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7 Attorneys for All Plaintiffs

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11

12
13 Robert M. Nelson, William Bruce
Banerdt, Julia Bell, Josette Bellan,
14 Dennis V. Byrnes, George Carlisle, Kent
Robert Crossin, Larry R. D'Addario,
15 Riley M. Duren, Peter R. Eisenhardt,
Susan D.J. Foster, Matthew P.
Golombek, Varoujan Gorjian, Zareh
16 Gorjian, Robert J. Haw, James Kulleck,
Sharon L. Laubach, Christian A.
17 Lindensmith, Amanda Mainzer, Scott
Maxwell, Timothy P. McElrath, Susan
18 Paradise, Konstantin Penanen, Celeste
M. Satter, Peter M.B. Shames, Amy
19 Snyder Hale, William John Walker and
Paul R. Weissman,

20
21 Plaintiffs,

22 v.

23 National Aeronautics and Space
Administration, an Agency of the United
24 States; Michael Griffin, Director of
NASA, in his official capacity only;
25 Department of Commerce; Carlos M.
Gutierrez, Secretary of Commerce, in his
26 official capacity only; California Institute
of Technology; and Does 1-100,
27

28 Defendants.

Case No. CV-07-05669 ODW(VBKx)

[Assigned to the Honorable Otis D.
Wright II - Courtroom 11]

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
CLASS CERTIFICATION;
MEMORANDUM OF POINTS AND
AUTHORITIES AND
DECLARATION IN SUPPORT
THEREOF**

Complaint Filed: August 30, 2007

Date: January 7, 2008
Time: 1:30 p.m.
Dept: 11

1 **TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:**

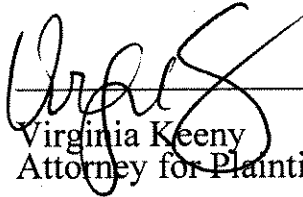
2 **PLEASE TAKE NOTICE** that on January 7, 2008 at 1:30 p.m., or as soon as
3 thereafter as the matter may be heard, before the Honorable Otis D. Wright, United
4 States District Court, Central District of California, 312 N. Spring Street, Los Angeles,
5 Plaintiffs will move the Court, pursuant to Rule 23 of the Federal Rules of Civil
6 Procedure, for an Order certifying a Plaintiff class defined as follows:

7 All current and future employees or subcontractors of the California
8 Institute of Technology hired to work at the Jet Propulsion Laboratory, or
9 required to have physical or electronic access to that laboratory, who hold
10 "non sensitive" or low risk positions, and are required to complete OPM
11 Standard Form 85 and submit to a background investigation as set forth in
12 NASA Interim Directive 1600.1.

13 This motion is based upon this Notice of Motion, Plaintiffs' Memorandum of Law, the
14 attached Declarations and Exhibits, the pleadings and other documents on file, and all
15 other written or oral arguments that may be presented to the Court.

16 Dated:

Respectfully submitted,

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21 Virginia Keeny
22 Attorney for Plaintiffs
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MEMORANDUM OF LAW

I. INTRODUCTION

By this motion, Plaintiffs respectfully request that this Court certify the following class for injunctive and declaratory relief pursuant to Federal Rule of Civil Procedure 23(b)(2):

All current and future employees or subcontractors of the California Institute of Technology hired to work at the Jet Propulsion Laboratory, or required to have physical or electronic access to that laboratory, who hold “non sensitive” or low risk positions, and are required to complete OPM Standard Form 85 and submit to a background investigation as set forth in NASA Interim Directive 1600.1.

It is well-established that injunctive relief actions like this one are appropriate for class certification and many courts, including those in the Ninth Circuit, have approved injunctive relief classes under similar circumstances. *See, e.g. Dukes v. Wal-Mart*, 474 F.3d 1214, 1233-34 (9th Cir. 2007); *Molski v. Gleich*, 318 F.3d 937 (9th Cir. 2003).

Rule 23(b)(2) authorizes certification where the “party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.” Fed.R.Civ. Proc. 23(b)(2). In order to qualify for certification for injunctive or declaratory relief pursuant to Rule 23(b)(2), the party seeking class certification must make a prima facie showing that each of the prerequisites set forth in Rule 23(a) has been satisfied, i.e., (1) numerosity; (3) commonality; (3) typicality; and (4) adequacy of representation. *See, e.g. Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). The class must also be “ascertainable.” A class is sufficiently defined “(i.e., ascertainable) if it is “administratively feasible for the court to determine whether a particular individual is a member.” *O’Connor v. Boeing North American*,

1 *Inc.*, 184 F.R.D. 311, 319 (C.D. Cal. 1998)(class definition must be “precise, objective
2 and presently ascertainable”).

3 In deciding whether to certify a class under Rule 23, an inquiry regarding “the
4 merits of the claims is [generally] inappropriate.” 7A Charles Alan Wright, Arthur R.
5 Miller & Mary Kay Kane, *Federal Practice and Procedure: Civil 2D* § 1759 (2006); *see*
6 *also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-178 (1974); *Valentino v. Carater-*
7 *Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996).

8 This action readily satisfies the requirements for class certification under Rule
9 23(b)(2): 1) the Class, which plaintiffs believe numbers in the thousands, is so numerous
10 that joinder of all members would be impracticable (Fed. R. Civ. P. 23(a)(1)); 2) there
11 are questions of law and fact that are common to the members of the Class (Fed. R. Civ.
12 P. 23(a)(2); 3) the claims asserted by the representative plaintiffs are typical of the claims
13 of all class members (Fed. R. Civ. P. 23(a)(3)); and 4) plaintiffs and their counsel will
14 fairly and adequately represent the interests of the Class (Fed. R. Civ. P. 23(a)(4)).

15 Rule 23(b)(2) is also satisfied because defendants are requiring all of the class
16 members to submit to the same background questionnaire, waiver and background
17 investigation, a process which they will not end or alter unless enjoined by this court.
18 (First Amended Complaint “FAC”, ¶¶ 47-55.)

19 **II. FACTUAL BACKGROUND**

20 The Complaint alleges that defendants’ background questionnaire, waiver and
21 background investigation constitute an unconstitutional invasion of plaintiffs’
22 informational privacy rights, as well as other rights protected by the Federal and
23 California constitutions and the Administrative Procedures Act, 5 U.S.C. § 706(2)(c).
24 (FAC, ¶ 60-66.)

25 In ruling on a motion for class certification, the substantive allegations in
26 Plaintiffs’ complaint must be accepted as true. *Blackie v. Barrack*, 524 F.2d 891, 901
27 (9th Cir. 1975), *cert. den’d*, 429 U.S. 816 (1976). The Court may consider matters
28 beyond the pleadings to ascertain whether plaintiffs’ claims are susceptible to resolution

1 on a class-wide basis. *In re Vitamins Antitrust Litig.*, 209 F.R.D. 251, 257 (D.D.C. 2002)
2 (“*Vitamins*”). However, the Court may not consider the merits of Plaintiffs’ case in
3 determining the certification motion. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-
4 78 (1974); *Blackie*, 524 F.2d at 901.

5 **III. ARGUMENT**

6 **A. The Requirements of Rule 23**

7 Rule 23 provides that a court must certify an action as a class action where, as
8 here, Plaintiffs satisfy the four prerequisites of Rule 23(a), and the criteria set forth in
9 Rule 23(b). Rule 23(a) provides that a class may be certified if:

- 10 (1) the class is so numerous that joinder of all members is
11 impracticable;
- 12 (2) there are questions of law or fact common to the class;
- 13 (3) the claims or defenses of the representative parties are
14 typical of the claims or defenses of the class; and
- 15 (4) the representative parties will fairly and adequately
16 protect the interests of the class.

16 Fed. R. Civ. P. 23(a).

17 Plaintiffs also must satisfy Rule 23(b)(2), which provides that “an action may be
18 maintained as a class action” if: “the party opposing the class has acted or refused to act
19 on grounds generally applicable to the class, thereby making appropriate final injunctive
20 relief or corresponding declaratory relief with respect to the class as a whole.”

21 A Rule 23 determination is procedural and does not concern whether a plaintiff
22 will ultimately prevail on the substantive merits of his or her claims. *Blackie*, 524 F.2d
23 at 901. Therefore, the only issue on a motion for class certification is whether plaintiff is
24 asserting a claim which, assuming its merit, will satisfy the requirements of Rule 23.
25 *Eisen*, 417 U.S. at 178, quoting, *Miller v. Mackey Int’l, Inc.*, 452 F.2d 424, 427 (5th Cir.
26 1971).

27 **B. Injunctive Relief Actions Are Routinely Certified As Class Actions.**

28 “Class certification under Rule 23 (b)(2) is appropriate only where the primary

1 relief sought is declaratory or injunctive.” *Dukes* 474 F.3d at 1234. Even where the
2 plaintiffs also seek incidental damages, the courts will approve class certification where
3 injunctive relief issues predominate. *Id.*, at 1234; *see also Molski v. Gleich* 318 F. 3d 937
4 (9th Cir.) (Based on allegations that ARCO acted in a manner generally applicable to the
5 Class by denying access to ARCO facilities, class certification under Rule 23(b)(2) was
6 proper.) *Yslara v. Hughes Aircraft Co.*, 845 F. Supp. 705 (D. Ariz. 1993).

7 **C. The Requirements of Rule 23(a) Are Satisfied In This Case.**

8 As noted, a threshold requirement for the certification of a class under Rule 23 is
9 that the class be adequately defined and ascertainable. Here the class certification is
10 clear as it applies only to Caltech employees who worked at the JPL facility. Further, the
11 “non-sensitive” designation which is a critical part of the class definition is a term used
12 by NASA and directly applicable to the work force at JPL. Every employee working at
13 JPL has been informed whether they are “non-sensitive” personnel or not. The identity
14 of each class member, therefore, can be obtained readily from the personnel files
15 maintained by Caltech and from the lists of non-sensitive personnel maintained in NASA
16 and Caltech’s own classification systems.

17 **1. The Class Is So Numerous That Joinder of All Members Is**
18 **Impracticable**

19 The next requirement for maintaining a class action under Rule 23 is that the class
20 be so numerous that joinder of all members would be “impracticable.” Fed. R. Civ. P.
21 23(a)(1). To satisfy this prerequisite, Plaintiffs need not allege the precise number or
22 identity of class members. *In re Rubber Chemicals Antitrust Litigation*, 232 F.R.D. 346,
23 350 (N.D.Cal.2005) (“Plaintiffs do not need to state the exact number of potential class
24 members, nor is a specific number of class members required for numerosity.”). Rather,
25 a “court may make common sense assumptions to support a finding that joinder would
26 be impracticable.” *In re Rubber Chems. Antitrust Litig.*, at 350.

27 Courts have never defined the exact number of putative class members that is
28 required for class certification but have generally found that the numerosity requirement
is satisfied when class members exceed forty. 6 Alba Conte & Herbert B. Newberg,

1 Newberg On Class Actions §18:4 (4th ed. 2002); *see also Oregon Laborers-Employers*
2 *Health & Welfare Trust Fund v. Philip Morris, Inc.*, 188 F.R.D. 365, 373 (D. Ore. 1998);
3 *Ikonen v. Hartz Mountain Corp.*, 122 F.R.D. 258, 262 (S.D.Cal. 1988)(citing 3B J.
4 Moore & J. Kennedy, Moore's Federal Practice, ¶ 23-05[1] (2d ed 1987).

5 In this case, Plaintiffs allege that the class contains thousands of members of
6 current and future JPL employees. (FAC, ¶ 61.) In papers submitted by defendants in
7 opposition to plaintiffs' motion for preliminary injunction, defendants have admitted that
8 the total work force at JPL is approximately 5,000, of whom 97-98% have been
9 classified by NASA itself as holding "non sensitive" positions, and therefore are putative
10 class members. (Declaration of Cozette Hart, submitted by Caltech's Opposition to
11 Motion for Preliminary Injunction, at ¶ 5 and 8.)

12 For these reasons, the proposed Class readily satisfies the numerosity requirement
13 of Rule 23.

14 **2. This Case Involves Questions of Law and Fact Common to the Class**

15 The second requirement for class certification under Rule 23 is that "there are
16 questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). A court must
17 assess if "the class is united by a common interest in determining whether a defendant's
18 course of conduct is in its broad outlines actionable." *Blackie*, 524 F.2d at 902. The
19 commonality requirement is construed liberally, and the existence of some common legal
20 and factual issues is sufficient to satisfy the requirement. *Jordan v. County of Los*
21 *Angeles*, 669 F.2d 1311, 1320 (9th Cir. 1982). Indeed, it may be satisfied by the
22 existence of a single common issue. *In re Flat Glass Antitrust Litigation*, 191 F.R.D. at
23 472, 478 (W.D. Pa 1999). *See also Hanlon v. Chrysler Corp.*, 150 F.3d 1011,1019 (9th
24 Cir.1998) ("all questions of fact and law need not be common to satisfy the rule. The
25 existence of shared legal issues with divergent factual predicates is sufficient, as is a
26 common core of salient facts coupled with disparate legal remedies within the class.")

27 "In a civil rights suit, ... commonality is satisfied where the lawsuit challenges a
28 system-wide practice or policy that affects all of the putative class members." *Armstrong*

1 v. *Davis*, 275 F. 3d 849 (9th Cir. 2001); See also *Walters v. Reno*, 145 F.3d 1032, 1045-
2 45 (9th Cir. 1998) (existence of common legal issue with divergent factual predicates
3 sufficient to meet commonality requirement of Rule 23). So long as it appears unlikely
4 “that differences in the factual background of each claim will affect the outcome of the
5 legal issue, .. the class action device saves the resources of both the courts and the parties
6 permitting an issue potentially affecting [class members] to be litigated in an economical
7 fashion under Rule 23.” *Califano v. Yamasaki*, 442 U.S. 682, 701 (1979); *Oregon*
8 *Laborers-Employers*, 188 F.R.D. at 373 (“[w]hen the party opposing the class has
9 engaged in some course of conduct that affects a group of persons and gives rise to a
10 cause of action, one or more of the elements of that cause of action will be common to all
11 of the person affected”) (citations omitted).

12 The commonality requirement is readily satisfied here as there are numerous
13 questions of law and fact common to the class which are at the heart of this case. Those
14 questions include:

- 15 (1) whether compelling class members to complete Form
16 SF-85 and the related waiver violates Plaintiffs’
informational privacy rights;
- 17 (2) whether compelling class members to complete Form
18 SF-85 and the related waiver violates Plaintiffs’ 4th
Amendment Rights;
- 19 (3) whether compelling class members to answer Question
20 No. 14 on Form SF-85 (relating to drug use and drug
21 treatment) violates class members 5th Amendment
privilege against self-incrimination or other
constitutional rights;
- 22 (4) Whether the background investigative scheme violates
23 the grant of authority given to NASA by statute,
24 regulation or executive order, thereby violating the
Administrative Procedures Act; and
- 25 (5) whether Defendants’ can establish a compelling state
26 interest in requiring that class members complete Form
SP 85 and comply with the background investigation
conduct;

27 These issues constitute a common core of questions focusing on the central issue
28 of the constitutionality of the background questionnaires and investigation and plainly

1 satisfy the commonality requirement of Rule 23(a)(2). *Walters v. Reno*, 167 F.3d 1228
2 (9th Cir. 1998)(commonality satisfied by constitutional question whether nationwide
3 procedures used by INS in document fraud proceedings sufficiently apprised aliens of
4 their constitutional right to a hearing).

5 The Ninth Circuit and district courts within this Circuit have allowed the
6 certification of other classes where class members have far less in common than the class
7 members here. See *Hialo v. Estate of Ferdinand Marcos*, 103 F. 3d 767, 774 (9th Cir.
8 1996) (allowing the certification of class of “all current civilian citizens of the Republic
9 of the Philippines, their heirs, and beneficiaries, who between 1972 and 1986 were
10 tortured, summarily executed or disappeared while in custody of military or paramilitary
11 groups.”); See also *International Molders’ and Allied Workers’ Local Union No. 164 v.*
12 *Nelson*, 102 F.R.D. 457, 461 (N.D. Cal. 1983) (certifying a class of “all persons of
13 Hispanic or other Latin American ancestry, residing or working within the jurisdiction of
14 the San Francisco District Office of the United States Immigration and Naturalization
15 Service (INS) and/or Livermore Border Patrol sector, who have in the past are now, or
16 may in the future be subjected to the policies, practices and conduct of INS and/or
17 Border Patrol during the course of INS area control operations directed at places of
18 employment”). Thus, the fact that there may be some minor factual differences between
19 the plaintiffs here, should not present a major problem in certifying this class.

20 **3. The Claims of the Representative Parties are Typical of the Claims of** 21 **the Class**

22 The third requirement for maintaining a class action under Rule 23(a) is that “the
23 claims or defenses of the representative parties [be] typical of the claims or defenses of
24 the class.” “[R]epresentative claims are ‘typical’ if they are reasonably co-extensive with
25 those of absent class members; they need not be substantially identical.” *Hanlon*, 150
26 F.3d at 1020. “Typicality determines whether a sufficient relationship exists between the
27 injury to the named Plaintiff and the conduct affecting the class, so that the court may
28 properly attribute a collective nature to the challenged conduct.” *Oregon Laborers-*
Employers, 188 F.R.D. at 373-74 (internal quotations and citations omitted). Typicality,

1 like commonality is a “permissive standard[.]” *Hanlon*, 150 F.3d at 1021.

2 Courts have generally found the typicality requirement satisfied in cases involving
3 the effect of a single policy on a group of individuals. See, e.g., *In re Rubber Chemicals*
4 *Antitrust Litigation*; 232 F.R.D. 346 (N.D. Cal. 2005); *In re Citric Acid Antitrust*
5 *Litigation*, 1996 U.S. Dist. LEXIS 16409, *9 (N.D. Cal 1996)(“The alleged underlying
6 course of conduct in this case is defendants’ conspiracy to fix the price of citric acid and
7 to allocate customers among themselves . . . The legal theory Plaintiffs that rely on is
8 antitrust liability. Because plaintiffs and all class members share these claims and this
9 theory, the representatives’ claims are typical of all.”); *Northwestern Fruit Co. v. A. Levy*
10 *and J. Zentner*, 116 F.R.D. 384, 388 (C.D. Cal 1986) (typicality requirement met “since
11 plaintiffs and all other class members must prove the same conspiracy and its
12 effectuation by the defendants”).

13 Plaintiffs here allege a common, NASA-wide policy of requiring all contractors at
14 federally owned facilities to submit to a highly invasive background investigation. All
15 of these claims are based on the same legal theories. Plaintiffs will have to prove the
16 same elements that absent members would have to prove: the existence, scope, and
17 constitutionality of the newly-implemented background investigation process. The
18 typicality requirement of Rule 23(a)(3) is plainly satisfied.

19 **4. The Representative Plaintiffs Will Fairly and Adequately Protect the**
20 **Interests of the Class**

21 The fourth requirement of Rule 23 mandates that the representative plaintiffs fairly
22 and adequately represent the class. Fed. R. Civ. P. 23(a)(4). The adequacy requirement
23 consists of two separate inquiries. First, the representative plaintiffs must not possess
24 interests which are antagonistic to the interests of the class. Second, plaintiffs must be
25 represented by counsel of sufficient diligence and competence to fully litigate the claim.
26 *Hanlon*, 150 F.3d at 1020; *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512
27 (9th Cir. 1978).

28 The representative plaintiffs here meet both aspects of the adequacy test. There

1 are no actual or potential conflicts of interest between the representative parties and the
2 members of the class. Plaintiffs are current JPL employees, each designated as “non-
3 sensitive” personnel, none of whom currently have security clearances or are required to
4 work in secure or classified areas of JPL. They have a mutual interest, with absent class
5 members, in establishing whether the background investigation process, to which all
6 must submit or lose the ability to continue to work at JPL, complies with the
7 Constitution’s guarantees relating to personal privacy and the right against self
8 incrimination. Accordingly, the interests of the representative Plaintiffs and the putative
9 Class members in determining whether any aspects of the background investigation
10 trammel on those rights are the same.

11 Moreover, Plaintiffs have retained highly capable and well-recognized counsel
12 with extensive experience in class actions raising constitutional issues. Plaintiffs’
13 counsel have successfully prosecuted numerous class actions for injunctive relief against
14 the United States government. Plaintiffs’ counsel are capable of, and committed to,
15 prosecuting this action vigorously on behalf of the class. (See Keeny Decl., ¶ 3-5.)

16 **D. THE PROPOSED CLASS SATISFIES THE REQUIREMENTS OF**
17 **RULE 23(B)(2)**

18 Once it is determined that the proposed class satisfies the requirements of Rule
19 23(a), a class must be certified under Rule 23(b)(2) where the “party opposing the class
20 has acted or refused to act on grounds generally applicable to the class, thereby making
21 appropriate final injunctive relief or corresponding declaratory relief with respect to the
22 class as a whole.” Fed.R.Civ.Proc. 23(b)(2). A rule 23(b)(2) class is appropriate only
23 where “the primary relief sought is declaratory or injunctive.” *Molski v. Gleich*, 318
24 F.3d 937, 947 (9th Cir. 2003). Plaintiffs’ claims meet these requirements.

25 The Ninth Circuit, on similar facts, has upheld class certification of a claim for
26 injunctive relief against the United States government, based on alleged violations of
27 constitutional rights. In *Walter v. Reno*, the court rejected the government’s argument
28 that class certification was inappropriate because class members diverged in their
critique of the challenged regulation and multiple immigration administrative hearings

1 were likely to result from a permanent injunction:

2 We note that with respect to 23(b)(2) in particular, the government's
3 dogged focus on the factual differences among the class members
4 appears to demonstrate a fundamental misunderstanding of the rule.
5 Although common issues must predominate for class certification
6 under Rule 23(b)(3), no such requirement exists under 23(b)(2). It is
7 sufficient if class members complain of a pattern or practice that is
8 generally applicable to the class as a whole. Even if some class
9 members have not been injured by the challenged practice, a class
10 may nevertheless be appropriate. See 7A Charles Alan Wright et al.,
11 Federal Practice & Procedure § 1775 (2d ed. 1986) ("All the class
12 members need not be aggrieved by or desire to challenge the
13 defendant's conduct in order for some of them to seek relief under
14 Rule 23(b)(2)."); see also *Adamson v. Bowen*, 855 F.2d 668, 676
15 (10th Cir. 1988) (emphasizing that although "the claims of individual
16 class members may differ factually," certification under Rule 23(b)(2)
17 is a proper vehicle for challenging "a common policy").
18

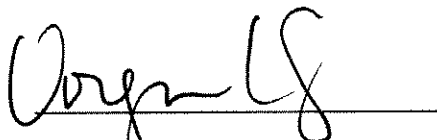
19 Under the reasoning of *Walters*, certification under Rule 23(b)(2) is
20 particularly appropriate here.

21 **IV. CONCLUSION.**

22 For the foregoing reasons, Plaintiffs respectfully submit that the proposed class
23 should be certified.

24 Dated: December 14, 2007

Respectfully submitted,

25
26 

27 Virginia Keeny
28 Attorney for Plaintiffs

1 **PROOF OF SERVICE**

2 I am employed in the county of Los Angeles, State of California. I am over
3 the age of 18 and not a party to the within action; my business address is 128 N. Fair
4 Oaks Avenue, #204, Pasadena, California 91103.

5 On December 14, 2007, I served the foregoing document(s) described as:
6 **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR CLASS
7 CERTIFICATION; MEMORANDUM OF POINTS AND AUTHORITIES AND
8 DECLARATION IN SUPPORT THEREOF** on all interested parties in this action by a
9 true copy thereof enclosed in a sealed box addressed as follows:


<p>7 Vesper Mei, Esq. 8 Wendy Ertmer, Esq. 9 Mark Stern, Esq. 10 Federal Programs Branch 11 U.S. Department of Justice, Civil Division 12 20 Massachusetts Avenue, N.W. 13 Washington, DC 20530 14 Telephone: (202) 514-4686 15 Facsimile: (202) 616-8470</p>	<p>Attorneys for Defendants National Aeronautics and Space Administration, an Agency of the United States; Michael Griffin, Director of NASA, in his official capacity only; Department of Commerce; Carlos M. Gutierrez, Secretary of Commerce, in his official capacity only</p>
<p>12 Mark Holscher, Esq. 13 Alexander Pilmer, Esq. 14 Mark T. Cramer 15 KIRKLAND & ELLIS, LLP 16 777 S. Figueroa, #3700 17 Los Angeles, California 90071 18 Telephone: (213) 680-8400 19 Facsimile: (213) 680-8500</p>	<p>Attorneys for Defendant CALIFORNIA INSTITUTE OF TECHNOLOGY</p>

16 **XX BY E-MAIL:** I caused the foregoing document(s) to be emailed to Vesper Mei,
17 Wendy Ertmer, Mark Stern, Mark Holscher, Alexander Pilmer, Mark T. Cramer to
18 email addresses: vesper.mei@usdoj.gov, wendy.ertmer@usdoj.gov,
19 mark.stern@usdoj.gov, mholscher@kirkland.com, apilmer@kirkland.com,
20 mcramer@kirkland.com

21 **XX BY MAIL**
22 **XX** I deposited such envelope in the mail at Pasadena, California. The
23 envelope was mailed with postage thereon fully prepaid.

24 Executed on December 14, 2007, at Pasadena, California.

25 **XX (Federal)** I declare that I am employed in the office of a member of the bar of
26 the State of California at whose direction the service was made.

27
28

Yuritzy Anaya
Declarant