

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED
CIVIL INTAKE

2011 JUN 14 PM 3:55

JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

SPACE EXPLORATION TECHNOLOGIES)
CORP.,)

Plaintiff,)

v.)

VALADOR, INC.,)

SERVE: Valador, Inc.)
c/o Richard Kaplan)
Registered Agent)
560 Herndon Parkway)
Suite 300)
Herndon, VA 20170)

2011-08756

CIVIL ACTION NO. _____

And)

JOSEPH FRAGOLA,)

SERVE: Joseph Fragola)
3466 Ocean Avenue)
Oceanside, NY 11572)

Defendants.)

COMPLAINT AND JURY DEMAND

Plaintiff Space Exploration Technologies Corp. ("SpaceX"), by and through its undersigned counsel, states as its Complaint against Defendants Valador, Inc. ("Valador") and Joseph Fragola ("Fragola"):

PARTIES

1. SpaceX is a privately owned Delaware corporation headquartered in Hawthorne, California in the business of launching satellites, cargo, and crew into space. Among other

things, SpaceX is the designer, manufacturer, and provider of a low-cost, highly-reliable commercial launch rocket called the "Falcon 9" and a spacecraft capable of carrying cargo and potentially crew carriage called the "Dragon." SpaceX is a party to a federal "Space Act Agreement" with NASA for the design and development of the Falcon 9-Dragon system to ferry cargo to the International Space Station ("ISS"). SpaceX also has a federal contract with NASA for a series of operational cargo resupply missions to the ISS using the Falcon 9-Dragon. With the imminent retirement of the Space Shuttle, SpaceX recently won an award from NASA to continue developing key elements of a Falcon 9-Dragon system for manned flights, and plans to compete in the coming months for opportunities to ferry astronauts to the ISS.

2. Valador is a Delaware corporation headquartered in Herndon, Virginia. Valador holds itself out as a provider of technical services to the aerospace community.

3. Fragola is a citizen of New York and an employee of Valador who works at Valador's office in Rockville Centre, New York. He purports to hold the title of "Vice President" of Valador.

RELEVANT FACTS

4. **The Falcon 9 Rocket.** As a pathfinder to its Falcon 9 launch vehicle, SpaceX initially developed and successfully launched the "Falcon 1," a two-stage liquid fueled rocket to launch commercial payloads into low Earth orbit. SpaceX then developed and successfully launched the "Falcon 9," a larger two-stage rocket, and the "Dragon," a spacecraft designed to carry cargo and crew into space.

5. The Falcon 9 rocket has launched twice – both times successfully, having two nearly-perfect flights in its first two attempts. Both launches were broadcast live on the Internet, and received worldwide acclaim for their successes.

6. On the second flight of Falcon 9 in December 2010, the rocket successfully placed the Dragon spacecraft into orbit. As planned, the Dragon twice orbited the Earth, demonstrated its communication and control capabilities, then de-orbited and splashed down to a pinpoint water landing off of the California coast. It was the first time in history that a commercial spacecraft orbited the Earth and returned safely to the surface.

7. SpaceX's public manifest for the Falcon 9 rocket extends many years into the future, with both Government and commercial launch payloads for a variety of customers.

8. **SpaceX's Contracts.** Among other things, SpaceX is a party to a Space Act Agreement with NASA, under a program called Commercial Orbital Transportation Services ("COTS"), to develop a commercially viable, domestic end-to-end solution for cargo carriage to the ISS.

9. Separately, SpaceX has a federal contract with NASA for a series of operational cargo resupply missions to the ISS using the Falcon 9-Dragon system. This contract is known as the ISS Resupply Contract.

10. NASA has publicly announced intentions that, later in 2011, it aims to hold a competition for the next-generation spacecraft to ferry astronauts to the ISS. SpaceX, which recently won an award from NASA to continue developing key elements of a Falcon 9-Dragon system for manned flights, is expected to be one of the primary competitors for that contract. SpaceX designed the Dragon to be upgraded with systems that will allow it to carry human passengers.

11. SpaceX competes worldwide for business from satellite operators requiring launch services for their satellites. For instance, Iridium – a satellite operator headquartered in

Ashburn, Virginia – has contracted to launch a new constellation of dozens of satellites on a fleet of eight or more Falcon 9 rockets later this decade.

12. For all of its business with NASA, commercial customers, and other entities, SpaceX relies on a sterling and pristine reputation. When rockets launch, the risk and cost of failure is significant. SpaceX has been chosen by its customers, and will be chosen by future customers, because those customers can fully trust in SpaceX's personnel, rockets, and spacecrafts.

13. **Defendants' False Statements.** Fragola purports to be an expert on rocket and spacecraft flight safety. On information and belief, he and/or his employer, Valador, have provided services to SpaceX's main competitors for commercial launch services and federal contracts, including the competitors who may be competing in the coming months for NASA manned spaceflight opportunities.

14. Early in June 2011, on behalf of Valador, Fragola attempted to obtain a consulting contract from SpaceX worth as much as \$1 million. He claimed that SpaceX needed an "independent" analysis of its rocket to bolster its reputation with NASA based on what he called an unfair "perception" about SpaceX. SpaceX did not respond favorably to Fragola's offer.

15. SpaceX subsequently learned that Fragola – within the scope of his employment at Valador, and by using his email account at Valador – has been contacting officials in the United States Government to make disparaging remarks about SpaceX, which have created the very "perception" that he claimed SpaceX needed his help to rectify.

16. For instance, in an email he wrote on June 8, 2011, to Bryan O'Connor, a NASA official at NASA's headquarters in Washington, D.C., Fragola falsely stated: "I have just heard a rumor, and I am trying now to check its veracity, that the Falcon 9 experienced a double engine

failure in the first stage and that the entire stage blew up just after the first stage separated. I also heard that this information was being held from NASA until SpaceX can 'verify' it."

17. Fragola knew and expected that his statements to NASA would be forwarded within the Government to other persons and entities, including the Aerospace Advisory Panel ("ASAP"), which among other things investigates safety and design issues of rockets.

18. Fragola's statements are blatantly false, and as a purported "expert" in the industry, he should have known that the statements were false and that he should not have relied on admittedly unsubstantiated "rumors."

19. First, there was no "double-engine" failure (nor even a single engine failure). As planned, two of the nine first-stage engines shut down automatically ten seconds before the first stage shut down.

20. Second, the first stage did not "blow up" after separation from the second stage and spacecraft. The launch was broadcast by a camera on the Dragon spacecraft, which vividly showed the separation of the first stage – and no explosion occurred. Furthermore, the first stage was, at all times, tracked by ground telemetry including by NASA. No systems observed any "explosion" of the first stage. As an "expert," Fragola should have known the notion of the first stage "blowing up" was abjectly untrue.

21. Finally, SpaceX is not withholding any information from NASA. NASA officials were present with SpaceX controllers in the control center during the flight, and thus saw in real time all of the telemetry information SpaceX controllers saw. SpaceX then provided extensive post-flight debriefings to NASA, including telemetry analysis. If any of the foregoing events claimed by Fragola had occurred, then NASA would have known as soon as SpaceX did.

22. On information and belief, even after being informed that his statements were false, Fragola has continued to contact U.S. Government officials spreading false information about the second Falcon 9 flight.

23. **Damage to SpaceX.** Notwithstanding the complete falsity of his statements, Fragola's statements and repeated suggestions of technical problems have generated an adverse reaction within the Government. His purported factual statements, while false, have caused and will continue to cause damage to SpaceX's reputation in the Government and aerospace community. Allegations of unreported anomalies, cover-ups, and equipment failures during launch are serious matters that can cause a company like SpaceX to lose existing business quickly, and can disadvantage it in highly competitive opportunities for future business.

24. SpaceX has suffered monetary loss, and will continue to suffer loss, by Fragola's false statements. SpaceX will have to commit significant resources in the future to undue the damage to its reputation caused by Fragola's false statements, and to reestablish the sterling reputation that it has deservedly earned to date.

25. Fragola's statements were within the scope of his employment at Valador, and were made at least in part to serve the interests of Valador. Furthermore, any person who received Fragola's communications would have reasonably understood that Fragola was communicating on behalf of Valador.

COUNT I

(DEFAMATION OR LIBEL)

26. SpaceX incorporates by reference the allegations contained in paragraphs 1-25 of this Complaint as if set forth in their entirety.

27. Fragola and Valador made false and defamatory statements as alleged herein concerning SpaceX and published these statements in writing without privilege to third parties. These third parties included, but were not limited to, SpaceX's customers.

28. Fragola and Valador made the false and defamatory statements with knowledge that the statements would foreseeably be republished by the third parties.

29. The false and defamatory statements were objectively false in light of the full facts available to Fragola and Valador. Because of the limited facts and circumstances provided to the readers of the statements, the statements tended to injure SpaceX's trade or business.

30. Fragola and Valador's false and defamatory statements have caused and will continue to cause actual damage to the trade or business of SpaceX – a for-profit corporation – including without limitation, pecuniary loss from harm to its good commercial reputation among those in the industry and deterrence of customers; loss of goodwill; interference with and damage to its relationships with its customers; and costs of restoring its reputation and goodwill (hereinafter "Pecuniary and Property Damage").

31. Fragola and Valador made the foregoing false and defamatory statements against SpaceX with knowledge of their falsity, with intentional or reckless disregard for the truth or falsity thereof, and/or with a high degree of awareness of the probable falsity.

32. Fragola and Valador knew such false and defamatory or libelous statements disparaged the quality of SpaceX's business and its reputation, and intended these statements to cause SpaceX Pecuniary and Property Damage.

33. Fragola and Valador's false and defamatory or libelous statements actually and proximately caused damage to SpaceX.

34. Fragola and Valador are liable to SpaceX for this damage in an amount to be determined at trial.

35. Valador is also vicariously liable for Fragola's liabilities. Fragola had actual authority to send the communications using his Valador email account. Fragola also had apparent authority to send those emails on behalf of Valador, as would have been reasonably understood by the recipients of those communications.

COUNT II

(DEFAMATION OR LIBEL PER SE)

36. SpaceX incorporates by reference the allegations contained in paragraphs 1-35 of this Complaint as if set forth in their entirety.

37. Fragola and Valador made statements as alleged herein concerning SpaceX's alleged misconduct that were defamatory on their face, including the false statement that SpaceX was withholding information from NASA, and published these statements in writing without privilege to third parties. These third parties included, but were not limited to, SpaceX's customers.

38. Fragola and Valador made the false and defamatory statements with knowledge that the statements would foreseeably be republished by the third parties.

39. The false and defamatory statements had a natural and probable defamatory effect on the reader as to SpaceX's business and trade without the necessity of explanatory matter, and accordingly, Fragola and Valador's false and defamatory statements are defamatory or libelous per se.

40. Fragola and Valador's false and defamatory statements have caused and will continue to cause actual damage to the trade or business of SpaceX – a for-profit corporation – including without limitation, Pecuniary and Property Damage.

41. Fragola and Valador made the foregoing false and defamatory or libelous statements against SpaceX with knowledge of their falsity, with intentional or reckless disregard for the truth or falsity thereof, and/or with a high degree of awareness of the probable falsity.

42. Fragola and Valador knew such false and defamatory or libelous statements disparaged the quality of SpaceX's business and its reputation, and intended these statements to cause them Pecuniary and Property Damage.

43. Fragola and Valador's false and defamatory or libelous statements actually and proximately caused damage to SpaceX.

44. Fragola and Valador are liable to SpaceX for this damage in an amount to be determined at trial.

45. Valador is also vicariously liable for Fragola's liabilities. Fragola had actual authority to send the communications using his Valador email account. Fragola also had apparent authority to send those emails on behalf of Valador, as would have been reasonably understood by the recipients of those communications.

JURY DEMAND

SpaceX herein demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, SpaceX prays for and moves this Court to enter a judgment in SpaceX's favor and against Defendants, and award SpaceX damages in the amount of at least \$1,000,000.00, and in addition any costs or other fees to which SpaceX may be entitled.

Dated: June 14, 2011

SPACE EXPLORATION
TECHNOLOGIES CORPORATION

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