Case No. 25-4811

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAIGE HOLLAND-THIELEN, YAMAN ABDULHAK, SCOTT BECK, REBEKAH CLARK, DEBORAH LAWRENCE, CLAIRE MALLON, TOM MOLINE, AND ANDRE NADEAU,

Plaintiffs-Appellees,

v.

SPACE EXPLORATION TECHNOLOGIES CORP.

Defendant-Appellant,

ELON MUSK

Defendant.

On Appeal from the
United States District Court for the Central District of California
Case No. 2:24-cv-06972
Hon. John A. Kronstadt

BRIEF OF AMICI CURIAE EQUAL RIGHTS ADVOCATES, THE CALIFORNIA EMPLOYMENT LAWYERS ASSOCIATION, THE CALIFORNIA WOMEN'S LAW CENTER, AND LEGAL AID AT WORK IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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INTEREST OF AMICI

Equal Rights Advocates (ERA) is a nonprofit organization based in San Francisco that has been advocating for gender justice in workplaces in California and across the country since 1974. ERA has represented plaintiffs in dozens of sexual harassment cases, including cases alleging sex discrimination based on a hostile work environment standard under both the California Fair Employment and Housing Act (FEHA) and Title VII. ERA litigated the first case in the Ninth Circuit to find that sexual harassment violates Title VII, *Miller v. Bank of America*, 600 F.2d 211 (9th Cir. 1979). In addition, ERA has appeared as *amicus curiae* in numerous federal court sexual harassment cases, including *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986), *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993), and others. ERA served as an organizational cosponsor of several legislative measures amending the harassment provisions of the FEHA. Through its Advice and Counseling program, ERA has educated hundreds of women and workers across genders regarding their legal right to be free from sexual harassment and other forms of harassment and discrimination. ERA has a strong interest in the proper application of both FEHA and Title VII to combat workplace discrimination and of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act.

The California Employment Lawyers Association (CELA) is an organization of California attorneys whose members primarily represent employees in a wide range of employment cases. CELA has a substantial interest in protecting the civil rights of all California workers, including those who are harmed by hostile workplace harassment directed at others. The organization has taken a leading role in advancing and protecting the rights of California workers, which has included submitting amicus briefs and letters and appearing before the United States Court of Appeal for the Ninth Circuit in employment rights cases such as *Chamber of Commerce of the California Trucking Ass'n v. Bonta*, 996 F.3d 644 (9th Cir. 2020); *Frlekin v. Apple, Inc.*, 870 F.3d 867 (9th Cir. 2017); *Jimenez v. Allstate Insurance Co.*, 765 F.3d 1161 (9th Cir. 2014).

The California Women's Law Center (CWLC) is a statewide, nonprofit law and policy center dedicated to advancing the civil rights of women and girls. CWLC's mission is to create a more just and equitable society by breaking down barriers and advancing the potential of women and girls through impact litigation, policy advocacy, and education. Since its inception in 1989, CWLC has placed a particular emphasis on eradicating all forms of discrimination and violence against women. CWLC's interest in robust enforcement of workplace anti-harassment laws is longstanding.

Legal Aid at Work is a non-profit public interest law firm founded in 1916 whose mission is to protect, preserve, and advance the rights of individuals from traditionally under-represented communities. LAAW has represented plaintiffs in cases of special import to communities of color, women, recent immigrants, individuals with disabilities, the LGBTQ community, and the working poor. LAAW has appeared in discrimination cases on numerous occasions both as counsel for plaintiffs, *see, e.g.*, *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002); *US Airways, Inc. v. Barnett*, 535 U.S. 391 (2002); and *California Federal Savings and Loan Ass'n v. Guerra*, 479 U.S. 272 (1987) (counsel for real party in interest), as well as in an amicus curiae capacity. *See, e.g.*, *U.S. v. Virginia*, 518 U.S. 515 (1996); *Harris v. Forklift Sys.*, 510 U.S. 17 (1993); *Int'l Union, UAW v. Johnson Controls*, 499 U.S. 187 (1991); *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986). In addition to representing workers who have experienced sexual harassment through processes with the California Civil Rights Department, in California State Courts, and in Federal Courts, LAAW has counseled hundreds of callers through its Workplace Sexual Harassment Helpline. LAAW has a strong interest in ensuring the proper application of the California Fair Employment and Housing Act and Title VII to combat workplace discrimination, and in the appropriate enforcement of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act.

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No party or counsel for any party was involved in authoring or editing this brief in whole or in part and no entity or person, aside from the *Amici Curiae*, their members, and counsel, made any monetary contribution towards the preparation and submission of this brief.

The parties to this appeal have consented to the filing of this amicus brief.

SUMMARY OF THE ARGUMENT

As the District Court found in this case, application of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA) is warranted because Plaintiffs have alleged "a dispute relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law." EFAA, 9 U.S.C. § 401(4); ER-18. Amici submit this brief to refute Defendant-Appellant's argument that some of the plaintiffs' claims are not covered by the EFAA because those plaintiffs were not the direct targets of harassment or because they are men. Appellant's Br. at 45-46. Both California courts and this Circuit have recognized that individuals may state a claim of unlawful sexual harassment based on a hostile work environment whether or not they were directly targeted by the harassment, and whether they are women or men.

In addition, a robust body of social-science research has confirmed that workplace sexual harassment can cause employees of all genders to suffer

psychological harm and can adversely affect their experience of their work environment, whether or not the harassment directly targeted them. Research has also demonstrated that an employer's failure to effectively address harassing conduct, including by ignoring or making light of complaints, can heighten employees' perception of their workplace as hostile or abusive. Further, particularly since many employees who experience workplace sexual harassment are reluctant to come forward and most harassment is never reported, penalizing employees who do complain or take steps to stop harassment is likely to deter future reporting and allow sexual harassment to persist, which seriously undermines the goals of both the California FEHA and Title VII.

ARGUMENT

I. To State a Hostile Work Environment Claim, Plaintiffs, Whether Men or Women, Need Not Be the Direct Target of the Harassment.

A plaintiff can establish unlawful sexual harassment in the form of a hostile work environment under the California FEHA, California Government Code sections 12923, 12940 (West 2025),[1] even if they have not been directly or personally targeted by the harassing conduct. "[A]n employee who is subjected to a hostile work environment is a victim of sexual harassment even though no offensive remarks or touchings are directed to nor perpetrated upon that

[1] The sexual harassment claims in this case were brought under FEHA.

employee." *Fisher v. San Pedro Peninsula Hosp.*, 262 Cal. Rptr. 842, 853 n.8 (Cal. Ct. App. 1989). California courts have repeatedly and recently reaffirmed this standard in cases where none or only some of the harassing conduct that "permeate[s]" the workplace is directed at the plaintiff. *See, e.g.*, *Thomas v. Regents of Univ. of Cal.*, 315 Cal. Rptr. 3d 623, 645 (Cal. Ct. App. 2023) ("[T]he fact that much of the harassment [plaintiff] alleged was not directed at her individually does not undermine her hostile environment claim."); *Alexander v. Cmty. Hosp. of Long Beach*, 259 Cal. Rptr. 3d 340, 363 (Cal. Ct. App. 2020) ("An employee's work environment is affected not only by conduct directed at the employee but also by the treatment of others."); *McCoy v. Pac. Mar. Ass'n*, 156 Cal. Rptr. 3d 851, 861 (Cal. Ct. App. 2013) ("There is no requirement that a plaintiff alleging such conduct be the direct target of the harassment ....").

The fact that California's Civil Jury Instructions include an explicit instruction outlining the essential factual elements of "work environment harassment" when the "conduct [is] directed at others" further confirms that plaintiffs can establish a claim for hostile work environment without being a direct target. Judicial Council of California Civil Jury Instructions (CACI) No. 2521B (2026). Specifically, the instructions refer to plaintiffs who "*although not*

personally subjected to harassing conduct, personally witnessed harassing conduct that took place in [their] immediate work environment." *Id.* (emphasis added).[2]

In assessing whether plaintiffs can establish a hostile work environment, California courts have also deemed relevant evidence of harassing conduct that does not occur directly in a plaintiff's presence, but of which they have knowledge, in addition to conduct observed. *See, e.g.*, *Carranza v. City of Los Angeles*, 332 Cal. Rptr. 3d 778, 793 (2025) (recognizing "the long-standing principle that a person can perceive, and be affected by, harassing conduct in the relevant environment by knowledge of that harassment as well as by personal observation" (internal quotations and citations omitted)); *Thomas*, 315 Cal. Rptr. 3d at 646 n.10; *Beyda v. City of Los Angeles*, 76 Cal. Rptr. 2d 547, 552 (Cal. Ct. App. 1998). While all plaintiffs in this action allege direct exposure to the harassing conduct at issue, ER-151 ¶ 22, they also had knowledge of other behavior occurring at the company, *see, e.g.*, ER-154 ¶ 31.

Like California courts interpreting the FEHA, this circuit has recognized that a plaintiff need not allege they were individually targeted by sexually harassing conduct to establish a violation of Title VII.[3] "'It is enough' ... 'if such hostile

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[2] Additionally, FEHA explicitly states that "[s]exually harassing conduct need not be motivated by sexual desire." Cal. Gov't Code § 12940(j)(4)(C) (West 2025).

[3] California courts frequently look to federal court interpretations of Title VII when interpreting similar FEHA provisions. *See, e.g.*, *Bailey v. S.F. Dist. Att'y's Off.*,

conduct pollutes the victim's workplace, making it more difficult for her to do her job, to take pride in her work, and to desire to stay on in her position.'" *Sharp v. S&S Activewear, L.L.C.*, 69 F.4th 974, 978 (9th Cir. 2023) (quoting *Steiner v. Showboat Operating Co.*, 25 F.3d 1459, 1463 (9th Cir. 1994)); *see also Reynaga v. Roseburg Forest Prods.*, 847 F.3d 678, 687 (9th Cir. 2017) ("[S]uch hostility need not be directly targeted at the plaintiff to be relevant to his or her hostile work environment claim.").

Plaintiffs in this case allege facts analogous in many ways to those in *Sharp*. In *Sharp*, the female and male plaintiffs were exposed to "sexually derogatory music" that was constantly "[b]lasted from commercial-strength speakers placed throughout the warehouse" and pervaded the workplace without being directly targeted at any individual plaintiff. *Sharp*, 69 F.4th at 977, 979. The music then "served as a catalyst for abusive conduct by male employees, who frequently pantomimed sexually graphic gestures, yelled obscenities, made sexually explicit remarks, and openly shared pornographic videos." *Id.* at 977. Here, Plaintiffs allege that Musk frequently posted vulgar, sexual, and demeaning gender-based content on a Twitter (now X) account he used for both personal and company

552 P.3d 433, 442 (Cal. 2024) ("In interpreting these provisions, California courts often look for guidance in decisions construing federal antidiscrimination laws, including title VII of the Civil Rights Act of 1964.").

announcement purposes that permeated the workplace in such a way and to such an extent that workers could not escape it. ER-151-53 ¶¶ 22-27. And like in *Sharp*, these posts encouraged similar behavior by company employees. ER-153 ¶ 28. This type of language also filled the day-to-day operations of many SpaceX workers as euphemisms for genitals, sex, and sex toys were used to refer to mechanical parts and products. ER-153 ¶ 29. That these posts and some of the conduct within the workplace did not directly reference or target certain plaintiffs does not undercut their ability to state a hostile work environment claim.

Men whose workplace is permeated by harassing conduct can experience the workplace as offensive, intimidating and/or abusive and can make out a claim for hostile work environment if the requisite elements are met. *See Sharp*, 69 F.4th at 982 ("As a practical matter, it should be no surprise that sexually charged conduct may simultaneously offend different genders in unique and meaningful ways .... Thus, in general terms, a male employee may bring a hostile work environment claim alongside female colleagues."). Even if the content is "particularly demeaning toward women" such as the music in *Sharp* that "denigrated women and used offensive terms like 'hos' and 'bitches'" and "described extreme violence against women," it can be offensive to men. *Id.* at 977. Both men and women can find offensive and unwelcome behavior that "create[es] an atmosphere that is demeaning to women" and on that basis "establish a hostile work environment ...

regardless of whether any objectionable conduct is directed at them ....” *Miller v. Dep’t of Corr.*, 115 P.3d 77, 89 (Cal. 2005) (citation omitted).

Our societal and legal understanding of sexual harassment has evolved to recognize the way that hostile work environments can be experienced by employees of all genders. *See, e.g.*, *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 78-80 (1998). Employees of any gender whose workplace has devolved into a hostile environment due to severe or pervasive gender-based harassment, whether directed at them or not, should and do have legal recourse under FEHA and Title VII.

The EFAA provides that “at the election of the person alleging conduct constituting a sexual harassment dispute ... no predispute arbitration agreement . . . shall be valid or enforceable with respect to a case which ... relates to [... a] sexual harassment dispute.” 9 U.S.C. § 402(a). Plaintiffs in this case, including the male plaintiffs, allege that they were subjected to a hostile environment at work – a basis for establishing unlawful sexual harassment that is explicitly articulated in the FEHA, California Government Code section 12923(a) (West 2025), and supported by decades of case law interpreting Title VII, *see Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986). This Court should affirm the District Court’s decision and permit all plaintiffs alleging a hostile work environment to pursue their claims in court.

II. Social Science Research Confirms That Employees Who Are Exposed to Workplace Sexual Harassment Often Suffer Significant Harm, Whether or Not They, or Other Members of Their Sex, Are Directly Targeted.

Courts' recognition of the fact that employees of both sexes can state a viable sexual harassment hostile environment claim even if they were not directly targeted is supported by decades of social science research. Numerous peer-reviewed studies of workplace harassment have demonstrated that both female and male employees suffer harm[4] from sexual harassment in their workplace that is not targeted at them and that it impacts their experience of their workplace. In a foundational study, researchers probed the effects of "ambient sexual harassment" on "job-related, psychological, and health outcomes" within a work group.[5] The types of sexual harassment studied included "gender harassment," described as "offensive, misogynist, degrading remarks and behavior not intended to elicit

[4] While many of the studies discussed in this section assess psychological harm, it is well-established that under both Title VII and FEHA, severe or pervasive conduct need not cause psychological injury for plaintiff to state a hostile work environment claim. *See Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 22 (1993) ("A discriminatorily abusive work environment, even one that does not seriously affect employees' psychological well-being, can and often will detract from employees' job performance, discourage employees from remaining on the job, or keep them from advancing in their careers."); *Carranza*, 332 Cal. Rptr. 3d at 788 ("The standard for workplace harassment claims strikes a 'middle path between making actionable any conduct that is merely offensive and requiring the conduct to cause a tangible psychological injury.'" (internal citations omitted)).

[5] Theresa M. Glomb et al., *Ambient Sexual Harassment: An Integrated Model of Antecedents and Consequences*, 71 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 309, 314 (1997).

sexual cooperation."[6] The results indicated that even among subjects who never were targets of direct sexual harassment, indirect exposure to sexual harassment in their work group had "severe negative outcomes,"[7] including both increased psychological distress and reduced job satisfaction.[8]

Recent studies report similar results. One such study reported that "[t]he impact of [sexual harassment in the workplace] affects not only the direct victims, but also the witnesses ... who live in a climate characterized by these dysfunctional behaviors."[9] In another study, "observed hostility toward women was significantly correlated with psychological well-being, job satisfaction, burnout, job withdrawal, and affective commitment for all participants [both men and women]."[10]

Researchers have found that men, like women, suffer the harmful consequences of experiencing and witnessing sexually harassing conduct in the

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[6] *Id.* at 316.

[7] *Id.* at 322.

[8] *Id.* at 318.

[9] Daniela Acquadro Maran et al., *Sexual Harassment in the Workplace: Consequences and Perceived Self-Efficacy in Women and Men Witnesses and Non-Witnesses*, BEHAV. SCIS., Sept. 8, 2022, at 2.

[10] Kathi Miner-Rubino & Lilia M. Cortina, *Beyond Targets: Consequences of Vicarious Exposure to Misogyny at Work*, 92 J. APPLIED PSYCH. 1254, 1260 (2007).

workplace.[11] For men, "experiencing gender harassment" (including "hostile behaviors, insults, and/or degrading attitudes that are gendered in nature" such as "making deprecating jokes about women or men or using offensive gendered terms") "predicted lower psychological well-being" and "decreased job satisfaction."[12] Just as for women, these effects extend to those who are not directly targeted by such harassment. In another study, researchers found that "ambient sexual harassment [of women in the workgroup] has severe negative effects on job-related outcomes and psychological conditions for men" in addition to women.[13] Likewise, a different study reported that, "the more that both male and female employees observed uncivil and sexually harassing behavior directed toward female coworkers, the lower their psychological well-being and job

[11] While the foundational study on ambient sexual harassment included only women subjects, the study's authors pointed out that while a male employee may not experience sexual harassment of women in exactly the same way a woman employee does, male employees may experience distress in other ways, such as feeling powerless to stop the harassment or "fear of being perceived as similar to the harasser and[/or] a contributor to the sexually harassing environment." Glomb et al., *supra* note 5, at 325-26.

[12] Kathryn J. Holland et al., *Sexual Harassment Against Men: Examining the Roles of Feminist Activism, Sexuality, and Organizational Context*, 17 PSYCH. MEN & MASCULINITY 17, 18, 22 (2016).

[13] Wendy L. Richman-Hirsch & Theresa M. Glomb, *Are Men Affected by the Sexual Harassment of Women? Effects of Ambient Sexual Harassment on Men*, *in* The Psychology of Work: THEORETICALLY BASED EMPIRICAL RESEARCH 121, 133-34 (Jeanne M. Brett & Fritz Drasgow eds., 2002).

satisfaction."[14] Notably, "the extent to which working in a misogynistic context affect[ed] well-being" did not differ between men and women.[15] These effects on well-being, while not differing by gender, were notably largest in male-dominated workplaces[16] such as the one in which the plaintiffs worked at SpaceX.[17]

This robust social science literature affirms that both female and male employees, like Plaintiffs, may suffer substantial harmful effects from a workplace replete with gender-based harassment, whether or not it is directed targeted at them specifically. This court should not disregard these significant potential impacts.

III. An Employer's Failure to Respond Effectively to Harassing Conduct Heightens Employees' Perception of Their Work Environment as Hostile.

An employer's inadequate or inappropriate response to complaints of sexual harassment can significantly enhance employees' perception that their workplace is

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[14] Miner-Rubino & Cortina, *Beyond Targets*, *supra* note 10, at 1264.

[15] Kathi Miner-Rubino & Lilia M. Cortina, *Working in a Context of Hostility Toward Women: Implications for Employees' Well-Being*, 9 J. OCCUPATIONAL HEALTH PSYCH. 107, 118 (2004); *see also* Miner-Rubino & Cortina, *Beyond Targets*, *supra* note 10, at 1264 ("[O]bserving–perceiving the mistreatment of women in the workplace affects men and women similarly.").

[16] Miner-Rubino & Cortina, *Working in a Context of Hostility*, *supra* note 15, at 117-18.

[17] *See* ER-169 ¶ 95 (referring to a department that "did not have any women"); *What the SpaceX launch was missing*, SAN DIEGO TRIBUNE (Feb. 15, 2018), https://www.sandiegouniontribune.com/2018/02/15/what-the-spacex-launch-was-missing/ ("A report from 2016 found that only 14 percent of employees at SpaceX are women.").

a "hostile, intimidating, offensive, oppressive, or abusive"[18] one. When supervisors brush off complaints or fail to discipline wrongdoers, this enhances stress, exacerbates harm, and may increase fears of future harassment, thus increasing an employee's negative perception of their workplace.[19] Plaintiffs allege they made numerous, unsuccessful attempts to encourage managers to address the prevalent and disturbing sexual harassing conduct at the company. ER-178 ¶ 143. Yet SpaceX managers repeatedly demonstrated their unwillingness or inability to address the problem, and a refusal to take the complaints seriously. ER-158 ¶ 48. Plaintiffs allege, for example, that in one meeting in which employees expressed concerns about "unchecked" sexual harassment, Falcon Vice President Jon Edwards dismissively told them there was nothing management could do about the sexual conduct and "if [employees] could not tolerate the existing environment in the workplace, they should leave and find employment elsewhere." ER-158 ¶ 48. They also allege that HR Director Chapman responded to employee concerns by making "wholly inappropriate jokes, such as: 'I've never been sexually harassed; I must not be hot enough.'" ER-160 ¶ 57.

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[18] CACI No. 2521A (2026); *Carranza*, 332 Cal. Rptr. 3d at 787 (quoting jury instructions).

[19] *See* Lilia M. Cortina & Maira A. Arbequina, *Putting People Down and Pushing Them Out: Sexual Harassment in the Workplace,* 8 ANN. REV. ORGANIZATIONAL PSYCH. & ORGANIZATIONAL BEHAV. 285, 295-96 (2021); Miner-Rubino & Cortina, *Beyond Targets*, *supra* note 10, at 1260.

According to the complaint, SpaceX management also gave employees reason to expect that if they complained of specific types of sexual harassment, management would side with the harasser. In response to an article reporting on SpaceX's settlement of an ex-flight attendant's claim of unwelcome sexual advances by Musk (including "asking her to 'do more' during a massage, exposing his penis to her, and offering to buy her a horse in exchange for his desired sexual favors"), President Gwynne Shotwell "issued a company-wide email supporting Musk and insisting that the anonymous complainant was lying," and Musk made fun of the allegations and demeaned the complainant. ER-155 ¶¶ 33-35.

This Court has recognized that an employer's response can amplify the sense of hostility in the workplace. In *Okonowsky v. Garland*, 109 F.4th 1166 (9th Cir. 2024), this Court analyzed the hostile work environment claim of a prison psychologist who had discovered a co-worker's Instagram page, widely followed by other co-workers, that contained graphic posts that were "suggestive of rape and physical harassment, and depicted scenes of violence" against women in general and the plaintiff. *Id.* at 1172-73. When the plaintiff complained to supervisory employees and HR staff, they admonished her for lacking a sense of humor and indicated they also found the content amusing. *See id.* at 1173-74. This Court held that "[a] reasonable juror could also conclude that the Bureau's lackluster response to Okonowsky's complaint 'reinforced rather than remediated' [the page creator's]

sexually harassing conduct, cementing the discriminatory effect of his behavior within the workplace." *Id.* at 1182 (citation omitted).

A substantial body of social science research demonstrates that "organizational tolerance" can compound the harm of the underlying harassment. The shared belief among employees that their employer does not take sexual harassment seriously, that it is risky (and futile) to complain, and that there are few or no meaningful sanctions for perpetrators both adds to the stress and adverse emotional consequences of harassment and, separately, increases the employees' negative feelings about their job and work environment.[20] This "institutional betrayal" is in turn associated with higher levels of "anxiety ... and other trauma-related outcomes" for affected employees.[21] Moreover, an organization's culture of

[20] *See, e.g.*, Charles L. Hulin et al., *Organizational Influences on Sexual Harassment*, *in* SEXUAL HARASSMENT IN THE WORKPLACE 127, 134, 145-46 (Margaret S. Stockdale ed., 1996) ("[T]he realization that a lack of organizational sanctions for harassing behavior reflects the dominant values of the organization may lead directly to job stress and other negative outcomes whether or not the focal employee is herself a target of harassment."); Miner-Rubino & Cortina, *Beyond Targets*, *supra* note 10, at 1258, 1260, 1264 (finding that "perceived organizational unresponsiveness to sexual harassment" is "related to lower job satisfaction" as well as lower psychological well being and higher burnout).

[21] Carly Parnitzke Smith & Jennifer J. Freyd, *Institutional Betrayal*, 69 AM. PSYCH. 575, 578 (2014).

tolerance for sexual harassment "has been the best single predictor of the incidents of [sexual harassment] in organizations."[22]

It is particularly noteworthy in this case that not only were managers at SpaceX failing to respond effectively to alleged harassment, but the harassing conduct was being perpetrated by CEO and owner Elon Musk–from the very top of the company. Research has indicated that "if a leader ... identifies sexual harassment prevention as an issue the [workplace] prioritizes, ... this stance will push other people in the organization to take it seriously as well."[23] Plaintiffs had the exact opposite experience. The fact that the CEO was himself engaging in pervasive gender-based harassment, which allegedly encouraged other employees to follow suit, could understandably have heighted Plaintiffs' perception of their work environment as "hostile, intimidating, offensive, oppressive, or abusive."[24]

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[22] Chelsea R. Willness et al., *A Meta-Analysis of the Antecedents and Consequences of Workplace Sexual Harassment*, 60 PERSONNEL PSYCH.127, 134, 143 (2007).

[23] Chloe Hart et al., *Study: When Leaders Take Sexual Harassment Seriously, So Do Employees*, HARVARD BUS. REV. (Dec. 14, 2018), https://hbr.org/2018/12/study-when-leaders-take-sexual-harassment-seriously-so-do-employees.

[24] CACI No. 2521A; *Carranza*, 332 Cal. Rptr. 3d at 787 (quoting jury instructions).

IV. Penalizing Employees Who Complain About Sexual Harassment Fundamentally Undermines the Goal of Reducing and Preventing Workplace Sexual Harassment.

Workplace sexual harassment is a pervasive and insidious problem in America. The fact that it often exists in the shadows enables it to persist. Despite growing public recognition of the problem, workplace sexual harassment remains extremely under-reported. The vast majority of sexual harassment victims neither formally nor informally report misconduct.[25] Employees choose not to report for various reasons, such as justified fears of employer inaction, reputational harm, or fear of retaliation.[26] Fear of retaliation is a common reason employees choose not to report.[27]

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[25] Fewer than one-third of harassment victims report the harassment to a supervisor, manager, or union representative and only 6% to 13% of harassment victims file a formal complaint. U.S. EQUAL EMP. OPPORTUNITY COMM'N, SELECT TASK FORCE ON THE STUDY OF SEXUAL HARASSMENT IN THE WORKPLACE: REPORT OF CO-CHAIRS CHAI R. FELDBLUM & VICTORIA A. LIPNIC 16 (2016); *see also* Chloe Grace Hart, *The Penalties for Self-Reporting Sexual Harassment*, 33 GENDER & SOC'Y 534, 536 (2019) ("Only 5-30 percent of those who experience sexual harassment file formal complaints within their organizations, and less than 1 percent pursue legal action.").

[26] *See* U.S. EQUAL EMP. OPPORTUNITY COMM'N, *supra* note 25, at 16; Hart, *supra* note 25, at 536 ("[T]argets may opt not to report for other reasons: they do not believe that anything will be done, anticipate being blamed, or fear retaliation."); NAT'L ACADS. OF SCI., ENG'G & MED., SEXUAL HARASSMENT OF WOMEN 80-81 (2018).

[27] *See* U.S. EQUAL EMP. OPPORTUNITY COMM'N, *supra* note 25, at 16.

Both FEHA and Title VII explicitly prohibit retaliation for speaking out against or opposing sexual harassment at work. *See* Cal. Gov't Code § 12940(h) (West 2025); 42 U.S.C. § 2000e-3. Reporting can benefit both the sexual harassment victim and society at large. When those who do come forward are met with significant and/or public adverse consequences as a result, the employer reinforces a culture of silence, deterring future reporting by that employee and others.[28] SpaceX's alleged retaliatory termination of Plaintiffs for opposing sexual harassment (both by speaking with management and by posting the Open Letter) represents a dangerous step backwards in a broader effort to combat sexual harassment in the workplace. ER-156-59 ¶¶ 40-49. It reinforces the fear of serious retaliation, deters reporting, and contravenes the fundamental purposes of laws such as FEHA and Title VII to provide workers a right to workplaces free of sexual harassment and other gender-based discrimination. *See Miller*, 115 P.3d at 96-97 ("The FEHA's stricture against retaliation serves the salutary purpose of

[28] *See* M. Sandy Hershcovis et al., *See No Evil, Hear No Evil, Speak No Evil: Theorizing Network Silence Around Sexual Harassment*, 106 J. APPLIED PSYCH. 1834, 1841 (2021) ("The persistence of sexual harassment occurs as a result of network silence because: (a) network members, including authority figures within the network, do not take steps necessary to stop harassment or prevent it from recurring; (b) victims are not supported and, in fact, are often punished when they speak out (e.g., blaming them, accusing them of lying, failing to protect them from retaliation); and (3) perpetrators suffer no meaningful consequences for their actions (e.g., they are given a 'slap on the wrist,' they retain their position and status, people continue to work and remain friendly with them).").

encouraging open communication between employees and employers so that employers can take voluntary steps to remedy FEHA violations, a result that will be achieved only if employees feel free to make complaints without fear of retaliation.") (internal citation omitted); *Passantino v. Johnson & Johnson Consumer Prods., Inc.*, 212 F.3d 493, 506 (9th Cir. 2000) ("The purpose of Title VII's anti-retaliation provision is to bar employers from taking actions which could have 'a deleterious effect on the exercise of these rights by others.'") (internal citations omitted).

Employees should be encouraged to speak up against sexual harassment in their work environments, not penalized for doing so, as provided under established law.

CONCLUSION

Both female and male Plaintiffs in this action allege they were subjected to sexual harassment that created a hostile work environment for them at SpaceX and set forth numerous facts in the complaint to support their claims. Courts—and California's model jury instructions—have consistently recognized hostile environment claims by individuals who were not the direct targets of the harassment they challenge. Moreover, substantial research supports the contention that employees who are exposed to significant sexual harassment, even if they were not directly targeted by it, may experience their work environment as hostile

or abusive as a result, and that their perception of the environment as hostile may be heightened if the employer's response is dismissive or otherwise inadequate, as alleged in this case. The purpose of the Ending Forced Arbitration Act is to enable victims of sexual harassment to seek redress without being forced into closed-door proceedings that are often stacked against them with no public accountability. This court should allow all plaintiffs in this action to have their day in court.

Dated: February 24, 2026

Respectfully Submitted,

s/ Maha Ibrahim

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 25-811.

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