue" because "the NMB has particular expertise in administering the RLA"); *Oxford Electronics, Inc., d/b/a Oxford Airport Tech. Servs.*, 369 NLRB No. 6, slip op. at 3 (Jan. 6, 2020) (requesting and following NMB opinion in light of "the substantial deference the Board ordinarily accords such opinions"); *DHL Worldwide Express, Inc.*, 340 NLRB 1034, 1034 (2003) (same); NLRB Casehandling Manual: Representation Proceedings, § 11711.2 (Dec. 2023) (providing instructions to "refer close cases of arguable RLA jurisdiction to the NMB for an advisory opinion on the jurisdictional issue.").

Here, for the reasons stated above, Respondent has put forth more than an "arguable" case for RLA jurisdiction. Accordingly, if the Board does not dismiss the Consolidated Complaint outright for lack of jurisdiction, it should seek an advisory opinion from the NMB on the threshold issue of jurisdiction.

C. The Board Should Postpone Indefinitely the Hearing in This Case Until the Threshold Issue of Jurisdiction Is Decided.

The Board's Rules and Regulations generally require that it postpone a hearing indefinitely if it finds potential merit to a motion to dismiss. *See* Board Rules & Regulations 102.24(b) (providing that hearing "will normally be postponed indefinitely" where the Board finds potential merit to a motion to dismiss).

Immediate and indefinite postponement is particularly necessary here to allow proper consideration of an issue of first impression for both the Board and the NMB: whether a private space transportation company is subject to the RLA.

Moreover, the Board must postpone the hearing *immediately* while this novel jurisdictional issue is resolved prior to the hearing on the merits, and prior to the potentially unnecessary expenditure of resources that preparation for such a hearing entails. The Board has recognized the importance of resolving the "threshold issue" of statutory jurisdiction at the outset of proceedings. *Stack Elec., Inc.*, 290 NLRB 575, 575 (1988) (addressing "threshold issue" of jurisdiction first).

As stated above, Section 2(2) of the Act precludes the Board from asserting jurisdiction over an entity that is subject to the Railway Labor Act, and the Board has found that "[i]n view of this clear statutory language, *the first step* in considering our jurisdiction under the Act, when a claim of arguable RLA jurisdiction is raised, is the determination whether the employer is subject to the Railway Labor Act." *Fed. Express Corp.*, 317 NLRB 1155, 1155 (1995) (emphasis added). *See also Pan Am. World Airways, Inc.*, 115 NLRB at 495 ("We, therefore, affirm . . . that *unless* the National Mediation Board definitely declines to assume jurisdiction over such disputed airline employees, this Board will not assert jurisdiction.") (emphasis added).

Accordingly, the Board has refused to proceed on the merits until it resolves the threshold issue of statutory jurisdiction that is raised by colorable claims of RLA jurisdiction, even where resolving the issue requires seeking an advisory opinion from the NMB. *See Fed. Express Corp.*, 317 NLRB at 1155 (finding issue of RLA jurisdiction must be submitted to NMB and resolved before deciding whether to direct an election, despite General Counsel's objection that the NMB advisory opinion process causes delay); *cf. Aircraft Serv. Int'l, Inc.*, 365 NLRB No. 94, slip op. at

1 (June 9, 2017) ("the issue of unit appropriateness is addressed by the NMB (as by the NLRB) *only after the threshold requirement of jurisdiction has been met*") (emphasis added).

IV. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Consolidated Complaint be dismissed in its entirety for lack of jurisdiction. Respondent further requests that the hearing and all other proceedings on the Consolidated Complaint be postponed indefinitely pending the Board's decision on the threshold question of statutory jurisdiction.

Dated: January 30, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 30, 2024, a copy of Respondent SpaceX, Inc.'s Motion to Dismiss in NLRB Cases 31-CA-307446, 31-CA-307514, 31-CA-307525, 31-CA-307532, 31-CA-307539, 31-CA-307546, 31-CA-307551, and 31-CA-307555 was filed electronically using the NLRB's e-filing system and served by email on the following:

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Exhibit A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

SPACE EXPLORATION TECHNOLOGIES CORP.

And — **Cases 31-CA-307446, 31-CA-307532, 31-CA-307539, 31-CA-307546, 31-CA-307551, 31-CA-307555**

ANNE SHAVER

and — **Case 31-CA-307514**

TOM MOLINE, an Individual

and — **Case 31-CA-307525**

PAIGE HOLLAND-THIELEN, an Individual

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT, AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 31-CA-307446, 31-CA-307532, 31-CA-307539, 31-CA-307546, 31-CA-307551, and 31-CA-307555, which are based on charges filed by Anne Shaver; Case 31-CA-307514, which is based on a charge filed by Tom Moline, an Individual; and Case 31-CA-307525, which is based on a charge filed by Paige Holland-Thielen, an individual, respectively, against Space Exploration Technologies Corp. (Respondent) are consolidated.

This Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act

(the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below.

1. The charges in the above cases were filed by the respective Charging Parties, as set forth in the following table, and served upon Respondent on the dates indicated by U.S. mail:

Case Number	Amended	Charging Party	Date Filed	Date Served
31-CA-307446	N/A	Anne Shaver	November 16, 2022	November 18, 2022
31-CA-307446	First Amended	Anne Shaver	January 20, 2023	January 27, 2023
31-CA-307446	Second Amended	Anne Shaver	December 15, 2023	December 20, 2023
31-CA-307514	N/A	Tom Moline	November 16, 2022	November 21, 2022
31-CA-307514	First Amended	Tom Moline	January 20, 2023	January 27, 2023
31-CA-307525	N/A	Paige Holland-Thielen	November 16, 2022	November 21, 2022
31-CA-307525	First Amended	Paige Holland-Thielen	January 20, 2023	January 30, 2023
31-CA-307532	N/A	Anne Shaver	November 16, 2022	November 21, 2022
31-CA-307532	First Amended	Anne Shaver	January 20, 2023	January 27, 2023
31-CA-307539	N/A	Anne Shaver	November 16, 2022	November 21, 2022
31-CA-307539	First Amended	Anne Shaver	January 20, 2023	January 30, 2023
31-CA-307546	N/A	Anne Shaver	November 16, 2022	November 21, 2022
31-CA-307546	First Amended	Anne Shaver	January 20, 2023	January 30, 2023
31-CA-307551	N/A	Anne Shaver	November 16, 2022	November 21, 2022
31-CA-307551	First Amended	Anne Shaver	January 20, 2023	January 30, 2023
31-CA-307555	N/A	Anne Shaver	November 16, 2022	November 21, 2022
31-CA-307555	First Amended	Anne Shaver	January 20, 2023	January 27, 2023

2. (a) At all material times, Respondent has been a corporation with an office and place of business at 1 Rocket Road, Hawthorne, California 90250 (Hawthorne facility).

(b) In conducting its operations during the 12-month period ending September 21, 2023, a representative period, Respondent has been engaged in the manufacture and operation of rocket vehicles and satellites and has provided launch services to the United States valued in excess of $1,000,000.

(c) Based on its operations described above in paragraph 2(b), Respondent has a substantial impact on the national defense of the United States.

(d) In conducting its operations during the period described above in paragraph 2(b), Respondent purchased and received at its Hawthorne facility goods valued in excess of $5,000 directly from points outside of the State of California.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and/or agents of Respondent within the meaning of Section 2(13) of the Act:

Brian Bjelde	-	Vice President of Human Resources
Lindsay Chapman	-	Director of Human Resources
John Edwards	-	Vice President of Falcon Launch Vehicles
Jessica Jensen	-	Vice President of Customer Operations
Michael Saqr	-	Flight Software Engineering Manager
Gwynne Shotwell	-	President and Chief Operating Officer

Sandy Simmons - Software Engineering Manager

5. (a) About June 15, 2022, Respondent's employees Paige Holland-Thielen, Tom Moline, Yaman Abdulhak, Scott Beck, Rebekah Clark, Deborah Lawrence, Clarie Mallon, and Andre Nadeau engaged in concerted activities with other employees for the purposes of mutual aid or protection by drafting and distributing an open letter that detailed workplace concerns (Open Letter).

(b) About June 16, 2022, Respondent discharged Paige Holland-Thielen, Tom Moline, Scott Beck, and Claire Mallon.

(c) About July 20, 2022, Respondent placed Deborah Lawrence on administrative leave.

(d) About July 21, 2022, Respondent placed Yaman Abdulhak on administrative leave.

(e) About July 22, 2022, Respondent discharged Yaman Abdulhak and Deborah Lawrence.

(f) About July 29, 2022, Respondent discharged Andre Nadeau.

(g) About August 16, 2022, Respondent discharged Rebekah Clark.

(h) Respondent engaged in the conduct described above in paragraphs 5(b) through 5(g) because Paige Holland-Thielen, Tom Moline, Yaman Abdulhak, Scott Beck, Rebekah Clark, Deborah Lawrence, Clarie Mallon, and Andre Nadeau engaged in the conduct described above in paragraph 5(a), and to discourage employees from engaging in these or other concerted activities.

/ / /

/ / /

6. About May 24, 2022, Respondent, by Lindsay Chapman, in a human resources conference room on the second floor of the main building of the Hawthorne facility, interrogated an employee about the Confluence pages the employee created to address workplace concerns.

7. About June 15, 2022, Respondent, by Gwynne Shotwell, through an email unlawfully restricted employees from distributing the Open Letter.

8. About June 15, 2022, Respondent, by Brian Bjelde, in a conference room by Bjelde's office on the second floor of the Hawthorne facility, disparaged employees' participation in, and the content of, the Open Letter.

9. About June 15, 2022, Respondent, by Brian Bjelde, in a conference room by Bjelde's office on the second floor of the Hawthorne facility, interrogated an employee about the Open Letter.

10. About June 16, 2022, Respondent, by Brian Bjelde and/or Gwynne Shotwell, in the following locations, told employees that they were being discharged for their participation in the Open Letter:

(a) A conference room at the Hawthorne facility, and

(b) Via telephone.

11. About June 16, 2022, Respondent, by Gwynne Shotwell, in an email to all employees announced that employees had been discharged for their involvement in the Open Letter.

12. About June 17, 2022, Respondent, by John Edwards, at the Hawthorne facility, made coercive statements concerning employees' protected concerted activities by disparaging the Open Letter and those employees who had participated in drafting it and by inviting employees to quit if they disagreed with the behavior of Chief Executive Officer Elon Musk.

13. About June 17, 2022, Respondent, by Jessica Jensen, at the Hawthorne facility, told employees at a meeting that the terminated employees were discharged for their involvement with the Open Letter.

14. About June 17, 2022, Respondent, by Sandy Simmons, outside of the Hawthorne facility, impliedly invited employees to quit if they wished to engage in protected concerted activities.

15. About June 20, 2022, Respondent, by Sandy Simmons, outside of the Hawthorne facility, impliedly invited employees to quit if they wished to engage in protected concerted activities.

16. About June 20, 2022, Respondent, by Sandy Simmons, outside of the Hawthorne facility, interrogated employees about their protected concerted activities.

17. About June 21, 2022, Respondent, by Sandy Simmons, impliedly threatened employees with discharge if they continued discussion of the issues contained in the Open Letter.

18. About June 22, 2022, Respondent, by Michael Saqr, told employees during a meeting that employees were discharged for their participation in creating and distributing the Open Letter.

19. About July 19, 2022, Respondent, by Lindsay Chapman, in a small conference room on the first floor of the main building of the Hawthorne facility, interrogated employees about their involvement in the Open Letter and other employees' protected concerted activities.

20. About July 19, 2022, Respondent, by Lindsay Chapman, in a small conference room on the first floor of the main building of the Hawthorne facility, during an investigatory interview instructed an employee not to discuss the interview with anyone.

21. About July 20, 2022, Respondent, by Lindsay Chapman, at Respondent's facility in Redmond, Washington, interrogated employees about their protected concerted activities.

22. About July 20, 2022, Respondent, by Lindsay Chapman, at Respondent's facility in Redmond, Washington, by showing employees screen shots of communications between employees concerning the Open Letter created an impression among its employees that their protected concerted activities were under surveillance by Respondent.

23. About July 20, 2022, Respondent, by Lindsay Chapman, at Respondent's facility in Redmond, Washington, during an investigatory interview instructed an employee to not discuss the interview with anyone.

24. About July 21, 2022, Respondent, by Lindsay Chapman, in a small conference room on the first floor of the main building of Respondent's Hawthorne facility, interrogated employees about their involvement with the Open Letter and other protected concerted activities.

25. About July 21, 2022, Respondent, by Lindsay Chapman, in a small conference room on the first floor of the main building of Respondent's Hawthorne facility, by reading aloud to employees communications between employees concerning the Open Letter, created an impression among its employees that their protected concerted activities were under surveillance by Respondent.

26. About July 21, 2022, Respondent, by Lindsay Chapman, at the Hawthorne facility, interrogated employees about their participation in group chats and involvement with the Open Letter.

27. About July 21, 2022, Respondent, by Lindsay Chapman, at the Hawthorne facility, by showing employees screen shots of communications between employees concerning

the Open Letter, created an impression among its employees that their protected concerted activities were under surveillance by Respondent.

28. About July 21, 2022, Respondent, by Lindsay Chapman, at the Hawthorne facility, during an investigatory interview instructed an employee to not discuss the interview with anyone.

29. By the conduct described above in paragraphs 5(b) through (g) and 6 through 28, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

30. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 5 through 28, the General Counsel seeks an Order requiring Respondent to:

i. Post the notice for 120 days, including electronically posting the notice on platforms where Respondent regularly communicates with employees;

ii. Hold a meeting or meetings scheduled to ensure the widest possible attendance, at which Respondent's representative Gwynne Shotwell reads the notice to the employees on worktime in the presence of a Board agent. Alternatively, the General Counsel seeks an order requiring that Respondent promptly have a Board agent read the notice to employees during worktime in the presence of Respondent's supervisors and/or agents identified above in paragraph 4. Each employee present at the meeting at which the Notice is to be read shall be provided a copy of the Notice before it is read aloud;

iii. Post the Board's Explanation of Employee Rights poster for one year to ensure that employees fully understand their rights under the Act;

iv. Within 60 days of the issuance of a Board Order, permit a Board Agent to conduct a training on the National Labor Relations Act and unfair labor practices for all management officials and supervisors employed by Respondent. This training will take place either in person or via a videoconference platform, at the General Counsel's discretion. The date, time, and manner of the training must be approved by the General Counsel. The General Counsel will determine the curriculum for the training; and

v. Draft and send letters to each of the discriminatees named in paragraph 5 apologizing to them for their discharge and/or discipline, any hardship or distress this caused, and requiring Respondent to provide a copy of each letter to the Regional Director within 14 days of distribution.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before January 17, 2024, or postmarked on or before January 16, 2024**. Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that

the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **Tuesday**, **March 05, 2024**, **9:00 a.m. at Region 31 of the National Labor Relations Board, 11500 West Olympic Blvd, Suite 600, Los Angeles, CA 90064**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are

described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: January 3, 2024

MORI RUBIN, REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 31
11500 WEST OLYMPIC BLVD, SUITE 600
LOS ANGELES, CA 90064-1753

Attachments

FORM NLRB 4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Cases 31-CA-307446, et al.

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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Hawthorne, CA 90250

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San Francisco, CA 94110-1435

Form NLRB-4668
(6-2014)

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative**. If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.

- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence**: At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits**: **Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence.** If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing.

If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts**: An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- **Date for Filing Post-Hearing Brief**: Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- **Exceptions to the ALJ's Decision**: The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

Exhibit B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

SPACE EXPLORATION TECHNOLOGIES CORP.		
and	**Cases**	**31-CA-307446** **31-CA-307532** **31-CA-307539** **31-CA-307546** **31-CA-307551** **31-CA-307555**
ANNE SHAVER		
and	**Case**	**31-CA-307514**
TOM MOLINE, an Individual		
and	**Case**	**31-CA-307525**
PAIGE HOLLAND-THIELEN, an Individual		

RESPONDENT SPACE EXPLORATION TECHNOLOGIES CORP.'S ANSWER TO COMPLAINT

Pursuant to Sections 102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board"), Space Exploration Technologies Corp. ("SpaceX" or "Respondent"), through its undersigned counsel, submits the following answer to the Complaint and Notice of Hearing ("Complaint") according to the Complaint's numbered paragraphs. SpaceX disputes that it is subject to the NLRA and the Board's jurisdiction, because at all relevant times, SpaceX operated as a covered "carrier" as defined in Title II of the Railway Labor Act ("RLA"), and therefore, is subject to the dispute resolution provisions of the RLA, not the NLRA. *See* 29 U.S.C. § 152(2). SpaceX also disputes the constitutionality of this action proceeding forward in any fashion. *See Space Exploration Technologies Corp. v. National Labor Relations Board et al.*, Case 1:24-cv-00001 (S.D. Tex.) (filed January 4, 2024). In filing this Answer, SpaceX does not

concede that it is subject to the NLRA or the Board's jurisdiction, that these proceedings are constitutional, nor is SpaceX consenting to the Board's jurisdiction.

To the extent the Complaint's introduction contains allegations and legal conclusions, SpaceX denies each and every one of these allegations and legal conclusions.

1. SpaceX lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint and therefore denies them, except to admit that SpaceX received a copy of the charges and amended charges in Cases 31-CA-307446, 31-CA-307514, 31-CA-307525, 31-CA-307532, 31-CA-307539, 31-CA-307546, 31-CA-307551, and 31-CA-307555.

2. (a) Admitted.

(b) Admitted.

(c) Admitted.

(d) Admitted.

3. This paragraph states a legal conclusion to which no answer is required. To the extent a response is required, SpaceX denies this allegation, because, at all relevant times, SpaceX operated as a covered "carrier" as defined in Title II of the RLA.

4. Paragraph 4 of the Complaint sets forth legal conclusions to which no response is necessary. To the extent a response is required, SpaceX admits that the individuals listed in Paragraph 4 of the Complaint have held the alleged job titles and been supervisors of SpaceX within the meaning of Section 2(11) of the Act, with the following corrections:

- Lindsay Chapman's job title is, and all material times was, Senior Director of Human Resources;
- Mr. Edwards's name is "Jon";

- Jessica Jensen's job title is, and at all material times was, Vice President of Customer Operations and Integration;
- At all material times, Michael Saqr's job title was Software Engineering Manager;
- At all material times, Sandy Simmons's job title was Flight Software Engineering Manager.

SpaceX denies each and every other allegation and legal conclusion contained in this paragraph.

5. (a) SpaceX admits only that Paige Holland-Thielen, Tom Moline, Scott Beck, and Claire Mallon repeatedly distributed a document they named "An open letter to the Executives of SpaceX" (hereinafter, "Open Letter") and that Moline had a role in earlier drafting the Open Letter. SpaceX lacks sufficient information to respond to the further alleged role of individuals concerning the Open Letter beyond the above, and, on that basis, denies such allegations. SpaceX denies each and every other allegation and legal conclusion contained in this paragraph.

(b) Admitted.

(c) Admitted.

(d) Admitted.

(e) Admitted.

(f) Admitted.

(g) Admitted.

(h) Denied. SpaceX denies each and every allegation and legal conclusion contained in this paragraph.

6. SpaceX admits that, on or about May 24, 2022, Lindsay Chapman met with an individual. SpaceX denies each and every other allegation and legal conclusion contained in this paragraph.

7. SpaceX admits that Gwynne Shotwell sent an email regarding the Open Letter on or about June 15, 2022. SpaceX denies each and every other allegation and legal conclusion contained in this paragraph.

8. This paragraph states a legal conclusion to which no answer is required. To the extent a response is required, SpaceX denies each and every allegation and legal conclusion contained in this paragraph.

9. This paragraph states a legal conclusion to which no answer is required. To the extent a response is required, SpaceX denies each and every allegation and legal conclusion contained in this paragraph.

10. On or about June 16, 2022, SpaceX informed Paige Holland-Thielen, Tom Moline, Scott Beck, and Claire Mallon of their discharge. SpaceX denies each and every other allegation and legal conclusion contained in this paragraph, and its two subparagraphs.

(a) Denied.

(b) Denied.

11. SpaceX admits that Gwynne Shotwell sent an email to all or substantially all SpaceX personnel on June 16, 2022 that referenced personnel discharges. SpaceX denies each and every other allegation and legal conclusion contained in this paragraph.

12. This paragraph states a legal conclusion to which no answer is required. To the extent a response is required, SpaceX denies each and every allegation and legal conclusion contained in this paragraph.

13. SpaceX admits that, on or about June 17, 2022, Jessica Jensen had a meeting with certain SpaceX personnel. SpaceX denies each and every other allegation and legal conclusion contained in this paragraph.

14. This paragraph states a legal conclusion to which no answer is required. To the extent a response is required, SpaceX denies each and every allegation and legal conclusion contained in this paragraph.

15. This paragraph states a legal conclusion to which no answer is required. To the extent a response is required, SpaceX denies each and every allegation and legal conclusion contained in this paragraph.

16. This paragraph states a legal conclusion to which no answer is required. To the extent a response is required, SpaceX denies each and every allegation and legal conclusion contained in this paragraph.

17. This paragraph states a legal conclusion to which no answer is required. To the extent a response is required, SpaceX denies each and every allegation and legal conclusion contained in this paragraph.

18. SpaceX denies each and every allegation and legal conclusion contained in this paragraph.

19. This paragraph states a legal conclusion to which no answer is required. To the extent a response is required, SpaceX denies each and every allegation and legal conclusion contained in this paragraph.

20. SpaceX admits that, on or about July 19, 2022, Lindsay Chapman gave a confidentiality instruction to an employee about an investigation. SpaceX denies each and every other allegation and legal conclusion contained in this paragraph.

21. This paragraph states a legal conclusion to which no answer is required. To the extent a response is required, SpaceX denies each and every allegation and legal conclusion contained in this paragraph.

22. SpaceX admits that, on or about July 20, 2022, Lindsay Chapman, during an investigation, utilized screenshots of communications showing the authors' intent to wrongfully leak SpaceX documents. SpaceX denies each and every other allegation and legal conclusion contained in this paragraph.

23. SpaceX admits that, on or about July 20, 2022, Lindsay Chapman gave a confidentiality instruction to an employee about an investigation. SpaceX denies each and every other allegation and legal conclusion contained in this paragraph.

24. This paragraph states a legal conclusion to which no answer is required. To the extent a response is required, SpaceX denies each and every allegation and legal conclusion contained in this paragraph.

25. SpaceX admits that, on or about July 21, 2022, Lindsay Chapman, during an investigation, discussed communications showing the authors' intent to wrongfully leak SpaceX documents. SpaceX denies each and every other allegation and legal conclusion contained in this paragraph.

26. This paragraph states a legal conclusion to which no answer is required. To the extent a response is required, SpaceX denies each and every allegation and legal conclusion contained in this paragraph.

27. SpaceX admits that, on or about July 21, 2022, Lindsay Chapman, during an investigation, utilized screenshots of communications showing the authors' intent to wrongfully

leak SpaceX documents. SpaceX denies each and every other allegation and legal conclusion contained in this paragraph.

28. SpaceX admits that, on or about July 21, 2022, Lindsay Chapman gave a confidentiality instruction to an employee about an investigation. SpaceX denies each and every other allegation and legal conclusion contained in this paragraph.

29. This paragraph states a legal conclusion to which no answer is required. To the extent a response is required, SpaceX denies each and every allegation and legal conclusion contained in this paragraph.

30. This paragraph states a legal conclusion to which no answer is required. To the extent a response is required, SpaceX denies each and every allegation and legal conclusion contained in this paragraph.

Any and all remaining allegations and legal conclusions contained in the Complaint are denied, including but not limited to the unnumbered remedy allegations.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted, including but not limited to the non-existence of protected concerted activity in this matter.

2. Paige Holland-Thielen is a supervisor within the meaning of Section 2(11) of the Act.

3. SpaceX is a covered "carrier" as defined in the Railway Labor Act, and therefore not subject to the NLRA pursuant to 29 U.S.C. § 152(2).

4. Any finding of an unfair labor practice based in whole or in part on speech and/or views, argument, or opinion spoken or disseminated by SpaceX or its agents in any meetings, one-on-one discussions, or written or other communications constitutes an unconstitutional

infringement on the First Amendment right of freedom of speech. Under the U.S. Supreme Court's decision in *Counterman v. Colorado*, 600 U.S. 66 (2023), the First Amendment requires that, for government regulation of an alleged threat to be constitutionally permitted, the Government must demonstrate from the context of the statement that the author of the threat possessed intent to actually threaten the subject. In this case, the General Counsel has failed to plead any of the required elements required under *Counterman*, and even if the General Counsel had, the General Counsel could not prove the requisite subjective intent. As none of the alleged threats, interrogation, or communications by SpaceX rise to the level of a "true threat" under *Counterman*—a threat of actual violence—the Board must therefore prove a level of intent beyond reckless disregard, and, instead, prove an actual subjective intent to specifically coerce specific employees in their Section 7 rights. The Board's attempts to regulate SpaceX's speech therefore exceeds the constitutional limits identified by the Supreme Court in *Counterman*.

5. Any proceeding before or action by an NLRB Administrative Law Judge ("ALJ") in this matter or finding by an NLRB ALJ that SpaceX committed an unfair labor practice in this proceeding would be an unconstitutional action because the dual removal protections for NLRB ALJs violate Article II of the Constitution. These violations include, but are not limited to, an NLRB ALJ carrying out any conferences, hearings, or trial whatsoever, in the course of this case, and SpaceX being required to respond to, or litigate, the Complaint in any fashion, including but not limited to the filing of this Answer.

6. Any decision by the NLRB Board Members on review of the ALJ's final order that SpaceX committed an unfair labor practice would be an unconstitutional action under Article II given the strict protections insulating Board Members from removal by the President and the substantial executive power that Board Members exercise.

7. The NLRB Members' exercise of substantial executive power (see, e.g., 29 U.S.C. § 160(j)), combined with the Member's removal protection, also violates Article II of the Constitution.

8. Any adjudicatory proceeding to determine whether SpaceX committed an unfair labor practice violates SpaceX's Seventh Amendment right to a jury trial given the remedies sought in the Complaint. This claimed authority to award legal relief goes beyond the Board's constitutional and statutory remit to adjudicate public rights through administrative proceedings and instead seeks to vindicate private rights for the benefits of private parties. This is underscored by the charging parties' attempt to intervene in *Space Exploration Technologies Corp. v. National Labor Relations Board et al.*, Case 1:24-cv-00001 (S.D. Tex.), claiming a separate and private interest to do so.

9. Any appeal of the ALJ's order to the NLRB Board Members would violate SpaceX's constitutional due process rights if the Board Members first seek injunctive relief against SpaceX under Section 10(j) of the NLRA, 29 U.S.C. § 160(j).

10. The finding of an unfair labor practice based on the Complaint would violate SpaceX's Due Process Rights under the U.S. Constitution and other federal law as the facts alleged in the Complaint are not unfair labor practices within the meaning of the Act, and the General Counsel has delayed too long in deciding to allege SpaceX's actions as unfair labor practices.

11. The finding of an unfair labor practice, and any remedy, based on the Complaint would contravene the purposes and terms of the Outer Space Treaty, the Space Liability Convention, the Commercial Space Launch Act, Title 14 regulations, Federal Acquisition Regulations (including the Department of Defense and NASA supplements), and Federal Aviation Administration-granted Launch Licenses, and other laws and regulations, in violation of the

comity and accommodation principles set forth by *Southern Steamship Co. v. NLRB*, 316 U.S. 31 (1942).

12. No remedy is appropriate as SpaceX has not engaged in any unfair labor practice. Further, the remedies requested in the Complaint are punitive, inappropriate, non-remedial, violate SpaceX's freedom of speech and assembly rights under the First Amendment, violate the takings clause of the Fifth Amendment, and are beyond the authority of the Board to order under Section 10(c) of the Act.

13. SpaceX further reserves the right to amend and/or supplement its answers and affirmative defenses.

WHEREFORE, SpaceX respectfully requests that the Complaint be dismissed in its entirety, with prejudice.

Dated: January 24, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 24, 2024, a copy of Respondent Space Exploration Technologies Corp.'s Answer to the Complaint in NLRB Cases 31-CA-307446, 31-CA-307514, 31-CA-307525, 31-CA-307532, 31-CA-307539, 31-CA-307546, 31-CA-307551, and 31-CA-307555 was filed electronically using the NLRB's e-filing system and served by email on the following:

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