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7
8 UNITED STATES DISTRICT COURT FOR THE
9 CENTRAL DISTRICT OF CALIFORNIA

10 Dr. Nira Schwartz dba Jaffa OptroniX) **CASE NO.: CV - 06-04010 DDP (JCx)**
11 2550 PCH # 68, Torrance, CA 90505)
12)
13 Plaintiff,) **Plaintiff's:**
14 vs.) **(1) Response In Opposition To**
15 **1) United States Of America**) **Defendants' Motions to dismiss**
16 **Office of the US Attorney, Civil**) **Complaint; And To Declaration of**
17 **Process Clerk, 7th FL. 300 N. Los**) **Aleta Bodolay;**
18 **Angeles St., Los Angeles, CA 90012**) **(2) Petition For Answers To Presented**
19 **2) MIT Lincoln Laboratory known as**) **Questions;**
20 **"MIT/LL", At: 244 Wood Street,**) **(3) Request for Judicial Notice and**
21 **Lexington, MA 02420-9108**) **Attachment A filed Concurrently**
22 **3) Lawrence Livermore National**) **Herewith;**
23 **Laboratory known as "LLNL", At:**) **Proof of service;**
24 **7000 East Ave., Livermore, CA**)
25 **94550**)
26 **4) Aerospace Corporation known as**) **JUDGE: DDP [Hon. Dean D. Pregerson]**
27 **"AERO" At: 2350 East El Segundo**) **DATE: December 11, 2006**
28 **Bldv. El Segundo, CA90245-4691**) **TIME: 10:00 a.m.**
Defendants) **COURTROOM: 3**

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Par. #	Description	Page #
VIII	Decline intervention and intervened only for dismissal of prior litigation Qui-Tam Case 96-3065 RSWL was the Defendants' false/fraud/biased, breach of trust, and is In violation of 31 U.S.C. § 3730; 31 U.S.C. § 3729 act; without the Attorney General consent in writing, without his signature, and in conjunction, consent and partnership of the Defendants, taking the law into their hands; Black balled and discriminated against me; for the benefits/pay/enjoyment of the Defendants only; I had the best law firms in the country as my attorneys in prior litigation; The Defendants concealed from me a \$15 million dollar possible out of court settlement in prior case 96-3065RSWL and instead dismissed it, in which I am entitled to 30%;	33
IX	Efforts made by the Defendants to confuse this Court.	42

Additional Request for judicial Notice on the following

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2	Order dated 9/18/2006 in Docket Nos. 7183/7192 "STATE OF VERMONT PUBLIC SERVICE BOARD"	6
25	"Another barrier to judicial review of administrative action was removed by section 2 of Pub. L. No. 94-574, which amended 28 U.S.C. § 1331(a) so as to eliminate the \$10,000 amount-in-controversy requirement in actions against the United States, any agency thereof, or any officer or employee thereof in his official capacity. This provision persuaded the Supreme Court to conclude that, subject to preclusion-of-review statutes, jurisdiction to review agency action is conferred by 28 U.S.C. § 1331, and that the Administrative Procedure Act is not an independent grant of jurisdiction. See Califano v. Sanders, 430 U.S. 99, 105-07 (1977)."	13
26	Executive Order 12958 Section 1.8(a)	14

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Par. #	Description	Page #
27	H. Rep. 94-1656, p. 13, 1976 U.S.Code Cong. & Ad.News 6133	14
29	“Copyright as Entry Policy: The Case of Digital Distribution,” 47 <i>Antitrust Bull.</i> 423, 442 (2002))	14
30	35 U.S.C. 183 Right to compensation and other laws	15
38	Government website: www.house.gov/Berman	17
98	<u>Brillhart v. Excess Co. of American</u> , 316 U.S. 491, 625 S.Ct. 1173, 86L.Ed. 1620 (1942); <u>Torch Inc. v. LeBlanc</u> , 947 F.2d 193 (5 th Cir. 1991). <u>Mission Ins. Co. v. Puritan Fashions Corp.</u> , 706 F.2d 599, 601 (5 th Cir. 1983).	42
90	<u>Great American Insurance Co. v. Houston General Insurance Co.</u> 735 F. Supp. 581 at page 585 (S.D.N.Y. 1990); <u>Continental Casualty Co. v. Coastal Savings Bank</u> , 977 F.2d 734 (2 nd Cir. 1992); <u>Nautilus Ins. Co. v. Winchester Homes Inc.</u> 15 F.3d 371 (4 th Circ. 1994).	42

1 **NOTICE TO THE HON. COURT and to Defendants and their Counsels:**

2 Please Take Notice that Hon. Judge **DDP** has continued hearing on 12/11/06 for your
3 motions to dismiss.

4 The Defendants motions to dismiss cross relies on information in each others Exhibits, and I
5 will do the same, to prevent duplications of documents and save money. The Exhibits
6 marked as: Exh. 1-11 were produced by the Defendants (2, 3, and 4); and Exh. A-F were
7 produced by Defendant (1); Exh. 2 in error is dated 12/29/2003 and should be dated
8 12/29/2004. My **Request for Judicial Notice and Attachment A** Filed Concurrently
9 Herewith.

10
11 **DECLARATION**

12
13 (a) I am the plaintiff in this action.

14 (b) The facts supporting my Petition, and a deny with prejudice of both the Defendants'
15 motion to dismiss, their declarations, and their request for judicial notice on the
16 grounds of incorrect documents, and/or erroneous legal basis for their motions, the
17 following orders, decision, opinions, specific facts, statute, rule of court case law,
18 answers to questions presented to the Court etc:

19
20
21 **I. Petition For Answers To Questions and Questions Presented To The Hon. Court:**

22 (1) Answers are requested to the following set of questions on unresolved and open
23 issues prior to ruling on Defendants Motions to dismiss instant complaint, and to cause
24 these motions to be denied with prejudice. An example is an Order dated 9/18/06 by
25 STATE OF VERMONT, which is provided below and a judicial notice on that ruling is
26 requested.

27 **QUESTIONS:**

- 1 **i.** Does the 01/14/03 State Secret Privilege claimed in Prior case 96-3065RSWL
2 apply to the 13 reports of my *Intellectual Property* and ideas I authored between
3 1996 and 1999 and thousands of pages of analysis and recommendations for the
4 government in NMD/EKV program? [Exh. 9, Exh.2 page 19 top par., Complaint
5 ¶ 17, 18, (NMD/EKV - National Missile Defense Exoatmospheric Kill Vehicle)];
6
7 **ii.** Does the Order dated 12/27/99 in Case 96-3065RSWL claims State Secret
8 Privilege on the 13 reports? (Attachment A page 120-121);
9
10 **iii.** Has the asserting state secret privilege been properly claimed for the instant
11 complaint 06-4010DDP claims and/or for the 13 reports?
12
13 **iv.** Am I entitled for compensation and when if the Court finds the 13 reports
14 classified?
15
16 **v.** Am I entitled for compensation by 35 U.S.C. 183 or by other laws when
17 Defendants:
18 **1.** Denied me possession, economical recovery, enjoyment, patent/copyright
19 /enrichment of 13 reports for over six years, by order dated 12/27/99?
20 (Attachment A page 120-121)
21 **2.** Since 1996 used, disseminated, and disclosed the 13 reports to their
22 favorites, and to public commercial companies without authorization and on
23 the top of my written objection?
24 **3.** Disseminated and disclosed the 13 reports and privileged information to the
25 defendants (TRW/Boeing/NRC) in qui-tam case 96-3065RSWL while case
26 was under seal?
27 **4.** Paid and enriched only others for the use/tamper/infringe/false classify
28 /killing market/lecturing/and analysis of the 13 reports?
 5. Approved as unclassified copyrighted/FOIA portions of the 13 reports and
 these Documents show the Defendants damaging and unlawful acts?

1 vi. Are Final Judgments in prior cases 96-3065RSWL, 03-37C and 03-786C also the
2 final Judgment on instant complaint **06-04010 DDP (JCx)** claims? [Exh. 1-11,
3 Exh. A-F, and Attachment A page 1]

4 vii. Am I entitled to this Hon. Court Declaratory Judgment on questions and other
5 issues requested in instant complaint 06-4010DDP rather than a dismissal?
6

7 (2) Arguments in support of Petition For Answer to Questions Presented. An example
8 of prior Order dated 9/18/2006 in Docket Nos. 7183/7192 is quoted below (please refer to
9 Attachment A pages 152-3):

10 "STATE OF VERMONT
11 PUBLIC SERVICE BOARD

12 Docket No. 7183

13 Petition of Eight Ratepayers for an investigation of))
14 possible disclosure of private telephone records without)
15 customers' knowledge or consent by Verizon New)
16 England Inc., d/b/a Verizon Vermont

17 Docket No. 7192

18 Petition of Vermont Department of Public Service for an)
19 investigation into alleged unlawful customer records)
20 disclosure by Verizon New England Inc., d/b/a Verizon)
21 Vermont

Order entered: 9/18/2006

22 **ORDER ON MOTION TO DISMISS**

23 **SUMMARY**

24 This Order denies Verizon's motion to dismiss these dockets. We have
25 jurisdiction under state law to proceed in this matter, and it has not been shown
26 that federal law preempts that jurisdiction. Notwithstanding the many bases upon
27 which Verizon asserts that the claims here are preempted by federal law and that
28 all critical evidence is privileged or otherwise unavailable, we conclude that
petitioners may still be able to adduce facts that sustain at least some of their

1 claims. We recognize that discovery in this case may be limited, but we allow the
2 petitioners to seek to prove their cases by whatever unprivileged evidence they can
3 glean from discovery of Verizon and from whatever other reliable sources that
4 may develop.

5 Based on the record before us, we conclude that the state secrets privilege does
6 not apply here, largely because it has not been properly claimed, but also because
7 it would not apply to all of petitioners' claims and because some of the matters
8 involved in these dockets are not secret. We also conclude that dismissal is not
9 required by the National Security Agency statute, the Foreign Intelligence
10 Surveillance Act, the statutes and rules regarding classified information, or the
11 Intelligence Reform and Terrorism Prevention Act of 2004.

12 Because of prior public disclosures by Verizon, we also specifically authorize
13 the parties to conduct discovery on whether Verizon has provided local calling
14 records to the NSA, whether Verizon provided information to the NSA before
15 February, 2006, and the conditions under which Verizon provides others with
16 access to its customer records.

17 Finally, we deny Mr. Michael Bandler's motion to establish a new schedule and
18 we grant his motion to allow discovery regarding private "data brokers." "

19 Some of the matters involved in this instant complaint, such as the copyrighted and FOIA
20 materials are NOT secret. The State Secret Privilege of the 13 reports was not properly
21 claimed. The 13 reports are not automatically secret just because prior case 96-3065RSWL
22 was dismissed asserting state secret privilege. The 13 reports were not even part of case 96-
23 3065RSWL. On 12/27/99, the 13 reports were taken away from me, to conceal the fact that
24 the Poet/Defendants National Missile Defense Exoatmospheric Kill Vehicle (NMD/EKV)
25 design/concept is false, and that any technology implemented based on this design/concept
26 will never work. The state secret privilege does not apply to all of the instant complaint
27 cases 06-4010DDP claims/documents. The amount of money the Poet/Defendants received
28 for their services of being alleged independent evaluator of NMD/EKV design/concept is
not a State Secret Privilege, and the Defendants should disclosed it in a response to my
request for production of documents. I have personal knowledge that each one of the Poet
members was paid by the Government over \$700 million per year. I gained this knowledge

1 while participating in the DCIS investigation during 1996-9. The copyrighted/FOIA
2 materials provided in this response were approved in the public domain and were not
3 restricted by NSA statute, FISA, and/or classified information.

4 **Conclusions (I):** Therefore Petitioner answers should be granted and the Defendants'
5 motion to dismiss and request for judicial notice should be denied.
6

7
8 **II. I have exhausted Administrative Remedies Prior To Filing Instant Complaint;**
9 **Including complying with the Government Referring me in vain to file complaints**
10 **in US Court of Federal Claims, causing me to waste years in litigations;**
11

12 (3) On 11/19/99 in letter to the Government I claimed a classification dispute and
13 requested to settle out of court:

14 "I am trying to settle the dispute between us out of court. You decline to
15 declassify/redact the necessary documents needed for me to assert a claim of
16 privilege." [Attachment A page 2-4]. I received no response.

17 (4) On 4/19/02 in letter to the Government I claimed it made **use** and unlawful act of
18 non-intervention in qui-tam case 96-3065RSWL and falls within 35 U.S.C. 183 Right to
19 compensation:

20 "You **used** our Expert Consulting products, and intellectual property .." and "..the
21 Government and the listed above parties breached the agreement made with us to
22 intervene in this case, and fraudulently and not in good faith declined
23 intervention". [Highlight add, Attachment A page 5-7 (redacted)]

24 (5) On 07/11/02 Government wrote back and directed me in vain to file complaints in
25 Court of Federal Claims that has no Jurisdictions over my claims. I quote the Government:

26 "The compensation you seek appears to relate to the qui tam action you filed."

27 And

28 "you may bring an action directly in the U.S. Court of Federal Claims".

[Attachment A pages 8-9, Exh. 2, Exh. 5, Exh. 7]

(6) On 11/07/05 in letter to the Government I requested to be paid for the **use** it made
of my *Intellectual Property*. I claimed to Patent/copyright the *Intellectual Property*:

1 “The government has **used** the 13 IP reports to their benefit (enrichment). The
2 government believes that they (and others such as Northrop Grumman
3 Corporation, POET, NRC, and Aerospace Corporation) should be allowed to be
4 enriched by my work [13 IP Reports] without compensating me in any way.”

4 And

5 “I demand that you declassify my 13 IP Reports in whole, and/or in part to allow
6 me Patent/Copyright them, and/or be paid the amount of \$1.61 million for their
7 **use.**” [Highlight add, Attachment A page 10-12]. I received no response.

7 (7) On 04/05/06 in a letter to the Government I claimed that communications was
8 denied and requested them to reinstate case 96-3065RSWL. Since 11/07/05 I received no
9 response, and is equivalent to Government declining a solution. I quote from my letter:

10 “Please communicate with me to settle compensation for the violation and use of
11 my IP. Decline communication with me will only add to the fraud committed by
12 the US government in my case CV-96-3065RSWL and its related GAO
13 investigation. Please refer to Press Release logged at: www.house.gov/Berman.
14 Please open/reinstate case CV-96-3065RSWL District Court, Los Angeles.”
[Attachment A page 13-14 (redacted) with proof of service].

15 (8) Based on above written claims dated 11/19/99, 4/19/02, 07/11/02, and 11/07/05, the
16 08/29/06 the Declaration by Ms. Aleta Bodolay has no basis:

17 “I have found that there is no record within the Civil Division of an administrative
18 claim having been presented by Nira Schwartz.” [Attached to the Government
19 motion to dismiss].

20 (9) All written claims dated 11/19/99, 4/19/02, 07/11/02, and 11/07/05, the 08/29/2006,
21 were served with proof of service.

22 (10) On 12/29/03 Court of Federal Claims dismissed case 03-37C for lack of
23 Jurisdiction, not for my lack of exhausting administrative remedies. The Defendants alleged
24 that case 03-37C claims and the instant case claims are the same. Therefore administrative
25 remedies were exhausted [Exh.2]

1 (11) On 04/07/06 I wrote Letters to Defendants (2, 3, and 4) requesting to resolve the
2 dispute between us. They refused.

3 **Conclusions (II):** Therefore Defendants' motion to dismiss and request for judicial
4 notice should be denied.
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8 **III. The following Instant Complaint's claims are for which Court Of Federal Claims**
9 **lacks jurisdictions and only the US District Court may entertain (The 12/29/03 and**
10 **02/17/04 opinions Exh. 2, Exh.7, and Attachment A, page 1);**

11 (12) Claims involving the government's decision not to intervene in the qui tam action.
12 Instant complaint claims ¶¶ 17, 23, 26-31, 33-35, 39, 52, 57, 64, 67, 70 75, 80, 81, 92, 103,
13 105, 106, 107, 117:

14 “This court does not have jurisdiction over any claims involving the government's
15 decision not to intervene in the qui tam action, nor over plaintiffs' alleged damages
16 resulting from that decision” ... “ The Federal Circuit, however, readily noted that
17 these allegations were tort claims over which the Court of Federal Claims has no
18 jurisdiction” ... “that dismissal resulted from the government's illegal interference.
19 The short answer is that these are tort claims, over which the Court of Federal
20 Claims has no jurisdiction.” ... (“LeBlanc maintains that he should not be denied
21 his portion of the government's alleged settlement with Raytheon simply because
22 the district court dismissed his suit, since . . . that dismissal resulted from the
23 government's illegal interference. The short answer is that these are tort claims,
24 over which the Court of Federal Claims has no jurisdiction.” (See Exh. 2, page 13
25 lines 11-13, page 14 lines 25-27, and page 15 lines 9-13).

26 (13) Claims for discrimination. Instant complaint claims ¶¶ 17, 30, 33, 34, 59, 64, 111,
27 115, 117:

28 “Plaintiffs allege discrimination, asserting that because Dr. Schwartz was
purposefully not labeled as a "technical advisor" by the government, she was
denied compensation for her work, whereas technical advisors in the TRW
Litigation, such as POET and Nichols Research Corporation (NRC), were

1 compensated for their services though it is unclear exactly in what way plaintiffs
2 were discriminated against, this court does not have jurisdiction over any claims
3 for discrimination since the Civil Rights Act of 1964 and the Age Discrimination
4 Employment Act (ADEA) grant exclusive jurisdiction over race, sex and age
5 discrimination claims to the United States District Courts”. (See Exh. 2, page 15
6 par. 4, and Attachment A, page 81, 82 first par.)

7 **(14) Claims for Defamation of character intentional infliction of emotional distress.**

8 Instant complaint claims ¶¶ 20, 27, 33, 34, 37, 56, 64, 75, 105, 117:

9 ”Plaintiffs allege that Dr. Schwartz's privacy was breached in that her security file,
10 which was to remain private, was given to her former employer. TRW, ultimately
11 causing defamation of her character and credibility. This court does not have
12 jurisdiction over such a claim. A claim for breach of privacy sounds in tort. *See*
13 *1ii.x v. Ur7ited States*, 229 Ct. C1. 546 (1 981) (no jurisdiction over privacy
14 violations as they are traditionally considered tort claims). Similarly, defamation
15 of character is also a cause of action in tort which this court cannot entertain. *See*
16 *Berdick v. United States*, 612 F.2d 533, 536 (Ct. C1. 1979) (no jurisdiction for
17 defamation, intentional infliction of emotional distress, tortious interference with
18 business relationships, or conspiracy, since each of these claims sounds in tort)
19 (citations omitted). Accordingly, this court lacks jurisdiction over plaintiffs'
20 breach of privacy claim.” (Exh. 2 page 16, par. 5)

21 **(15) Claims for Punitive damages. Instant complaint claims ¶¶ 92, 107, 117:**

22 ”it is clearly established that this court does not have jurisdiction over punitive
23 damages claims.” (See Exh. 2 16, par. 6)

24 **(16) Claims for Misrepresentation. Instant complaint claims ¶¶ 17, 18, 28, 33, 44, 64,**
25 **67, 74, 77, 89, 98, 100, 109, 111, 117:**

26 “For the same reasons, plaintiffs' claim that the government misrepresented to
27 plaintiffs that Dr. Schwartz's services would be compensated are also outside of
28 this court's jurisdiction as sounding in tort”. (Exh. 2 page 17, par. 7)

(17) Claims for Emotional trauma. Instant complaint ¶¶ 24, 25, 27, 56-61, 79, 81, 82, 97:

“(no jurisdiction over mental distress or emotional trauma that may be caused by
breach of contract)”. (See Exh. 2 page 18, par. a)

1 (18) Claims Misappropriation of trade secret. Instant complaint ¶¶ 18, 66, 96, 97, 99,
2 101, 103, 104, 117:

3 “(misappropriation of trade secret is a tort outside of the jurisdiction of this court)”.
4 (See Exh. 2 page 18, par. a)

5 (19) Claims for Compelling Government to return Intellectual Property in its possession.
6 Instant complaint ¶¶ 17-25, 27, 33, 37, 41-43, 45-50, 54, 60-62, 64, 67-73, 75-78, 81-89, 91,
7 94-104, 112-114, 117:

8 “this court cannot compel specific performance.” [Exh. 2 Page 12, par. 2]. and
9 “Plaintiffs allege that Dr. Schwartz authored “13 reports between 1996 and 1999
10 and thousands of pages of analysis and recommendations” for the government.
11 Compl. ¶ 13(f). These reports included flight test data analysis, technology
12 concepts and test procedures. *Id.* **Defendant does not contest** Dr. Schwartz's
13 authorship in these works. (Highlighted by me Exh. 2, page 19, top par.)

14 (20) Claims for Compelling Government intervention, and to reinstate the qui-tam case.
15 Instant complaint ¶¶ 17, 26-28, 75, 117:

16 “Plaintiffs request that this court force the government to intervene in the TRW
17 Litigation. However, this court does not have jurisdiction to compel the
18 government to intervene in the *qui tam* action because this court cannot compel
19 specific performance.” [Exh. 2 Page 12, paragraph 2]

20 (21) Claims for Mistreatment. Instant complaint ¶¶ 18, 31, 43, 48, 52, 95, 99, 115:

21 “And, even assuming that they were present, the allegations of mistreatment or
22 some sort of disparate treatment threatening Dr. Schwartz's ability to copyright her
23 works sound in tort and constitute issues over which this court has no
24 jurisdiction”. (Exh. 2, page 22, second par. Attachment A page 127)

25 (22) Claims for issued under qui-tam provision. Instant complaint ¶¶ 17, 23, 26-31, 33-
26 35, 39, 52, 57, 64, 67, 70 75, 80, 81, 92, 103, 105, 106, 107, 117:

27 “this court does not have subject matter jurisdiction over claims that require the
28 resolution of issues under the *qui tam* provisions of the FCA.” And “accordingly,
plaintiffs' claim that the government denied Dr. Schwartz the right to participate in

1 the TRW Litigation by creating bases not to intervene in that action must be
2 dismissed for lack of subject matter jurisdiction. [Exh. 2 Page 14, and page 15]

3 (23) On 12/29/04, a Court of Federal Claims case **03-37C** opinions directed above
4 claims, which are now incorporated in the instant complaint 06-04010 DDP (JCx) to United
5 States District Court. Please refer to:

6 [Exh. 2 (page 4 last par.), (page 5 par. 4), (page 8 par. B), (page 12 par. 2), (page 15
7 par. 3, 4), (page 16 par. 4, 5, 6, 7), (page 17 par. 7), (page 18 par. a). Instant
8 Defendants (2, 3, and 4) are not defendants in case 03-37C.

9 (24) On 02/17/04, a Court of Federal Claims case **03-786C** opinions directed me to
10 United States District Court. Please refer to:

11 [Exh. 7 (page 5 last par.), (page 8 par. B(1)), (page 9 par. B(1)), (page 11 last par.),
12 (page 12 top par.), (page 12 last par.), (page 13 top par.), (page 13 par. 4), (page
13 14 par. 5, 6), (page 15 to par.).

14 (25) Another barrier to judicial review of administrative action was removed. The
15 Government alleging only \$10,000 per infringement. [Its motion to dismiss 5:16-18]. The
16 Government infringed *Intellectual Property* over 500 times. I request for judicial Notice on
17 the following:

18 “Another barrier to judicial review of administrative action was removed by section
19 2 of Pub. L. No. 94-574, which amended 28 U.S.C. § 1331(a) so as to eliminate
20 the \$10,000 amount-in-controversy requirement in actions against the United
21 States, any agency thereof, or any officer or employee thereof in his official
22 capacity. This provision persuaded the Supreme Court to conclude that, subject to
23 preclusion-of-review statutes, jurisdiction to review agency action is conferred by
24 28 U.S.C. § 1331, and that the Administrative Procedure Act is not an independent
25 grant of jurisdiction. See *Califano v. Sanders*, 430 U.S. 99, 105-07 (1977).”

[Internet quotation]

26 **Conclusions (III):** Therefore Defendants’ motion to dismiss should be denied.
27
28

1 **IV. Government is not immune in Tort claims; in violation of Law claims; and in**
2 **claims for Declaratory Judgment;**

3 (26) Unlawful acts are not immune. White house Executive Order 12958 Section 1.8(a).

4 I request for judicial Notice on:

5 “In no case shall information be classified in order to: (1) conceal violations of law,
6 inefficiency, or administrative error” [Exh. 8].

7 (27) Immunity defense has been withdrawn with respect to the following, and I request
8 for judicial Notice on:

9 “The sovereign immunity defense has been withdrawn only with respect to actions
10 seeking specific relief other than money damages, such as an injunction, a
11 declaratory judgment, or a writ of mandamus. *Bowen v. Massachusetts*, 487 U.S.
12 879 (1988). Specific statutory provisions for the recovery of money damages, such
13 as the Little Tucker Act and the Federal Tort Claims Act, are unaffected. See H.
14 Rep. 94-1656, p. 13, 1976 U.S.Code Cong. & Ad.News 6133.” [Internet
quotation]

15 (28) The Defendants obligations and responsibility for their employees’ unlawful acts
16 are not immune.

17 (29) The Defendants are not immune because the law allows a copyright holder to sue
18 the contributor to the infringement, and I request for judicial Notice on:

19 “Copyright as Entry Policy: The Case of Digital Distribution,” 47 *Antitrust Bull.*
20 423, 442 (2002)), the law allows a copyright holder to sue a contributor to the
21 infringement instead, in effect as an aider and abettor.” [Internet quotation]

22 **Conclusions (IV):** Therefore Defendants’ motion to dismiss and their request for judicial
23 notice should be denied.

24
25
26 **V. Instant complaint is not barred by Res Judicata and Collateral Estoppel**
27

1 (30) 35 U.S.C. 183 Right to compensation and other laws provide for compensation, six
2 years after the Government prevented copyright/patent *Intellectual Property* and made
3 use/disseminated/disclosed it. On 12/27/99 in compliance with Order dated 12/27/99 case
4 96-3065RSWL, I submitted all of my *Intellectual Property* in NMD/EKV program to the
5 Defendants. Order dated 12/27/99 in effect triggers 35 U.S.C. 183 and other laws to pay me
6 [Attachment A page 120-121]. The Defendants refuse to give my *Intellectual Property*
7 back for over six years, preventing me copyright/patent my entire Intellectual Property and
8 enrichment, while only they and their favorites were enriched making unauthorized use of
9 it, and on the top of my written objections. On and prior to 3rd and 4th of February 1999, the
10 Defendants disseminated and disclosed my 13 reports of *Intellectual Property* and privilege
11 information, know how, and trade secret to commercial public companies
12 (TRW/Boeing/NRC), without protecting my rights to it. Only their favorites are allowed to
13 enjoy it, and be paid for the use of my *Intellectual Property*. I am entitled to be
14 compensated and not to be dismissed out of court. The Defendants do not contest I authored
15 13 reports of thousands of pages in NMD/EKV program (*Intellectual Property*). They do
16 not contest the *Intellectual Property* is in their possession and that it can be
17 copyrighted/patented. They did not contest they made use and enriched from it. The Poet
18 and the Defendants did not consent that they have disseminated and disclosed the
19 *Intellectual Property* to private and public companies, that were the only ones to enjoy it
20 [JN/I is the Joint Implementation of DOD/BMDO Joint Program Office]. As the
21 Poet/Defendants themselves wrote what they did:

23 **“B.2 POINT-BY-POINT DISCUSSION**

24 [U] This section presents the POET team's point-by-point responses to the issues
25 by DCIS. At the request of JN/I, the issues given in [21] are presented page-by-
26 page and bullet-by-bullet; the POET team's response to each bullet is inserted in
red immediately under the original text.” [Attachment A page 128,]

27 And

1 “Plaintiffs allege that Dr. Schwartz authored "13 reports between 1996 and 1999
2 and thousands of pages of analysis and recommendations” for the government.
3 Compl. ¶ 13(f). These reports included flight test data analysis, technology
4 concepts and test procedures. *Id.* **Defendant does not contest** Dr. Schwartz's
authorship in these works. (Highlighted add Exh. 2, page 19, top par.)

5 (31) Order dated 7/14/06 in case 06-4010DDP states this instant case is a:

6 “**Different case with different Defendants and claims**” than case 96-3065RSWL
7 (Handwriting by Judge RSWL).

8 Government is not a defendant, and could not be defendants in a qui-tam case 96-
9 3065RSWL. Defendants (2, 3, and 4) could not be Defendants in case 96-3065RSWL,
10 because they committed the unlawful acts in conjunction and in cahoots with the
11 Government [Attachment A page 1, Attachment A 2-153].

12 (32) Final Judgment of prior case 96-3065RSWL is not a deciding case 06-4010DDP
13 claims. Because instant case is a “**Different case with different Defendants and claims**”
14 than prior case. Defendants allege prior case’s Final Judgment covers instant claims. Just
15 say that with out proof are in contradiction to the facts and to Order dated 7/14/06
16 [Attachment A page 1, Exh. 1-11, Exh. A-F, and instant Complaint ¶¶ 1-117].

17 (33) Instant Court can compel Defendants to reinstate Case 96-3065RSWL because it
18 was dismissed without prejudice to Government:
19

20 “Such dismissal is with prejudice to the relator but without prejudice to the United
21 States” and the Court of Federal Claims “cannot compel specific
22 performance.”[Exh. C page 99, and Exh. 2 page 12, paragraph 2].

23 And

24 “Plaintiffs request that this court force the government to intervene in the TRW
25 Litigation. However, this court does not have jurisdiction to compel the
26 government to intervene in the *qui tam* action because this court cannot compel
27 specific performance.” [Page 12, paragraph 2 in Defendants (2, 3, and 4) Exh. 2]
28

1 (34) Adding the Government as a Defendant in qui-tam case 96-3065RSWL was
2 improper since:

3 “the relator sues on behalf of himself and the United States 31 U.S.C. § 3730(b).
4 [Exh. 2, (page 5, last line)]

5 (35) Adding Defendants (1, 2, 3 and 4) as Defendant to qui-tam case 96-3065RSWL is
6 improper. Since their unlawful acts committed in conjunction and with knowledge of the
7 Government (Defendant (1)). [Attachment A pages 1-142].

8 (36) Adding Defendants (1, 2, 3 and 4) as Defendant to case 03-37C and 03-786C would
9 not have solved a thing. Since court of Federal claims had no Jurisdictions over instant
10 claims and it redirected these claims to this D.C. [Exh. 2, 7]

11 (37) *Intellectual Property* was copyrighted on February 2006 after: (1) 2/24/03 when
12 Case 9-3065 RSWL was dismissed; (2) 12/29/04 when case 03-37C was dismissed; (3)
13 2/17/04 when case 03-786C was dismissed; [Exh. A-F, Exh. C, page 98-9, Exh. 1-11 and
14 especially Exh. 2, 7 and Complaint ¶ 48]

15 (38) In 2006 new information at Government website: www.house.gov/Berman after
16 prior litigation was dismissed (request for judicial notice). [Complaint ¶¶ 29, 48]

17 (39) On 12/29/04, Court of Federal Claims opinion in case 03-786C and 03-37C
18 redirected instant claims to United States District Court:

19 [Exh. 7 page 5 last par.), (page 8 par. B(1)), (page 9 par. B(1)), (page 11 last par.),
20 (page 12 top par.), (page 12 last par.), (page 13 top par.), (page 13 par. 4), (page
21 14 par. 5, 6), (page 15 to par.)] and [Exh. 2 pages 14 last par., page 15 top par. and
22 par. 4., page 16 par. 5, 6, 7, page 17 top par., page 22 mid par]

23 (40) I would not have signed stipulation, if the Government Attorneys that over looked
24 the qui-tam and wrongful termination case 96-3065 RSWL had explained to me that it
25 would allow the Defendants to get away with violation of the law, and rob me of my
26 *intellectual property*. This is a breach of trust. This document was signed under duress
27
28

1 because of my economical situation, and should not be a shelter for Defendants' violation of
2 law. [Exh. F page 103-5]

3 "In no case shall information be classified in order to: (1) conceal violations of law,
4 inefficiency, or administrative error" [Exh. 8, E.O. 12958 Section 1.8(a).

5 **Conclusions (V):** Therefore the Defendants' motion to dismiss should be denied.

6
7
8 **VI. Instant complaint and its claims are well defined; Cases 03-37C and 03-786C with**
9 **similar claims and *Intellectual Property* definition were understood by US Court of**
10 **Federal Claims and by the Defendants; Since the 12/27/99 Order the *Intellectual***
11 ***Property* is Only within the Defendants' possession; Defendants never contested;**
12 **(a) my authorship of the *Intellectual Property*; (b) they made and were paid for the**
13 **use of the *Intellectual Property* on the top of my written objections; (c) I was**
14 **"working as a Technical Advisor" in NMD/EKV program on behalf of Defendants**
15 **authorization /request and trusted them that I will be paid; (d) I was discriminated**
16 **as a scientist; (e) unclassified Portions of my *Intellectual Property* were**
17 **Copyrighted/patent filed In 2005-6;**

18 (41) The Defendants falsely allege instant complaint 06-4010DDP claims, and
19 *Intellectual Property* definition are vague/short /long/and improperly written. This while
20 they did not contest understandability of prior cases 03-37C, and 03-786C, and even
21 submitting these two cases as their Exh. A-F and Exh. 1-11 for the purpose of arguments to
22 dismiss the instant case. Now they come and allege instant complaint is too long/short,
23 *Intellectual Property* is vaguely defined, and claims are not properly written. This is when
24 the instant complaint is written in same way/format that prior cases 03-37C and 03-786C
25 were written.
26
27
28

1 (42) US Court Of Federal Claims understood prior cases 03-37C and 03-786C claims
2 and *Intellectual Property* definition. Instant complaint claims and *Intellectual Property*
3 definition are written in same way/format as prior cases. On 12/29/04, and on 2/17/04 US
4 Court of Federal Claims dismissed these two cases for lack of jurisdictions, not for me
5 having vague/short/long/and improper written complaints claims and *Intellectual Property*
6 definition:

7 “Plaintiffs allege that Dr. Schwartz authored "13 reports between 1996 and 1999
8 and thousands of pages of analysis and recommendations” for the government.
9 Compl. ¶ 13(f). **These reports included flight test data analysis, technology**
10 **concepts and test procedures.** *Id.* Defendant does not contest Dr. Schwartz's
11 authorship in these works.” [Highlighted add, Exh. 2 page 19 top par. and
Complaint ¶¶ 17, 18-25, 37, 48(b)]

12 (43) Since 1997, on behalf of the Defendants I was working as a Technical Advisor in
13 NMD/EKV program, as the Defendants wrote:

14 “21-DEC-99: SUBJECT IS WORKING AS A TECHNICAL ADVISOR FOR
15 THE OIG, DOD REGARDING A FRAUD INVESTIGATION ON THE EXO
16 ATMOSPHERE KILL VEHICLE”. The Defendants identify the date of the
17 *Intellectual property* (“12/21/99”). [Highlight added, Attachment A, page 81, 82
first par., and Complaint ¶¶ 1, 18, 48]

18 (44) On 11/27/98 with the Defendants’ authorization/request/instruction I worked
19 thousands of hours created seven reports on their behalf, trusted as they said I would be
20 paid. During 1997-1999 I mailed the Defendants 79 invoices asking to be paid. During this
21 time Defendants said they would pay me. But breached the trust and refuse to pay. My
22 security clearance was reinstated by the Defendants to allow me to be a Technical Advisor
23 in NMD/EKV program. DOD-IG DCIS SA Reed wrote:

24 “Schwartz has provided hundreds, if not thousands, of hours in reviewing and
25 analyzing numerous highly technical documents and manuals that have been
26 requested in conjunction with the DCIS investigation. She has been instrumental
27 in putting together **seven reports** that have laid out the problems with TRW’s
28 discrimination technology”. [Highlighted added. Attachment A, page 82,

1 Complaint ¶¶ 18, 17-21, 23-25, 37, 45-50, 55, 60, 61, 64, 67, 68, 72, 73, 76-78,
2 81, 82, 84, 85, 88, 91, 94-96, 98-104, 112-114] and

3 “There have been several serious areas of concern that have been brought to the
4 attention of TRW through the efforts of Dr. Schwartz. **I believe if these**
5 **questionable areas had not been identified that the government, nor possibly**
6 **anyone else, would be aware of them today.”** [Highlighted added. Attachment A
7 page 22 last paragraph]

8 (45) On 8/31/99 Defendants without my authorization and on the top of my written
9 objections reduced my 13 reports of *Intellectual Property* to 11 reports. DOD-IG DCIS SA
10 Reed wrote:

11 ”As a result of the POET findings, the letter from LtCol. Hoffman and the decision
12 by DOJ not to intervene this investigation is closed. During the course of the
13 investigation numerous technical discrepancies were noted that appear to warrant
14 further review. These discrepancies have been reduced to writing, generating
15 **eleven different reports**. At this time these issues do not appear to have been
16 resolved. A Management Control Deficiency Report has been generated
17 identifying the irregularities surfaced during this investigation”. [Highlighted
18 added. Attachment A, page 18 par. 16. I created reports].

19 (46) On 11/29/05 portion of *Intellectual Property*: “Non-Compliance without exception
20 of Baseline Discrimination Technology With The TRD” was copyrighted. [“TRD” means
21 Government Technical Requirement Document for NMD/EKV program]. The report
22 provides a unique idea, a method and a system design to identify malfunctions and non-
23 compliances with the TRD of the Poet’s NMD/EKV design/concept. On 12/27/99 Order, I
24 submitted it to the Defendants. From 6/14/98 the Defendants made use/tampered/infringed
25 /disseminated/disclosed/falsely classified/killed market/enriched without authorization, on
26 the top of my written objection this *Intellectual Property* report and without pay:

27 “TXul-272-124” [Attachment A, pages 83-103, and 104-119, 120-121, and
28 Complaint ¶48(a)].

(47) On 11/30/05 portion of *Intellectual Property*: “Test Procedures for Concept
Validation of the US EKV National Missile Defense Program” was copyrighted. The report

1 provides a unique idea, a method and a system design to test and validate the Poet's NMD
2 /EKV design/concept non-compliances with the TRD and the laws of Physics. On 12/27/99
3 Order, I submitted it to the Defendants. From 1997 the Defendants made use/tampered
4 /infringed/disseminated/disclosed/falsely classified/killed market/enriched/ without
5 authorization, on the top of my written objection this *Intellectual Property* report and
6 without pay:

7 "TXul-273-319" [Complaint ¶ 48(b), Attachment A page 121].

8
9 **(48)** On 12/02/05 portion of *Intellectual Property*: "Statistical Hypotheses Testing" was
10 copyrighted. The report provides a unique idea, a method and a system design to statistically
11 test and validate the Poet's NMD/EKV design/concept non-compliances with the TRD and
12 the laws of Physics. On 12/27/99 Order, I submitted it to the Defendants. From 9/23/98 the
13 Defendants use/tampered/infringed/disseminated/disclosed/falsely classified /killed
14 market/enriched/ without authorization, on the top of my written objection this *Intellectual*
15 *Property* report and without pay:

16 "TXul-264-855" [Complaint ¶ 48(c)].

17 **(49)** On 12/02/05 portion of *Intellectual Property*: "CONTRADICTIONS in Northrop
18 Grumman Corp. [Prior TRW Inc.] Reports to the Government" was copyrighted. The report
19 provides a unique idea, a method and a system design to identify and locate the Poet's
20 NMD/EKV design/concept contradictions in accordance with the TRD and the laws of
21 Physics. The report identifies over 250 contradictions. On 12/27/99 Order, I submitted it to
22 the Defendants. From 8/07/98 the Defendants made use/tampered/infringed
23 disseminated/disclosed/falsely classified/killed market /enriched/without authorization, on
24 the top of my written objection this *Intellectual Property* report and without pay:

25 "TXu 1-264-831" [Attachment A, pages 30-42, and Complaint ¶ 48 (d)].
26
27
28

1 (50) On 12/08/05 portion of *Intellectual Property*: “Analyzing Northrop Grumman
2 [prior TRWs] Threat Typing Sensitivity Report, and my analyzing Software” was
3 copyrighted. The report provides a unique idea, a method and a system design to analyze by
4 the use of the laws of physics, Infra Red Signals phenomenology the capability of the Poet’s
5 NMD/EKV design/concept to differentiate (discriminate) between warheads, and decoys.
6 On 12/27/99 Order, I submitted it to the Defendants. From 05/29/98 the Defendants made
7 use/tampered/infringed/disseminated/disclosed/falsely classified/killed market/enriched
8 without authorization, on the top of my written objection this *Intellectual Property* and
9 without pay:

10 “TXul-271-559” - [Complaint ¶ 48 (e)]

11
12 (51) On 12/13/05 portion of *Intellectual Property*: “Questions For POET and Agenda
13 For GAO Visit to MIT regarding EKV/NMD program” was copyrighted. The original
14 report provides a unique idea, a method and a system design to generate questions that their
15 answers will point to the non-compliance with the TRD and the laws of Physics of the Poet
16 NMD/EKV design and concept. On 12/27/99 Order, I submitted it to the Defendants. From
17 02/03/99 the Defendants made use/tampered/infringed /disseminated/disclosed/falsely
18 classified/killed market/enriched without authorization, on the top of my written objection
19 portions of this *Intellectual Property* and without pay:

20 “TXul-274-484” - [Complaint ¶ 48(f)]

21 (52) On 02/23/06 portion of *Intellectual Property*: “New Warhead motion” was
22 copyrighted and filed for a patent. The report provides a unique idea, a method and a
23 system design for a warhead with motions that complies with the TRD and the laws of
24 Physics, and that the Poet NMD/EKV design/concept are helpless against. In 1996 the idea
25 was provided to the Defendants. On 12/27/99 Order, I submitted it to the Defendants. In an
26 effort to cut down my damages, a limited idea was reconstructed without classified
27

1 documentation with the effort of over 1500 hours. Even if the idea is granted a patent, the
2 Defendants already enriched made **use/tampered /infringed/disseminated/disclosed/falsely**
3 **classified /killed market/enriched/without authorization**, on the top of my written objection
4 this *Intellectual Property* idea and without pay:

5 “Patent application #: 11/359,849 02/22/2006” and copyrighted:

6 Txu1-291-985 dated 3/07/06 [Complaint ¶ 48 (g)]

7
8 **(53)** On 09/17/98 I **objected** to the Dissemination of my *Intellectual property* and wrote
9 a letter to DOJ Attorney Egan:

10 “I object to giving any of the documents produced by me, or that will be produced
11 by me now or in the future to GBI, Boeing, TRW, NRC or their representatives or
12 their employees.” [Attachment A, page 25]

13 **(54)** On 09/22/98 I **objected** to the Dissemination of my *Intellectual property* and wrote
14 a letter to DOJ Attorney Egan:

15 “I object to giving any of the documents produced by me, or that will be
16 produced by me now or in the future to GBI, Boeing, TRW, NRC or their
17 representatives or their employees”. [Attachment A, page 26].

18 **(55)** On 09/25/98 I **objected** to the Dissemination of my *Intellectual property* and wrote
19 a letter to DOJ Attorney Egan:

20 “Sending document of mine without complying to my requests dated September 17,
21 and September 22, 1998 in fax to you will leave me no choice but to inform
22 BMDO that they have received illegally my documents and that I request to mail
23 them back to me without making any copies.” [Attachment A, page 27-28,
24 quotation last par.]

25 **(56)** On 10/09/98 on my behalf DOD-IG DCIS SA Sam Reed instructed Dr. Ming Tsai
26 (Poet Leader) to **safeguarded and not-disseminate** my *Intellectual Property*. SA Reed on
27 my behalf also communicated with Attorney Egan requesting not to disseminate/disclose
28 /use my *Intellectual Property*. As SA Reed wrote:

1 “We request that the information contained in our response to the POET Team
2 questions be safeguarded and not disseminated to anyone other than the POET
3 members”. [Attachment A, page 24]

4 (57) Since 1996-1999 I worked closely with the Poet and the Defendants. The
5 Defendants failed to safe guard my rights in the Intellectual property. On their behalf and
6 request I provided them with 13 reports in NMD/EKV program; know how; Trade Secret;
7 computer diskettes with my developed software and algorithms, source code and in
8 object code form; presentations; viewgraphs; lectures; technologies; ideas; *Intellectual*
9 *Property*; Copyrights information; confidential and proprietary information; test
10 procedures; tests results; tests validations; flight tests analysis and validations; thousands
11 of pages of fine and detailed analysis and recommendations related to the Poet
12 NMD/EKV design/concept; Trusting the Defendants I would be paid for it. As DOD-IG
13 DCIS SA Reed wrote:

14 “The POET was provided a full briefing regarding the questioned areas of TRW’s
15 discrimination technology”. And “During this meeting(s) the POET was presented
16 with Twelve questions generated by Schwartz”. And “On March 15, 1999, the
17 POET provided their answers to the twelve questions generated by Schwartz
18 concerning their findings on TRW's discrimination technology. The BMDO was
19 provided a response to the POET answers on August 11, 1999. “ [Attachment A,
20 page 18, par. 11, 12 and 15, and page 24].

21 and:

22 “We request that the information contained in our response to the POET Team
23 questions be safeguarded and not disseminated to anyone other than the POET
24 members”. [Attachment A, page 24, and complaint ¶ 48(f), 18]

25 **Conclusions (VI):** Therefore Defendants’ motion to dismiss and request for judicial
26 notice should be denied.

27 **VII. Examples for the Defendants unauthorized use/disseminated/ Enriched/disclosed**
28 **the heart of the Intellectual Property and its ideas; Falsely**

1 classified/tampered/copied and pasted it into their counter reports; Infringed upon
2 it; Refused to give it back; Refused to let me copyright/patent it in its entirety;
3 Refused to Pay for it; Destroyed its market;

4 (58) On 06/29/98, without my authorization the Defendants disseminated/disclosed my
5 copyrighted “CONTRADICTIONS “ report to the Poet for their “use” without paying me,
6 and on top of my objections. The original report provides over 250 contradictions and non-
7 compliance with the TRD of the Poet’s NMD/EKV design/concept. DOD-IG DCIS SA
8 Reed wrote:

9
10 “On June 29, 1998, correspondence was provided .. regarding a list of
11 "Contradictions" relative to TRW's discrimination technology. This Document
12 was also provided to the Phase One Engineering Team (POET) for their use in
13 analyzing the questioned technology. ” [Highlighted added, See Complaint ¶ 48
14 (d) “TXu 1-264-831”, and Attachment A pages 29, 30-42].

15 (59) On about 06/30/98 without my authorization and on top of my objections the
16 Defendants disseminated/“use” /disclosed the 06/14/98 report named: “Non-Compliance
17 without exception of Baseline Discrimination Technology With The TRD“. Additional
18 dissemination/disclosure of this report took place on 3rd and 4th of February 1999. The
19 Dissemination /disclosure includes to private commercial companies such as TRW/Boeing
20 /NRC, which were defendants on that qui-tam case 96-3065RSWL, and while qui-tam case
21 was still under seal. Qui-tam case was unsealed only on 4/1/99. On 2/5/99 I received partial
22 list of the meeting attendance on 3rd and 4th of February 1999. [Attachment A page 21,
23 Complaint ¶ 48 (a)]. **TABLE A** below summarizes the Poet/Defendants tampered/false
24 classified /copied/pasted/used/disclosed/infringed my “Non-Compliance without exception
25 of Baseline Discrimination Technology With The TRD“ report.

26 The right column of the **TABLE A** shows six groups of three numbers sets
27 (vertically presented). For Example Attachment A pages 99, 115, and 76 is a set. Page 99 is
28

1 my original copyrighted page; the tampered version of page 99 that the Poet/Defendants
2 created is shown as page 115; Page 76 is a Poet/Defendants *counter report's* page that
3 copied pasted page 115, with the Defendants Bates # **AERO 000066**. The original
4 unclassified copyrighted portion of this report is provided in Attachment A **83-103**. A
5 falsely classified/tampered version of my report that the Poet/Defendants created is
6 provided in Attachment A page **104-119**. The Poet/Defendants *counter report* is shown in
7 Attachment A page **65-80**, with the Poet bates # **AERO 000055 - AERO 000070**.

8 On the right side of each of that Poet/Defendants *counter report's* pages [See
9 Attachment A page **65-80**], they **copied/pasted** into a square frame (picture like) the falsely
10 classified/tampered version of my report [Attachment A page **104-119**]. On the left side of
11 each page of this *counter report*, they reported the reasons to why the tampered version of
12 my report that they had pasted on the right side of the page had “no merit”.

13 This alleged “no merit” was reported in conjunction and cahoots of the Poet
14 /Defendants while they responded to the tampered version they had created out of my
15 original report. The tampered version removed/falsely classified out the heart of my
16 original report as presented by the missing data on Attachment A pages **69, 74, 75, 76, 77**.
17 That tampered/missing data is unclassified since it was copyrighted; see Attachment A
18 pages **91, 97, 98, 99, 100**. These missing data provided my proof that the Poet /Defendant
19 NMD /EKV concept/design is false. The false removal of this data gave the Poet/
20 Defendants false reasons/basis for the non-intervention and dismissal of qui-tam claim. To
21 assure the Poet/Defendants will continue receiving money for their alleged independent
22 evaluator services, of its own NMD/EKV design/concept. Tampering/falsely classify the
23 data of my *Intellectual Property* also caused me not to win the Wrongful Termination claim
24 in case 96-3065RSWL. The Poet becoming the acting arms and the manual for covering-up
25 for Defendants corruption and for the Government false classification of documents;
26 assuring that they will be continuously paid for their services.

TABLE A

Name of Report: “**Non-Compliance without exception of Baseline Discrimination Technology With The TRD** dated 6/14/96 Presentation by Dr. N. Schwartz”

Attachment A Pages #	My Report's Original Pages #	My Report's falsely classified/Tampered Pages #	Poet Counter Report's copied/pasted/infringe Pages #	Poet Counter Report's Bates # on the copied /pasted infringe Pages
83-103	1-16			
104-119		1-16		
65-80			1-16	AERO 000055-70
91	5			
108		5		
69			5	AERO 000055
97	10			
113		10		
74			10	AERO 000064
98	11			
114		11		
75			11	AERO 000065
99	12			
115		12		
76			12	AERO 000066
100	13			
116		13		
77			13	AERO 000067

(60) Additional example of tampering/copy/past/falsely classify/disseminate/disclosure/ infringed the heart of the “Non-Compliance without exception of Baseline Discrimination Technology With The TRD“ report is provided in a Poet/Defendants’ *counter report* named:

1 “ POETStudy1998-5 Independent Review of TRW Discrimination Techniques -
2 Final Report
3 M-J. Tsai, MIT Lincoln Laboratory Larry Ng, Lawrence Livermore National
4 Laboratory Glenn Light, Aerospace Corporation Frank Handler, POET Lawrence
5 Livermore National Laboratory Charles Meins, MIT Lincoln Laboratory”
6 [Complaint ¶ 46 (1)]

7 Pages 45-59 out of this *counter report* are relevant for this example (I have redacted from
8 each of these pages the “Unclassified Draft” mark; pages produced by FOIA), and are
9 shown in Attachment A pages **128-142**. In this *counter report* the Poet/Defendants failed to
10 safe guard my rights in the Intellectual property, and on behalf of JN/I [DOD Joint
11 Implementation office], without my authorization, and on the top of my written objection, a
12 “POINT-BY-POINT”, “page by page, and bullet-by-bullet” took the law into their hands.
13 As the Poet/Defendant wrote:

14 **“B.2 POINT-BY-POINT DISCUSSION**

15 [U] This section presents the POET team's point-by-point responses to the issues by
16 DCIS. At the request of JN/I, the issues given in [21] are presented page-by-page and
17 bullet-by-bullet; the POET team's response to each bullet is inserted in red
18 immediately under the original text”. [Attachment A page 128]

19 The Poet/Defendants falsely presented/disclosed my Intellectual property ideas as issues
20 raised by DCIS, while Court of Federal claims ruled that the Consulting Agreement the
21 Government had with me was not valid, and therefore DOD-IG, DCIS, DOD, BMDO, JN/I,
22 DOJ, the Poet/Defendants **had no right**, and/or without my authorization to use
23 /disseminate/disclose/copy and paste/infringe/enriched and or/raise issues based on the heart
24 of my Intellectual Property and my ideas. All while only the Poet/Defendants are being
25 enriched /paid for these activities, and failed/refused to pay me, and while I objected in
26 writing to the unlawful acts.

27 For example Attachment A page 128 top 3rd par, show redacted portion of the
28 Poet/Defendants’ original *counter report* page 45. The Poet/Defendants had
copied/pasted into this page the following: “page 1: **Non-Compliance without
exception of Baseline Discrimination technology with the TRD**”. This is the

1 cover page of my Original Report [shown in Attachment A page 85]. The Poet
2 response was that this was a: “[U] Title page”.

3 Then Poet continues to copy and past into their *counter report* original page 45
4 shown as Attachment A page 128, the heart of my *Intellectual property*: “**Page 2 -**
5 **Kalman Filter (KF) family of Feature Extractors failed to comply without**
6 **exception to the TRD/SOW”**

- Jameison [ISEG] committee recommended spectrum analysis.”
[shown in Attachment A page 86]

7 And the Poet response to these idea and findings of mine: “[U] There is no
8 contractual requirement that the KF function should be included in the
9 discrimination process”. And so on the Poet *counter report* pages 128-142
10 copied/paste infringed/used /tampered/ the heart of my Intellectual Report page
11 103-103, “**POINT-BY-POINT”** “page-by-page and bullet-by-bullet”.

12 (61) On 2/03/99 and 2/04/99 the Poet/Defendants presented/disclosed/lectured on the
13 output and performance result of my software packages. They Failed to give me credit for
14 my software, failed to protect it, safe guard it, and falsely presented the software packages
15 as authored by DCIS. Denying me access to my attorneys. Alleging the reasons were, that
16 my attorneys had no clearance. The Poet /Defendants without my authorization, and on the
17 top of my written objection, a “POINT-BY-POINT”, “page by page, and bullet-by-bullet”
18 took the law into their hands. Disclosed my software packages to commercial public
19 companies such as NRC (Nichol Research Corporation), Boeing, TRW, MIT, LLNL,
20 AERO, and to AG, IG, GAO, FBI, CIA, NMD JPO, GBI PO, GBI, CSC, DCIS, DOJ,
21 BMDO, ARMY, NAVY, AIRFORCE, DOD, JN/I. Only for theirs and their favorites
22 benefit and enrichment without paying me. [Partial Attendance list is in Attachment A page
23 21]. The *counter reports* produced by the Poet on 12/7-8/98, that used/infringed/Tampered
24 /disseminated/disclosed my *Intellectual Property* are identified in the instant complaint
25 ¶46(2) and on Attachment A pages **143-151** where the Poet/Defendants took the law into
26 their hands “POINT-BY-POINT”, “page by page, and bullet-by-bullet” as identified in the
27 following pages’ headers:
28

1 (62) On 2/03/99 and 2/04/99 DOD-IG DCIS SA Reed recorded the meeting and the
2 false Poet/Defendants reporting NMD/EKV concept/design performance. My attendance at
3 this meeting, and questions I had asked:

4 “On February 3rd and 4th, 1999, the POET provided a presentation at the Aerospace
5 Corporation regarding their findings on TRW's discrimination technology. The
6 POET findings stated that TRW's discrimination technology did meet the contract
7 requirements, but the performance of the discrimination architecture may be
8 fragile. During this meeting(s) the POET was presented with Twelve questions
9 generated by Schwartz”. [Attachment A, page 18, par. 12]

10 (63) On 2/03/99 and 2/04/99 the Poet/Defendants killed the Market for the *Intellectual*
11 *Property*. Without authorization on the top of my and of SA Reed written objections they
12 disseminated/disclosed my *Intellectual Property* to over 150 people that attended the Poet
13 meeting and represented the potential market. The Poet /Defendant transferred/disclosed to
14 the entire possible market my *Intellectual Property* ideas/data. Attendances stood during
15 this meeting since there was no place to sit. Most refused to sign the meeting attendance
16 sheet. The Poet/Defendants presentation took place in Aerospace Corporation for two days,
17 while denying me lecturing on my *Intellectual property*. That presentation disseminated and
18 disclosed the heart of my *Intellectual Property* in hard copy, in diskettes, and in lecturing to
19 the Defendants, Poet, Government agencies, commercial public companies, such as NRC
20 (Nichol Research Corporation), Boeing, TRW, MIT, LLNL, AERO, and to AG, IG, GAO,
21 FBI, CIA, NMD JPO, GBI PO, GBI, CSC, DCIS, DOJ, BMDO, ARMY, NAVY,
22 AIRFORCE, DOD, JN/I. Only for their benefit/enrichment and enjoyment. This
23 Dissemination /disclosure killed the market and the protection of my ideas; my trade
24 secrets; my privilege information; and know how. It was the market for the Poet *counter*
25 *report; for which the Poet/Defendants were paid for preparing and lecturing on counter*
26 *reports; therefore it was the market for my reports (Intellectual Property)*. The *counter*
27 *reports* and my reports were identical work of analyzing NMD/EKV concept

1 /design/technologies. But while only the Poet/Defendants favorites were paid, I am
2 discriminated, harassed, and denied payment. Because my scientific work concluded the
3 Defendants/Poet NMD/EKV design/concept/technologies did not work and will never work
4 and are in non-compliance with the laws of physics, and with the TRD. That the
5 Poet/Defendants wasted billion of dollars implementing it over 20 years of precious
6 National time. On 2/5/99 SA Reed gave me a copy of this meeting attendance, which I
7 myself participated for one day. In this meeting the Poet/Defendants Point-by-Point, page-
8 by-page and bullet-by-bullet presented my Intellectual property. [Attachment A pages 21,
9 shows a partial list of 24 people that did sign the attendance sheet on this day].
10

11 (64) On 7/01/99 my Security clearance and access to 13 report of *Intellectual Property*
12 was terminated, as DOD-IG DCIS SA Reed wrote:

13 “the security clearance for Dr. Nira Schwartz was no longer in effect”. [Attachment
14 A, page 124] From that time on I was denied access to my *Intellectual Property*.

15 (65) On 12/27/99 in compliance with the Government Order I submitted 13 reports and
16 all my *Intellectual Property* to the Defendants. As this Order states:

17 “submit all written material, using security procedures, that relate to technical
18 information concerning the National Missile Defense program to the Ballistic
19 Missile Defense Organization (BMDO) before releasing such information.”
20 [Attachment A, page 120, 121 par. f.].

21 **Conclusions (VII):** Therefore the Defendants’ motion to dismiss and request for judicial
22 notice should be denied.
23

24
25 **VIII. Decline intervention and intervened only for dismissal of prior litigation Qui-**
26 **Tam Case 96-3065 RSWL was the Defendants’ false/fraud/biased, breach of**
27 **trust, and is In violation of 31 U.S.C. § 3730; 3 1 U.S.C. § 3729 act; without the**
28

1 **Attorney General consent in writing, without his signature, and in conjunction,**
2 **consent and partnership of the Defendants, taking the law into their hands;**
3 **Black ball and discriminate against me; for the benefits/pay/enjoyment of the**
4 **Defendants only; I had the best law firms in the country as my attorneys in prior**
5 **litigation; The Defendants concealed from me a \$15 million dollar possible out of**
6 **court settlement in prior case 96-3065RSWL and instead dismissed it, in which I**
7 **am entitled to 30%;**
8

9 (66) On 09/17/97 the Defendants and DCIS were aware that the Poet is a biased party
10 and cannot be an independent evaluator of its own NMD/EKV concept/design. Since on
11 09/17/97 Attorney Pauline Waschek informed the Defendants/DOJ Attorney Dennis Egan
12 that the Poet/Defendants (not TRW) were the inventor of the NMD/EKV design/concept.

13 As Attorney Pauline Waschek wrote:

14 “The basic elements of this technology are not original to TRW’s design. Rather
15 they have evolved through Government-funded research dating to the early 1970’s.
16 Government National labs, such as MIT/LL and DoD technical organizations,
17 such as SSDC’s Sensors Technology Directorate, have advocated algorithmic
18 approaches similar to that proposed by TRW to meet discrimination performance
19 requirements.” [Attachment A page 54 last par., and Complaint ¶¶ 16, 18, 21, 23,
20 24, 26, 28, 29, 30]

21 (67) On 03/25/98 DOD-IG DCIS SA Reed requested independent review of NMD/EKV
22 design/concept/technologies and wrote Mr. Keith Englander at BMDO:

23 “We are requesting that the Ballistic Missile Defense Organization undertake
24 additional testing regarding TRW’s discrimination technology. If approved, we
25 suggest that a government controlled facility be employed to do the testing. We
26 feel the additional testing will provide unbiased results and can only strengthen the
27 EKV program”. [Attachment A page 45 second last par.]

28 (68) On 05/29/98 DOD-IG DCIS SA Reed and I trust that an independent disinterested
party will be appointed by BMDO, and wrote Mr. Keith Englander at BMDO again:

1 “As I have stated before, we are requesting additional testing of TRW's BLA for
2 discrimination. We feel the additional testing will provide more accurate results
3 and will strengthen the EKV program. We trust that an independent disinterested
4 party, will be identified to conduct these tests.” [Attachment A page 63 third par.
And Complaint ¶¶ 18, 21, 23, 26, 48, 64, 76;]

5 (69) On May/31/1998 the Defendant breached the trust SA Reed and I had in them and
6 selected the Poet as alleged independent evaluator. And DOD-IG SA Reed wrote:

7 “11. In May 1998, Englander concurred that additional testing was needed and put
8 together a Phase One Engineering Team (POET) to evaluate TRW's
9 discrimination technology. In June 1998, a meeting was held with the POET at the
10 Aerospace Corporation, El Segundo, CA. The POET was provided a full briefing
11 regarding the questioned areas of TRW's discrimination technology. The POET
12 also met with TRW representatives during this time”. [Attachment A page 18 par.
11, and Complaint ¶¶ 21, 23, 64, 76;]

13 (70) On 06/08/98 BMDO/Defendants on the top of DOD-IG DCIS SA Reed and my
14 objections the Poet team became officially the “independent Review of the TRW
15 discrimination technique” for NMD/EKV program. SA Reed wrote:

16 “The document, Attachment A (I), provides an update on the Phase One
17 Engineering Team (POET) independent review of TRW discrimination techniques
18 for the Exoatmospheric Kill Vehicle program”. [Attachment A page 61,
Complaint ¶¶ 21, 23, 46, 64, 76]

19 (71) On about June 1998 the Poet's Cadre Leader Frank Handler declined my request
20 to give up being independent evaluator of NMD/EKV design/concept, since the Poet was its
21 inventor and therefore biased. He refused. Attorney Dennis Egan threaten me that if I keep
22 pushing the issue that the Poet is biased and cannot be an independent reviewer of
23 NMD/EKV design/concept /technologies the agreement he made with me that the
24 Government Intervene in case 96-3065RSWL will be null and void. As a result I was under
25 duress, anxiety, mental distress.
26
27
28

1 (72) On 06/08/98 DOD-IG DCIS SA Reed reported the Poet false findings, while
2 refusing to validate Technology performance against the TRD:

3 “The POET findings stated that TRW's discrimination technology did meet the
4 contract requirements, but the performance of the discrimination architecture may
5 be fragile”. [Attachment A page 18 par 12, and page 46 first par.]

6 (73) On 06/15/98 in effort to save his investigation from total fraud, DOD-IG DCIS SA
7 Reed proposed to BMDO amending the Poet Statement of Work [SOW]. So it would
8 validate the NMD/EKV design/concept and its discrimination technology against the TRD
9 (Technical Requirement Document). TRW/Boeing implemented the Poet/Defendants
10 NMD/EKV concept/design. Complying with the amending of the SOW will show the
11 Poet/Defendants NMD/EKV design/concept malfunctions. SA Reed wrote:

12 “As per our conversation on this date I am providing some minor changes to the
13 Statement of Work for the Poet Study 98-5 which are contained in Exh. (1) to this
14 correspondence. If you have any comments or additional considerations please call
15 me at anytime”. [Attachment A page 64, 122, 123, and Complaint ¶¶ 21, 23, 46,
48, 64, 76]

16 (74) On 07/10/98 the Poet/LLNL Cadre Leader Frank Handler was stronger than DOD-
17 IG DCIS and took the law into his hands refused DOD-IG DCIS modification to Poet’s
18 Statement of Work. This was to conceal the Poet NMD/EKV design/concept/technology
19 was false and fraud, and assure receiving \$700 Million per year. The Poet refused to test
20 and validate the NMD/EKV design/concept/technology against the Government TRD. In
21 effect opening the door for the creation of the false and fraud *counter report*. The Poet and
22 the Defendants in conjunction and in cahoots allowed that. Cadre Leader Frank Handler
23 wrote:

24 “Mr. Reed of the DoD Inspector General Defense Criminal Investigative Service
25 suggested, in a letter to you dated June 15, 1998 (attached), several modification to
26 the Statement of Work for POET Study 98-5 (PS98-5). In a subsequent letter to
27 you dated June, 29, 1998 (attached) Mr. Reed indicated that he believed the
28 modifications proposed in his June 15 letter were acceptable for implementation. I

1 **write this note to state clearly that the POET study team will not incorporate**
2 **the proposed modifications in our Statement of Work** for the reasons described
3 below”. [Highlighted added, Attachment A page 46 first par. Complaint ¶¶ 21,
4 23, 24, 26, 27, 46, 64, 76, 86, 110,112]

5 (75) On 11/27/98 SA Reed wrote the Poet and their reports are biased:

6 “It is felt that the POET does not fully understand the discrimination technology or
7 the requirements it is suppose to meet. It is also believed that the POET cannot
8 provide an unbiased report because of their association with employees at TRW
9 and Boeing, and the immense pressure that is on everyone for TRW's
10 discrimination technology to meet the contract requirements. As an example, if
11 TRW's discrimination technology does not meet the contract requirements the
12 government group who oversees this project known as the Ground Base
13 Interceptor (GBI) Office, located in Huntsville. Alabama will look extremely bad
14 since they support that TRW's technology does meet the contract requirements.
15 GBI's support is based on testing done by the Nichols Research Corporation
(NRC) who is the technical advisor on the contract to the GBI office. This testing
16 by NRC was done in a very questionable fashion and when they reported their
17 results in Dec 1997, they stated before several individuals attending the”.

18 [Attachment A page 82 last par. And Complaint ¶¶ 23, 64, 76]

19 (76) On 12/07/98, in June 1998, and on 12/7/98 despite the fact that the Poet was the
20 inventor/design of NMD EKV technologies, in conjunction with the Defendants it produced
21 alleged independent review *counter reports* named:

22 “POETS tudy1998-5 Independent Review of TRW Discrimination Techniques -
23 Final Report” and “Independent Review of TRW Discrimination Techniques” and
24 “AERO 000001-001 80, LLNL 00000 1-000620” [Complaint ¶¶ 46, 47, 48]

25 (77) On 12/20/98 DOD-IG DCIS SA Reed reported again about the Poet false findings,
26 while the Poet refusing to validate Technology performance against the TRD:

27 **“December 20, 1998, Update:** During this reporting period the Phase One
28 Engineering Team (POET), provided a draft report concerning TRW's
discrimination technology. A review of the POET report is somewhat confusing as
it states "Overall, the TRW Baseline Algorithms are well designed and work
properly", and then states on the next page that "The performance of the **TRW**

1 discrimination architecture may be fragile". These statements are inconclusive and
2 somewhat, if not totally, contradict each other. The POET report is *full* of
3 statements like this and actually support what we have reported to the Ballistic
Missile Defense Office (BMDO) in our last few reports." [FOIA document]

4 **(78)** On 02/26/99 LtCol. John B. Hoffman, falsify and fraudulent reasons /documents
5 for declining intervention in prior litigation (qui-tam case 96-3065RSWL). I never
6 requested Government non-intervention, and on 4/6/99 and on 1/24/00 (Docket # 74, 211)
7 filed in case 96-3065RSWL motions requesting to force Government intervention. (The
8 Hon. Judge RSWL explained to me that since the Government cannot be a defendant in the
9 qui-tam case, the Government breach of agreement to intervene, and damages resulted
10 because of it is to be filed in another case). DOD-IG DCIS SA Reed wrote:

11 "13. On February 26, 1999, LtCol. John B. Hoffman, United States Army Legal
12 Services, Arlington, VA, provided a letter to the DOJ, Commercial Litigation
13 Branch, Civil Division, Washington, D.C. LtCol. Hoffman states in the letter that,
14 "Based upon conversations with Mr. Dennis Egan, the investigators handling this
15 case and our review of the facts, we recommend against intervening in this case.
16 The relator's request that the government not intervene, while not determinative,
17 was also considered as a factor in making this recommendation." [Attachment A
page 18 par. 13 and Complaint ¶¶ 27, 28.]

18 **(79)** On 03/15/99 DOD-IG DCIS SA Reed stated LtCol. John B. Hoffman's reasons for
19 non-intervention in prior litigation (qui-tam case 96-3065RSWL) were a fraud. DOD-IG
20 DCIS SA Reed wrote:

21 "The letter is dated February 26, 1999 and recommended against, DOJ intervening
22 in this case. One of the reasons for not intervening was based upon conversations
23 with the investigators handling the case. This statement has no factual basis as
24 reporting agent is the only investigator assigned to the case, and has not spoken
25 with any Army representative regarding not intervening in the case" [Attachment
A page 20, Complaint ¶¶ 17, 23, 27, 28, 57, 64, 67,75]

26 **(80)** On 03/31/99 the Government in fraud, in shame, in breach of trust, with false
27 intervention agreement with me, declined intervention in prior litigation 96-3065 RSWL
28

1 based on the fraud and false recommendation of LtCol. John B. Hoffman, and based on the
2 fraud and biased Poet/Defendants *counter reports*. DOD-IG DCIS SA Reed wrote:

3 “14. In March 1999, DOJ Attorney Egan was contacted. Egan advised that as a
4 result of the POET findings and the letter received from LtCol. Hoffman, the DOJ
5 would not intervene in this investigation. Egan related that Schwartz was "pro se"
6 (representing herself) in the QT, at this time, and he would be overseeing the case
7 for any future legal considerations.” [Attachment A page 18 par. 14, and
8 Complaint ¶¶ 17, 23, 27, 28, 57, 64, 67, 75]

9 **(81)** On 3/31/99 in conjunction with the Poet fraud *counter reports*, and with LtCol.
10 John B. Hoffman fraud recommendations, the Defendants declined intervention. And on the
11 top of it, with out the Attorney General knowledge and without his signature. While
12 Attorney Dennis Egan, and signed on behalf of the Attorney General. On **01/14/03** as a
13 result of the Secretary of Defense recommendations, DOJ Attorney Egan signed again on
14 behalf of the Attorney General the consent to Dismiss case 96-3065RSWL. This when this
15 act had no authorization, as Court of Federal Claims stated on 12/29/03 (should be
16 12/29/04):

17 “ (“The Attorney General is charged with deciding whether there is sufficient
18 evidence to bring suit on behalf of the United States. He is responsible for
19 proceeding with all claims and appearing on behalf of the United States. He is also
20 responsible for deciding whether to continue suits initiated by private persons.”);
21); *United States ex. rel. Fendev v. Tenet Healthcare Cory.*, 105 F. Supp.2d 1228,
22 123 1 (N.D. Ala. 2000) (“The decision by the Attorney General not to intervene in
23 and conduct the [qui tam] lawsuit is tantamount to consent by the Attorney
24 General to have the action dismissed.”) (citations omitted)”. [Exh. 2, paged 13 last
25 8 lines, and top of page 14, **Exh. 9**, and Complaint ¶¶ 2, 17, 23, 27, 28, 29, 57,
26 64, 67, 75].

27 And

28 “Defendant presents a strong argument that Mr. Egan did not have the authority to
bind the government into agreeing to compensate Dr. Schwartz or to intervene in
the TRW Litigation. As the government explains, in this instance, DOJ attorneys,
such as Mr. Egan, do not have independent authority to commit the United States
to intervene in litigation, and plaintiffs have alleged no legal basis to suggest that
they do so.... This is true especially in light of the fact that the TRW Litigation

1 was a \$10 billion litigation, and the government's involvement ill claims in excess
2 of over \$500,000 must be approved at levels of authority above DOJ trial
3 attorneys. *See 28 C . F . R . Pt. 0 , Subpart Y, App. Sect. 1, 1(b) (2003).⁷*. [Exh.
4 2 paged 10 last par and top of page 11 and **Exh. 9**].

5 **(82)** On 01/14/03 the Defendants blackballed me alleging that I have released additional
6 classified information, without even identifying what it was. Generic accusations.

7 Defendants wrote:

8 “Dr. Schwartz has released additional classified information outside this litigation.
9 This threat of additional disclosures exists whether Dr. Schwartz is represented by
10 counsel or not.” [Exh. 9 (by Defendants 2, 3, and 4), paged 19 par. A].

11 **(83)** During 1999-2005, in case 96-3065RSWL I had the best attorneys in the country. I
12 have over half a million pages of unclassified documents that prove the Defendants in qui-
13 tam case reported false performance of NMD/EKV design/concept/technology. The
14 Defendants knew that the Judge would not accept the asserting state privilege; after all, the
15 trial can be in front of a judge, and in closed doors. To assure the dismissal, the Defendants
16 had to black ball me, alleging seven years after the fact, that I divulged classified
17 information, without even clearly identifying which “additional” information I have
18 allegedly released. And if that was not enough on 02/11/02 the Government on the top of
19 my objections approved their Attorney Steven Kim to be the attorney of the Defendant
20 TRW in case 96-3065RSWL, when I filed qui-tam case on behalf of the Government.
21 Letting Attorney Kim abuse his power to acquire documents TRW had no right to have. A
22 Relator in a qui-tam case is entitled to up 30% of recovery of 8 billion dollars, which the
23 Defendants deprived me. [Attachment A page 126, page 82 (last par.)] And if that is not
24 enough, on May 2005 the Defendants in conjunction and with knowledge harassing and
25 stalking me, making me go thru a security check in front of the public in the airport, putting
26 me behind a fence like a dog, to drive me away from my new country, so I would not file
27

1 any more cases against them and asked the court for justice, and show the public their
2 unlawful acts. [Attachment A page 127]

3 (84) The defendants declined and concealed possible out of court settlement with the
4 Defendants in qui-tam case 96-3065RSWL for the amount of \$15 million dollars. Falsely
5 claimed they did that because Government attorneys fee will be more than that. When no
6 Government attorneys, but rather my attorneys were on case 96-3065RSWL, since
7 Government decline intervention. In which I am entitled to up to 30%. [Exh. 5, and GAO
8 reports in public domain, and case 03-786C, which was dismissed for lack of jurisdictions.]
9

10 (85) The Defendants discriminate against me; refuse to pay me for work I produced on
11 behalf of their request, while trusting I will be paid as they said. While only paying the Poet
12 and NRC for the same work I did in NMD/EKV program as technical advisor to the
13 Defendants. The Defendants were paying each other, for the use of my *Intellectual*
14 *Property*, tampering it, falsely classifying it, disseminate it, disclose it, infringe it, and
15 destroy its market, on the top on my written objections, and only for their enrichment. Using
16 the tampered version of my Intellectual property to dismiss my prior qui-tam case. SA Reed
17 wrote first and the Defendants wrote second quotation below:

18 “GBI's support is based on testing done by the Nichols Research Corporation
19 (NRC) who is the technical advisor on the contract to the GBI office.”

20 And

21 “21-DEC-99: SUBJECT IS WORKING AS A TECHNICAL ADVISOR FOR THE
22 OIG, DOD REGARDING A FRAUD INVESTIGATION ON THE EXO
23 ATMOSPHERE KILL VEHICLE”. The Defendants identify the date of the
24 *Intellectual property* (“12/21/99”). [Attachment A, page 81, 82 (first and last par.),
Complaint ¶¶ [1, 11, 17 (par. 8, 9, 10), 10, 18, 22, 25, 26, 27, 32-41, 43-46, 48, 66,
70-73, 76-79]

25 (86) The Defendants discriminate against me over other scientist. On 12/27/99, they
26 issued orders against me that prevent me from getting a job as a scientist. The
27 Poet/Defendants’ scientist do not have to produce their work to the Government prior to
28

1 releasing it. No potential employer that I have applied for a job, agreed to put-up with such
2 delays, and a valid possibility of dissemination/diclosure of the work. The Defendants
3 refused to hire me as scientist, only to use my *Intellectual Property* for their enrichment
4 without pay.

5 “such a cause of action clearly sounds in tort, in which case this court still lacks
6 jurisdiction. “ [Exh. 2 Page 16, top paragraph, and Attachment A page 121]

7 (87) The Defendants (2, 3, and 4) motion to dismiss alleging that since I cannot “see”
8 my *Intellectual Property* because it is classified, I should not have rights to be paid. *Id* [8:7].
9 All not supported by law, or by the Constitution. The Defendants robbed my Intellectual
10 Property without pay. While paying only the Poet and NRC for the same work I did, and
11 refuse to pay me, and alleging that since I can not see my work any more, or present it in
12 full, than I have no right to ask to be paid for it.

13
14 (88) The Documents I have provided show that each of the Defendants independently,
15 and together is responsible in some manner for the occurrences herein, were proximately
16 caused by their conduct, intentionally, knowing or having reason to know that the other
17 is acting or will act tortiously, and materially contributing to it for their sole benefits, for
18 receiving Federal funds, and enrichment.

19
20 **Conclusions (VIII):** Therefore the Defendants’ motion to dismiss should be denied.

21
22 **IX. Efforts made by the Defendants to confuse this Court.**

23
24 (89) By the Federal Declaratory Judgment Act 28 U.S.C. § 2201(a) this Court has the
25 power to issue declaratory judgment in my instant complaint. Non-contract claims could
26 proceed in this Court. Under the Federal Declaratory Judgment Act is clear that the granting
27 of declaratory relief is a matter of trial court discretion. See Brillhart v. Excess Co. of

1 American, 316 U.S. 491, 625 S.Ct. 1173, 86L.Ed. 1620 (1942); Torch Inc. v. LeBlanc, 947
2 F 2d 193 (5th Cir. 1991). and Declaratory relief is a matter of district court discretion. See
3 Mission Ins. Co. v. Puritan Fashions Corp., 706 F.2d 599, 601 (5th Cir. 1983). [Internet
4 quotation]

5
6 (90) *The court must look at the litigation situation as a whole in determining whether it*
7 *is appropriate for the court to exercise jurisdiction over the declaratory judgment action*
8 *before it. Great American Insurance Co. v. Houston General Insurance Co. 735 F. Supp. 581*
9 *at page 585 (S.D.N.Y. 1990); But see also Continental Casualty Co. v. Coastal Savings*
10 *Bank, 977 F.2d 734 (2nd Cir. 1992); Nautilus Ins. Co. v. Winchester Homes Inc. 15 F.3d 371*
11 *(4th Circ. 1994). [Internet quotation]*

12 (91) Exh. D [page 100] is an Order dismissing appeal on prior case (“not appealable”).
13 Because judgment on Wrongful Termination claims (portion of prior litigation 96-
14 3065RSWL) was not yet available. And the Defendants try to confuse the Court, as though
15 the lack of subject matter was for other reasons.
16

17 (92) From 1995 to 1996 I was Senior Staff Engineer employed by TRW Inc.
18 Not a software programmer as the Defendants alleged.
19

20 (93) Defendants (2, 3, and 4) alleging they were not served personally with the
21 complaint. This is when I filed the Post Office returned receipt signed by them, and when
22 they failed to oppose it within 15 days.
23

24 (94) The Defendants stated MIT/LL is a part of MIT, and therefore the
25 defendants’ list should be amended to include MIT.
26

27 **Conclusions (IX):**
28

1 For the foregoing reasons identified the Defendants' motions to dismiss and request for
2 judicial notice should be denied with prejudice.

3
4
5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct.

7
8 DATED: October 29, 2006

9
10 BY: Dr. Nira Schwartz
11 Dr. Nira Schwartz
12 Plaintiff non-attorney in pro se
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 NIRA SCHWARTZ WOODS, Richard Woods, and we do swear or declare that on this
4 date, as required by Supreme Court Rule 29, our address is 2550 PCH # 68, Torrance, California 90505.

5 On October 29, 2006, we served the foregoing document described as:

6 **Plaintiff's:**

7 **(1) Response In Opposition To:** Defendants' Motions to dismiss complaint; And To
8 Declaration of Aleta Bodolay;

9 **(2) Petition For Answers To Presented Questions;**

10 **(3) Request for Judicial Notice and Attachment A filed Concurrently Herewith;**

11 Proof of service;

12 on Defendants parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope **BY FIRST CLASS MAIL** addressed as follows:

13 1) Debra Wong Yang, Jonathan B. Klinck – US Attorney
14 Federal Building, suite 7516, Civil Process Clerk,
15 300 N. Los Angeles Street,
Los Angeles, California 90012

16 2) James J. Gallagher, Mana Elihu –Defendants Attorneys
17 McKenna Long & Aldridge LLP,
18 444 South Flower Street, 8th Floor,
Los Angeles, CA 90071-2901

19 3) Office Of the Clerk,
20 Central District Of California,
21 Filing in Pro-se Room 526
312 N. Spring Street, Los Angeles, CA 90012

22 Executed on October 29, 2006, at Los Angeles, California.

23 

24 _____
25 Richard Woods

23 

24 _____
25 Plaintiff Schwartz