UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

BAYSYS TECHNOLOGIES, LLC

and Case 5-CA-36314

DONTRAY L. TULL, AN INDIVIDUAL

MOTION TO TRANSFER PROCEEDINGS TO THE BOARD AND MOTION FOR DEFAULT JUDGMENT

Pursuant to Sections 102.24 and 102.50 of the National Labor Relations Board Rules and Regulations and Statements of Standard Procedure, Series 8, as amended, herein called the Rules, the undersigned Counsel for the Acting General Counsel, respectfully moves that the National Labor Relations Board, herein called the Board: (1) transfer this case and continue the proceedings before the Board; (2) deem the allegations in the Complaint issued on February 28, 2011, as admitted to be true without taking evidence supporting the allegations in the Complaint; and (3) grant Default Judgment and issue a Decision and Order herein on the basis of the following:

1. The charge in this proceeding was filed by Dontray L. Tull, an individual, herein called the Charging Party, on December 8, 2010, and a copy was served by mail on BaySys Technologies, LLC, herein called the Respondent, on December 9, 2010. A copy of the charge is attached as Exhibit 1, and the Regional Director's transmittal letter together with the affidavit of service is attached as Exhibit 2.

2. On February 28, 2011, the Acting Regional Director issued a Complaint and Notice of Hearing, herein called the Complaint, alleging that Respondent violated Section 8(a)(1) of the Act by discharging the Charging Party because he engaged in concerted activities with other employees for the purposes of mutual aid and protection by posting comments on the website www.Facebook.com so that employees could concertedly complaint about Respondent not have issued employees' paychecks on time and because Respondent mistakenly believed that the Charging Party had caused the Facebook comments to be published in the newspaper, *Eastern Shore Post*, and to discourage employees from engaging in such activities. The Complaint also alleged that the Respondent had coerced and restrained employees in other ways, detailed in the Complaint, regarding these concerted protected activities. A copy of the Complaint is attached as Exhibit 3.

3. On March 18, 2011, Respondent filed an Answer to the Complaint.

4. On May 27, 2011, Respondent withdrew its Answer by letter with the understanding that Counsel for the Acting General Counsel would file a Motion for Default Judgment promptly thereafter. A copy of the Respondent's letter withdrawing its Answer is attached as Exhibit 4.[1] "The withdrawal of an answer has the same effect as a failure to answer, i.e., the allegations in the consolidated complaint must be considered to be true." *Rock Technologies*, 346 NLRB No. 68, slip op. 1 (2006), cited in NLRB Bench Book §3-500.

WHEREFORE, Counsel for the Acting General Counsel respectfully requests, in accordance with Sections 102.24 and 102.50 of the Rules, that the Board deem all matters alleged in the Complaint to be admitted as true, and that they be so found, and that a Decision and Order issue

[1] As a result of the Respondent withdrawing its Answer, hearing in this matter is being postponed indefinitely.

containing findings of fact, conclusions of law, and an appropriate remedy for the violations alleged in the Complaint.

Dated at Washington, D.C., this 27th day of May, 2011.

Respectfully submitted,

/s/ Synta E. Keeling

Synta E. Keeling, Esq.
Counsel for the Acting General Counsel
103 S. Gay Street, 8th Floor
Baltimore, MD 21202
(410) 962-5615
(410) 962-2198 – Fax
synta.keeling@nlrb.gov

CERTIFICATE OF SERVICE

This is to certify that on May 27, 2011, copies of the General Counsel's Motion to Transfer Case to the Board and for Default Judgment was served electronically:

Mr. Markus D. Ebert, Esq.
General Counsel and Vice President, Corporate Finance
BaySys International
18321 Parkway
Melfa, VA 23410
markus.e@baysys.aero

Mr. Dontray L. Tull
951 Wake Rd
Wake, VA 23176
dthealthy@verizon.net

/s/ Synta E. Keeling
Synta E. Keeling
Counsel for the Acting General Counsel
National Labor Relations Board, Region 5
103 South Gay Street, 8th Floor
Baltimore, MD 21202-4061
synta.keeling@nlrb.gov
Ph: (410) 962-5615
Fax: (410) 962-2198

INDEX OF EXHIBITS

Exhibit 1	Charge in Case 5-CA-36314, filed December 8, 2010
Exhibit 2	Regional Director's Letter of Transmittal of the Charge and Affidavit of Service, dated December 9, 2010
Exhibit 3	Complaint and Notice of Hearing in Case 5-CA-36314, dated February 28, 2011
Exhibit 4	Respondent's withdrawal of Answer in Case 5-CA-36314 dated May 27, 2011

FORM NLRB-501
(11-07)

FORM EXEMPT UNDER 44 U S C 3512

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 5-CA-36314	Date Filed 12/08/10

INSTRUCTIONS:
File an original together with four copies and a copy for each additional charged party named in item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a Name of Employer BaySys Technologies LLC		b. Number of workers employed 50
c Address *(street, city, state, ZIP code)* Wallops Flight Facility Bldg. D-1, Mailcode 097.0 Wallops Island, VA 23337	d. Employer Representative Steve Walton, CEO	c. Phone: 757-787-7668 FAX: 757-854-4614
f Type of Establishment *(factory, mine, wholesaler, etc.)* contractor at NASA facility	g. Identify principal product or service aircraft interior installation	

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

Since on or about August 13, 2010, the above-named Employer, by its officers, agents and supervisors, by threatening employees with discharge for engaging in protected concerted activities, interrogating employees about their protected concerted activities, and by other acts and conduct, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Since on or about August 18, 2010, the above-named Employer, by its officers, agents, and supervisors, terminated the employment of Dontray Tull, and at all times since such date said Employer has refused and does now refuse to reinstate him because he engaged in protected concerted activities.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Dontray Tull

4a. Address *(street and number, city, state, and ZIP code)* 20774 Bayside Rd., Onancock, VA 23417	4b. Phone: 757-789-3554 FAX:

5 Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By Dontray Tull — An individual
(signature of representative or person making charge) /s/ Dontray Tull — *(title if any)*

20774 Bayside Rd., Onancock, VA 23417	Phone 757-789-3554 FAX:	12-01-10
(Address)	*(Telephone Nos.)*	*(date)*

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. §151 *et seq.* The principal use of the information is to assist the National labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

IO:JDB 11/19/2010

Motion for Default Judgment, EXHIBIT 1

United States Government
NATIONAL LABOR RELATIONS BOARD
Region 5
103 South Gay Street, 8th Floor
Baltimore, MD 21202-4061
Telephone: (410) 962-2822
Facsimile: (410) 962-2198

December 9, 2010

Mr. Steven Walton
CEO
BaySys Technologies LLC
Wallops Flight Facility
Building D-1, Mailcode 097.0
Wallops Island, VA 23337

Re: Case 5-CA-36314

Dear Mr. Walton:

The enclosed charge has been filed with this Office. A copy of Form NLRB-4541 pertaining to our investigation and voluntary adjustment procedures is attached.

For information pertaining to this case, please contact Board agent Synta Keeling, (410)962-5615, Synta.Keeling@nlrb.gov. When the Board agent solicits relevant evidence from you or your counsel, I strongly urge you or your counsel to promptly present to the Board agent any and all evidence relevant to the investigation. Please state the case name and number on all correspondence, and include your e-mail address. Please see the attached document, "Communications with Regional Offices by E-mail," regarding the Agency's policy as to communicating with this office by e-mail.

FILING DOCUMENTS WITH REGIONAL OFFICES: The Agency is moving toward a fully electronic records system. To facilitate this important initiative, the Agency strongly urges all parties to submit documents and other materials (except unfair labor practice charges and representation petitions) to Regional Offices through the Agency's E-Filing system on its website: http://www.nlrb.gov (See Attachment to this letter for instructions). Of course, the Agency will continue to accept timely filed paper documents.

A refusal to cooperate fully during the investigation may cause a case to be litigated unnecessarily. Full and complete cooperation includes, where relevant, timely providing all material witnesses under your control to a Board agent so that witnesses' statements can be reduced to affidavit form, and providing all relevant documentary evidence requested by the Board agent. The submission of a position letter or memorandum, or the submission of affidavits not taken by a Board agent, does not constitute full and complete cooperation.

Please be advised that we cannot accept any limitations on the use of any evidence or position statements that are provided to the Agency. Any position letter will be treated as binding upon the party submitting it, and may be introduced at any hearing as evidence of party position. A claim of confidentiality cannot be honored except provided by Exemption 4 of the Freedom of Information Act, 5 U.S.C. Sec. 552(b)(4), and all material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge.

We are required by the Federal Records Act to keep copies of documents used in furtherance of our investigation for some period of years after a case closes. We may be required by the Freedom of Information Act to disclose such records upon request, absent some applicable exemption such as those that protect confidential financial information or personal privacy interests (e.g., Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4)). Accordingly, we will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the foregoing laws, regulations and policies.

Enclosed for the Employer is a form requesting commerce data, which should be completed, signed by an employer representative and returned in the enclosed envelope addressed to my attention.

Attention is called to your right, and the right of any party, to be represented by counsel or other representative in any proceeding before the National Labor Relations Board and the courts. If you choose to have a representative appear on your behalf, please fill out and return the enclosed Form NLRB-4701. Please note that Form NLRB-4701 may be executed by your designated representative. The National Labor Relations Board will provide assistance to parties with limited English proficiency. If parties are in need of assistance due to their English proficiency, they should advise this Office as promptly as possible.[1]

Please be advised that, under the Freedom of Information Act, unfair labor practice charges and representation petitions are subject to prompt disclosure to members of the public upon request. In this regard, you may have received a solicitation by organizations or persons who have obtained public information concerning this matter and who seek to represent you before our Agency. You may be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board; their information regarding this matter is only that which must be made available to any member of the public.

Customer service standards concerning the processing of unfair labor practice cases have been published by the Agency and are available on the Agency's website, www.nlrb.gov, under "Public Notices." Your cooperation in this matter is invited so that all facts of the case may be considered.

Very truly yours,

/S/ WAYNE R. GOLD

Wayne R. Gold
Regional Director

Enclosures

cc: Mr. Steven Walton
CEO
BaySys Technologies LLC
24233 Lankford Highway
Accomac, VA 23301

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[1] The National Labor Relations Board will provide assistance to individuals with limited English. If you or anyone involved in this case is in need of assistance due to their limited English, please advise this Office as soon as possible.

La Junta Nacional de Relaciones de Trabajo proveera assistencia a personas con ingles limitado. Si uno necesita asistencia debido a su ingles limitado, debe avisar a esta Oficina tan pronto possible.

Re: BaySys Technologies LLC
Case 5-CA-36314

December 9, 2010

I CERTIFY THAT I served the above-referenced charge on December 9, 2010, by postpaid regular mail on the addresses named together with a transmittal letter of which this is a true copy.

(Signature)

Subscribed and sworn to before me on December 9, 2010.

(Designated Agent)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

BAYSYS TECHNOLOGIES, LLC

and Case 5-CA-36314

DONTRAY L. TULL, AN INDIVIDUAL

COMPLAINT AND NOTICE OF HEARING

Dontray L. Tull, an individual, herein called the Charging Party, has charged that BaySys Technologies, LLC, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. δ 151, et seq., herein called the Act. Based thereon, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. The charge in this proceeding was filed by the Charging Party on December 8, 2010, and a copy was served by mail on Respondent on December 9, 2010.

2. (a) At all material times, Respondent, a Virginia Limited Liability Company, with its principal office and place of business in Accomac, Virginia, has been engaged in designing and installing custom aircraft interiors for commercial customers.

(b) During the past twelve months, a representative period, Respondent, in conducting its business operations described above in paragraph 2(a), purchased and received at its Accomac, Virginia facility goods valued in excess of $50,000 directly from points located outside the State of Virginia.

(c) 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.

3. At all material times, the following individuals have 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 agents of Respondent within the meaning of Section 2(13) of the Act:

Heather Anson	-	Human Resources Director
Paresh Buch	-	Vice-President, Engineering
Randy Knoblock	-	Vice-President, Operations
David Lumgair	-	Manager, BaySys Flight Operations
Steven Walton	-	Chief Executive Officer

4. (a) On or about August 6, 2010, the Charging Party engaged in concerted activities with other employees for the purposes of mutual aid and protection, by posting comments to employees' Facebook status on the website, www.Facebook.com, so they could concertedly complain about Respondent not having issued their paychecks on time.

(b) On or about August 13, 2010, the newspaper, *Eastern Shore Post*, published the Facebook conversation described above in paragraph 4(a).

5. On or about August 13, 2010, Respondent, by Steve Walton, in an email message to employees, a copy of which is attached as Exhibit 1:

(a) expressed disappointment that employees took their protected concerted complaints, described above in paragraph 4(a), to a newspaper rather than himself or other internal avenues;

(b) told employees their protected concerted complaints breached their nondisclosure agreements;

(c) threatened employees with legal action for having engaged in protected concerted activities;

(d) implied that employees would be discharged unless they issued written explanations about their protected concerted activities to other employees and to the *Eastern Shore Post* newspaper, and explained, in writing, their intentions for their future with Respondent; and

(e) threatened employees that their supervisors would be conducting performance evaluations in which, it was implied, their protected concerted activities would be a consideration.

6. On or about August 17, 2010, Respondent, by Steve Walton and Paresh Buch, in Walton's office, at Respondent's Wallops Island facility:

(a) interrogated employees about their protected concerted activities;

(b) told employees they should find another job, if they had complaints; and

(c) told employees they should have brought their protected concerted complaints to Steve Walton instead of posting them on Facebook.

7. (a) On or about August 18, 2010, Respondent discharged its employee Dontray Tull, the Charging Party.

(b) Respondent engaged in the conduct described above in paragraph 7(a), because the Charging Party engaged in the conduct described above in paragraph 4(a), and to discourage employees from engaging in these or other concerted activities.

(c) Respondent engaged in the conduct described above in paragraph 7(a), because Respondent mistakenly believed that the Charging Party caused the conduct described above in paragraph 4(b), and to discourage employees from engaging in these or other concerted activities.

8. By the conduct described above in paragraphs 5 through 7, 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.

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

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 March 14, 2011, or postmarked on or before March 11, 2011. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **File Case Documents,** enter the NLRB Case Number, and follow the detailed instructions. The 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 Sections 102.21. If an 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 be accomplished in conformance with the requirements of Section 102.114 of 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 commencing at 10:00 a.m., E.D.T., on the 17th day of May 2011, in City Council Chambers, Building #1, Municipal Center, City of Virginia Beach, 2416 Court-house Drive, Virginia Beach, Virginia, 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 has 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 at Baltimore, Maryland this 28th day of February 2011.

(SEAL) STEVEN L. SHUSTER

Steven L. Shuster, Acting Regional Director
National Labor Relations Board, Region 5
103 South Gay Street, 8th Floor
Baltimore, Maryland 21202

Attachments

From: Walton, Steve
Sent: Friday, August 13, 2010 6:34 PM
To: Clausen, Paul; Tull, Dontray
Cc: Knoblock, Randy; Buch, Paresh; Ebert, Markus; Lumgair, David
Subject: An explanation

Paul and Dontray,

Perhaps my greatest disappointment this week was that the two of you did not take the time to speak or email me to explain your role in the newspaper article. I have no regrets that the article was printed. I do regret that you chose this forum to discuss these concerns rather than one better suited to your intentions, such as our suggestion boxes or the emails, phones and offices of the three managers between you and I.

Your discussions regarding BaySys issues in a public forum may have breached the NDA's you have executed as employees of this company. I have instructed our general counsel to review this issue and make a determination if legal recourse is warranted.

In the aerospace industry lives can be lost if we exercise poor judgment. What consequences there may be for your actions are two-fold; were these statements intended to be malicious to our clients and coworkers? and have you disclosed other information of a sensitive nature which could jeopardize the safety of our clients and our co-workers?

If your interests are in remaining a part of the BaySys team, I expect the following;

1. An open letter to your co-workers explaining your actions.
2. A clear understanding of your personal intentions relative to your future here at BaySys.
3. A letter to the newspaper describing why your disclosures should not be considered as malicious.

I am instructing your supervisors to accomplish evaluations of your performance. I consider it a responsibility to your co-workers to ensure your intentions are in the best interests of our company.

My door is open should you choose to discuss this issue.

Steve Walton
CEO/Founder
BaySys International
18321 Parkway
Melfa Virginia 23410
T 757-787-7668
F 757-787-7740
C 757-709-0077

May 27, 2011

VIA E-MAIL

Ms. Synta Keeling
National Labor Relations Board
103 South Gay Street – 8th Floor
Baltimore, MD 21202

Re: BaySys Technologies, LLC – 05-CA-036314

Dear Ms. Keeling,

Further to our ongoing settlement discussions with you and Judge Amchan, we hereby withdraw our answer to the foregoing complaint.

Since neither the NLRB nor Mr. Tull are prepared to accept the good faith settlement offer of $27,000, we withdraw our answer to the complaint. I find it interesting that the request to pay the settlement offer amount over an over an extended time frame has been flatly rejected given that Mr. Tull is fully aware of our precarious financial position which was precisely what Mr. Tull complained about in his Facebook posting and subsequent statements to the newspaper.

If you have any questions with respect to the foregoing, please feel free to contact me.

Sincerely,

Markus D. Ebert, Esq.
General Counsel and Vice President, Corporate Finance

Cc: Judge Arthur Amchan

BaySys International, LLC, 18321 Parkway, Melfa, VA 23410
Phone: (757) 787-7668 markus.e@BaySys.aero Fax: (757) 787-7740