

CAUSE NO. C-1996-22-B

CARLOS MARTINEZ,
Plaintiff,

v.

SPACE EXPLORATION
TECHNOLOGIES CORP
a/k/a SPACEX,
Defendant.

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IN THE DISTRICT COURT

93rd JUDICIAL DISTRICT

HIDALGO COUNTY, TEXAS

**DEFENDANT’S ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF’S ORIGINAL PETITION,
SUBJECT TO MOTION TO COMPEL ARBITRATION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Space Exploration Technologies Corp. (“SpaceX”), Defendant in the above-styled and numbered cause, and files this its Original Answer and Affirmative Defenses (the “Answer”), Subject to Motion to Compel Arbitration,¹ in response to Plaintiff Carlos Martinez’ (“Plaintiff”) Original Petition, and would respectfully show the Court as follows:

I.

ORIGINAL ANSWER/GENERAL DENIAL

1. Subject to such stipulations and admissions as may hereinafter be made, Defendant asserts a general denial as authorized by TEX. R. CIV. P. 92, and respectfully requests that Plaintiff be required to prove the charges and allegations made against it by a preponderance of evidence as required by the Constitution and laws of the State of Texas.

¹ On or about February 23, 2020, Plaintiff entered into an “Employee Arbitration and Dispute Resolution Agreement and Class Action Waiver” (the “Arbitration Agreement”), through which he agreed to resolve claims of employment discrimination, specifically including claims pursuant to the Age Discrimination in Employment Act, arising out of or related to his employment with Defendant or the termination of such employment pursuant to final and binding arbitration. Because the claims asserted by Plaintiff in his Original Petition are subject to the terms of the parties’ Arbitration Agreement, Defendant files this Answer subject to a Motion to Compel Arbitration to be filed in the near future and without waiving Defendant’s right to compel such arbitration.

II. **AFFIRMATIVE DEFENSES**

Defendant does not admit any liability in asserting the following defenses and other matters. Without admitting liability as to any of Plaintiff's causes of action, Defendant states:

1. Pursuant to TEX. R. CIV. P. 94, Defendant affirmatively pleads that Plaintiff has failed to mitigate any damages he may have suffered as a result of Defendant's alleged actions, and, additionally and/or alternatively, that any award earned or received by Plaintiff should be offset by the amount of wages and benefits that Plaintiff has received during the period covered by the award.

2. Pursuant to TEX. R. CIV. P. 94, Defendant affirmatively pleads that Plaintiff should be denied recovery of any damages for lost wages, benefits, or similar damages during any period of time in which he was unable to work.

3. Pursuant to TEX. R. CIV. P. 54 and/or 94, Defendant affirmatively pleads that for any causes of action and/or claims pursuant to the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.* ("ADEA")² and that have not been made the subject of a timely filed Charge of Discrimination before the EEOC and/or the Texas Workforce Commission, Civil Rights Division ("TWCCRD") and/or any other governing administrative body, or for which the appropriate right-to-sue or other applicable notice has not been received, Plaintiff is barred recovery on those causes of action because of a failure to exhaust administrative remedies and/or to satisfy conditions precedent.

4. Pursuant to TEX. R. CIV. P. 94, Defendant affirmatively pleads that Plaintiff's claims for liquidated damages are precluded by Defendant's good faith efforts to comply with

² Plaintiff's Original Petition specifically asserts claims of age discrimination and retaliation pursuant to the Age Discrimination in Employment Act ("ADEA"); however, in referencing the ADEA's statutory citation, which is correctly 29 U.S.C. § 621, *et seq.*, Plaintiff cites 29 U.S.C. 12201 *et seq.* (*See* Pl.'s Orig. Pet. at 2, 4 and 5). Such statute does not exist.

the ADEA, and that Defendant had reasonable grounds to believe that its actions and/or omissions with respect to Plaintiff were in compliance with all applicable federal and state law.

5. Pursuant to TEX. R. CIV. P. 94, Defendant affirmatively pleads that Plaintiff is not entitled to damages under both ADEA and the Texas Commission on Human Rights Act (“TCHRA”), as sought in Paragraph 33(b), 33(c), 34 and the “Prayer” of Plaintiff’s Original Petition, as Plaintiff has not asserted any claims under the TCHRA and any such recovery would amount to an impermissible double recovery.

6. Pursuant to TEX. R. CIV. P. 94, Defendant affirmatively pleads that Plaintiff is not entitled to some or all of the relief requested in his pleading because, even if Defendant were found to have considered any impermissible factors in any decisions or actions with respect to Plaintiff, which Defendant denies, Defendant would have taken the same action with regard to his employment regardless of any impermissible factors.

7. Pursuant to TEX. R. CIV. P. 94, Defendant affirmatively pleads that it has in place a clear and well disseminated policy against discrimination and a reasonable and available procedure for handling complaints thereof, which provides for prompt and effective action; to the extent Plaintiff unreasonably failed to take advantage of the preventative or corrective opportunities provided by Defendant or to otherwise avoid harm, Plaintiff’s claims of discrimination are barred

III. **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendant Space Exploration Technologies Corp. prays that Plaintiff be denied all relief requested in his Original Petition, that a take-nothing judgment be entered against Plaintiff, that Defendant recover its costs and attorneys’ fees

as the prevailing party, and for such other relief, at law or in equity, both general and specific, to which it may be justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT,
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CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2022 I electronically filed the foregoing document with the Clerk of Court using the efile Texas system, which will send notification of such filing to the following counsel of record:

Mr. Daniel E. Vargas
The Vargas Law Office
324 W. University Drive
Edinburg, Texas 78539
Email: thevargaslawoffice@gmail.com

/s/**Ramon D. Bissmeyer**
Ramon D. Bissmeyer

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Sandra Young on behalf of Ramon Bissmeyer
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Status as of 6/21/2022 10:28 AM CST

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