

1 PAUL HASTINGS LLP
2 J. AL LATHAM JR. (SB# 71605)
3 CAMERON W. FOX (SB# 218116)
4 515 South Flower Street
5 Twenty-Fifth Floor
6 Los Angeles, CA 90071-2228
7 Telephone: (213) 683-6000
8 Facsimile: (213) 627-0705

9 Attorneys for Respondent
10 CALIFORNIA INSTITUTE OF TECHNOLOGY
11 JET PROPULSION LABORATORY

12 UNITED STATES OF AMERICA
13 BEFORE THE NATIONAL LABOR RELATIONS BOARD
14 DIVISION OF JUDGES
15 SAN FRANCISCO, CALIFORNIA

16 CALIFORNIA INSTITUTE OF TECHNOLOGY
17 JET PROPULSION LABORATORY

18 and

19 DENNIS BYRNES, an Individual

20 and

21 SCOTT MAXWELL, an Individual

22 and

23 LARRY D'ADDARIO, an Individual

24 and

25 ROBERT NELSON, an Individual

26 and

27 WILLIAM BRUCE BANERDT, an Individual

CASE NOS. 31-CA-030208
31-CA-030249
31-CA-030293
31-CA-030326
31-CA-088775

**MOTION TO AMEND ANSWER BY
CALIFORNIA INSTITUTE OF
TECHNOLOGY JET PROPULSION
LABORATORY**

1 Respondent California Institute of Technology Jet Propulsion Laboratory
2 (hereinafter "JPL") hereby moves to amend its Answer to Amended Consolidated Complaint
3 pursuant to Section 102.23 of the NLRB Rules and Regulations Manual. That Section provides
4 that, during the hearing or subsequent thereto, "[an] answer may, in the discretion of the
5 administrative law judge or the Board, upon motion, be amended upon such terms and within
6 such periods as may be fixed by the administrative law judge or the Board."

7 The hearing in this matter was held for four days beginning January 22, 2013
8 before Administrative Law Judge William G. Kocol. At the conclusion of the hearing, Judge
9 Kocol ordered the parties to prepare and file post-hearing briefs, which are currently due on
10 March 15, 2013.

11 In preparing its post-hearing brief, JPL reviewed its Answer and discovered that
12 paragraph 5(c) contains an inadvertent mistake. Contrary to what paragraph 5(c) currently states,
13 Ethics and Business Conduct Policy Section 2.3 was **not** one of the rules that the Charging Parties
14 violated, and it was **not** cited in their written warnings. Indeed, none of the written warnings cites
15 Section 2.3 by number, nor is the language of that Section included in any of the written
16 warnings. See General Counsel's Exhibits 18, 65, 75, 81, 97. Decisionmaker Leslie Livesay
17 testified that she reviewed the Ethics and Business Conduct Policy and determined that the
18 Charging Parties' conduct violated Section 2.2 (not Section 2.3). Tr. 640:2-641:1 (1/25). Ms.
19 Livesay also testified that she reviewed the Use of JPL and Sponsor Resources Policy, and she
20 determined that the Charging Parties' emails violated Section 2.3 of **that policy**. Tr. 638:25-
21 639:3 (1/25).

22 Thus, JPL's response to paragraph 5(c) should have been, "Deny."

23 There will be no prejudice to the General Counsel or any of the Charging Parties if
24 JPL is permitted to amend its Answer to correct this inadvertent mistake.

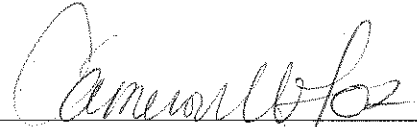
25 A copy of JPL's proposed Amended Answer to Amended Consolidated Complaint
26 is attached as Exhibit A.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: March 11, 2013

Respectfully submitted,

PAUL HASTINGS LLP
J. AL LATHAM, JR.
CAMERON W. FOX

By: 
CAMERON W. FOX

Attorneys for Respondent
CALIFORNIA INSTITUTE OF TECHNOLOGY
JET PROPULSION LABORATORY

EXHIBIT A

1 PAUL HASTINGS LLP
2 J. AL LATHAM JR. (SB# 71605)
3 CAMERON W. FOX (SB# 218116)
4 515 South Flower Street
5 Twenty-Fifth Floor
6 Los Angeles, CA 90071-2228
7 Telephone: (213) 683-6000
8 Facsimile: (213) 627-0705

9 Attorneys for Respondent
10 CALIFORNIA INSTITUTE OF TECHNOLOGY
11 JET PROPULSION LABORATORY

12 UNITED STATES OF AMERICA
13 BEFORE THE NATIONAL LABOR RELATIONS BOARD
14 REGION 31

15 CALIFORNIA INSTITUTE OF TECHNOLOGY
16 JET PROPULSION LABORATORY

17 and

18 DENNIS BYRNES, an Individual

19 and

20 SCOTT MAXWELL, an Individual

21 and

22 LARRY D'ADDARIO, an Individual

23 and

24 ROBERT NELSON, an Individual

25 and

26 WILLIAM BRUCE BANERDT, an Individual

CASE NOS. 31-CA-030208
31-CA-030249
31-CA-030293
31-CA-030326
31-CA-088775

**AMENDED ANSWER OF CALIFORNIA
INSTITUTE OF TECHNOLOGY JET
PROPULSION LABORATORY TO
AMENDED CONSOLIDATED
COMPLAINT**

1 California Institute of Technology Jet Propulsion Laboratory (hereinafter "JPL")
2 answers the allegations in the Amended Consolidated Complaint dated October 26, 2012, as
3 follows:

4
5 1. Admit.

6
7 2. (a) Admit and allege that JPL is an operating division of the California
8 Institute of Technology and a federally funded research and development center ("FFRDC"), with
9 an office and place of business in Pasadena, California. Except as expressly admitted and
10 alleged, deny;

11
12 (b) Admit;

13
14 (c) Admit.

15
16 3. Admit.

17
18 4. (a) Deny;

19
20 (b) Admit;

21
22 (c) Admit and allege that JPL issued written disciplinary warnings to the
23 Charging Parties because their emailing activities violated JPL policies and
24 interfered with JPL's operations. Except as expressly admitted and alleged, deny.

25
26 5. (a) Admit;

27
28 (b) Admit;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(c) Deny.

6. Deny.

7. Deny.

FIRST AFFIRMATIVE DEFENSE

JPL denies that it disciplined the Charging Parties in whole or in part for protected conduct, but the same discipline would have been imposed even in the absence of protected conduct. *See Wright Line*, 251 NLRB 1083 (1980), *enforced*, 662 F.2d 899 (1st Cir. 1981).

SECOND AFFIRMATIVE DEFENSE

JPL denies that Ethics and Business Conduct Section 2.3 is overbroad, but the discipline was warranted by the Charging Parties' actual interference with JPL's operations and violations of other policies, the validity of which is not at issue. *See Continental Group, Inc.*, 357 NLRB No. 39 (2011).

THIRD AFFIRMATIVE DEFENSE

As a federally funded research and development center, JPL's employment policies and actions must conform to relevant federal laws, regulations, and directives. These include, but are not limited to, FAR 35.017 and the Byrd Amendment, 31 U.S.C. § 1352.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTH AFFIRMATIVE DEFENSE

Charging Parties' activities, at least in part, were disloyal. *See NLRB v. IBEW Local 1229 (Jefferson Standard)*, 346 U.S. 464 (1953).

For all of the foregoing reasons, the Complaint should be dismissed in its entirety.

DATED: March 11, 2013

Respectfully submitted,

PAUL HASTINGS LLP
J. AL LATHAM, JR.
CAMERON W. FOX

By: 
CAMERON W. FOX

Attorneys for Respondent
CALIFORNIA INSTITUTE OF TECHNOLOGY
JET PROPULSION LABORATORY

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA)
3 CITY OF LOS ANGELES AND COUNTY OF LOS) ss:
4 ANGELES)

5 I am employed in the City of Los Angeles and County of Los Angeles, State
6 of California. I am over the age of 18, and not a party to the within action. My business
address is 515 S. Flower Street, 25th Floor, Los Angeles, CA 90071-2228.

7 On March 11, 2013, I served the foregoing document(s) described as:
8 **MOTION TO AMEND ANSWER OF CALIFORNIA INSTITUTE OF**
9 **TECHNOLOGY JET PROPULSION LABORATORY** on the interested parties by
electronic service as follows:

10 Scott Maxwell
1045 Sinaloa Ave.
11 Pasadena, CA 91104
[nlrb@scottmaxwell.org](mailto:nlr@scottmaxwell.org)

Larry D'Addario
3795 Cartwright Street
Pasadena, CA 91107
larry9850@gmail.com

12 Robert Nelson
13 775 N. Mentor Ave.
14 Pasadena, CA 91104
RMNelson2@earthlink.net

Dennis Byrnes
42720 Nelder Heights Drive
Oakhurst, CA 93644
dbyrnes@sti.net

15 Miguel A. Manriquez
16 Counsel for the Acting General Counsel
17 National Labor Relations Board
18 Region 31
11150 W. Olympic Blvd., Suite 700
19 Los Angeles, CA 90064
Miguel.Manriquez@nlrb.gov

William Bruce Banerdt
2207 East Dudley Street
Pasadena, CA 91104
banerdt@earthlink.net



VIA EMAIL:

21 The email transmission was complete and without error. The email was transmitted to the
22 email addresses listed above on March 11, 2013

23 I declare under penalty of perjury under the laws of the State of California
24 that the above is true and correct.

25 Executed on March 11, 2013, at Los Angeles, California.

26 
27 Iris V. Abo
28