

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

Pursuant to the Local Rules Governing Duties of Magistrate Judges, the following Magistrate Judge has been designated to hear discovery motions for this case at the discretion of the assigned District Judge:

(MANx)

- | | |
|--|---|
| <input type="checkbox"/> Paul L. Abrams | <input type="checkbox"/> Jennifer T. Lum |
| <input type="checkbox"/> Robert N. Block | <input type="checkbox"/> James W. McMahon |
| <input type="checkbox"/> Rosalyn M. Chapman | <input checked="" type="checkbox"/> Margaret A. Nagle |
| <input type="checkbox"/> Charles Eick | <input type="checkbox"/> Arthur Nakazato |
| <input type="checkbox"/> Rita Coyne Federman | <input type="checkbox"/> Fernando M. Olguin |
| <input type="checkbox"/> Paul Game | <input type="checkbox"/> Suzanne H. Segal |
| <input type="checkbox"/> Marc Goldman | <input type="checkbox"/> Carolyn Turchin |
| <input type="checkbox"/> Stephen J. Hillman | <input type="checkbox"/> Patrick J. Walsh |
| <input type="checkbox"/> Jeffrey W. Johnson | <input type="checkbox"/> Andrew J. Wistrich |
| <input type="checkbox"/> Victor B. Kenton | <input type="checkbox"/> Carla Woehrlé |
| <input type="checkbox"/> Stephen G. Larson | <input type="checkbox"/> Ralph Zarefsky |

Upon the filing of a discovery motion, the motion will be presented to the United States District Judge for consideration and may thereafter be referred to the Magistrate Judge for hearing and determination. The Magistrate Judge's initials should be used on all documents filed with the Court so that the case number reads as follows:

CV05- 7533 FMC (MANx)

===== :
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012 | <input type="checkbox"/> Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516 | <input type="checkbox"/> Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501 |
|--|---|--|

Failure to file at the proper location will result in your documents being returned to you.

United States District Court

Central District of California

SPACE EXPLORATION TECHNOLOGIES CORPORATION,

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

THE BOEING COMPANY and LOCKHEED MARTIN CORPORATION,

CV05-7533 FMC (MANX)

TO: (Name and address of Defendant)

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

CHARLES S. BARQUIST (CA BAR NO. 133785)
ANTHONY L. PRESS (CA BAR NO. 125027)
STEVEN M. HAINES (CA BAR NO. 166677)
MORRISON & FOERSTER LLP
555 WEST FIFTH ST., 35TH FLOOR
LOS ANGELES, CA 90013

an answer to the complaint which is served on you with this summons, within TWENTY days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

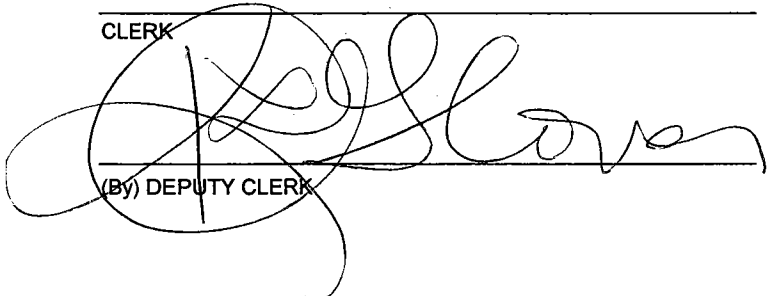
SHERRI R. CARTER

OCT 19 2005

CLERK

DATE

(By) DEPUTY CLERK



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Central District of California

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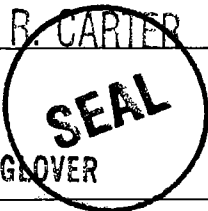
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SHERRI B. CARTER

CLERK



KERRI GLOVER

(By) DEPUTY CLERK

OCT 19 2005

DATE

COPY

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16 Attorneys for Plaintiff
17 SPACE EXPLORATION TECHNOLOGIES
18 CORPORATION

19 UNITED STATES DISTRICT COURT

20 CENTRAL DISTRICT OF CALIFORNIA

21 SPACE EXPLORATION
22 TECHNOLOGIES
23 CORPORATION,

24 Plaintiff,

25 v.

26 THE BOEING COMPANY and
27 LOCKHEED MARTIN
28 CORPORATION,

Defendants.

Case No. CV **C V 05 - 7533 FMC** (MAX)

COMPLAINT FOR:

1. Violation of Section 1 of the Sherman Act;
2. Violation of Section 2 of the Sherman Act;
3. Violation of Section 7 of the Clayton Act;
4. Violation of Racketeer Influenced and Corrupt Organizations Act;
5. RICO Conspiracy;
6. Violation of the Cartwright Act (Unreasonable Restraint of Trade);
7. Violation of the Cartwright Act (Conspiracy to Monopolize);
8. Violation of Section 17200 of Cal. Bus. & Prof. Code

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. This is an action by Space Exploration Technologies Corporation
3 (“SpaceX”) against The Boeing Company and Lockheed Martin Corporation for
4 violations of antitrust, unfair competition and racketeering laws. Boeing and
5 Lockheed Martin have engaged in an unlawful conspiracy to eliminate competition
6 in, and ultimately to monopolize, the government space launch business and
7 prevent SpaceX and other potential new entrants from competing in that business.

8 2. In 1995, the U.S. Government began a multi-billion dollar space
9 program, designed to improve the nation’s access to space by making space launch
10 vehicles more affordable and reliable. This government program, known as
11 Evolved Expendable Launch Vehicle (or “EELV”), is administered by the U.S. Air
12 Force, which awards lucrative contracts to private companies that provide EELV
13 launch vehicles and related launch services to the government.

14 3. Boeing and Lockheed Martin have dominated the EELV business.
15 They are currently the only companies with contracts through the EELV program
16 and the only companies being paid through the EELV program for EELV launch
17 services. Boeing and Lockheed Martin have benefited handsomely from these
18 contracts, and they stand to receive a steady stream of revenue under these contracts
19 in the future. Boeing and Lockheed Martin, therefore, have had and continue to
20 have a strong incentive to ensure that they remain the only companies that are
21 awarded EELV contracts.

22 4. SpaceX poses a significant threat to Boeing and Lockheed Martin’s
23 dominant position. It has developed new technologies and a new business model
24 that will allow it to reduce dramatically the cost of access to space and increase the
25 reliability of launch vehicles. The rockets being developed by SpaceX will perform
26 better, and will be much less expensive, than those offered by Boeing or Lockheed
27 Martin.

1 5. Boeing and Lockheed Martin have responded to this threat by
2 conspiring to act together to keep competitors such as SpaceX out of the market and
3 to maintain their dominant position. In furtherance of this agreement, Boeing and
4 Lockheed Martin have engaged in a group boycott and concerted refusal to deal
5 with the Air Force unless the Air Force agreed to deal with them on common terms
6 and exclude all other competitors, including SpaceX. They have also used
7 strong-arm tactics to demand that the Air Force grant them exclusive long-term
8 contracts, which provide that only Boeing and Lockheed Martin will provide EELV
9 services to the government through fiscal year 2011 and possibly longer. They now
10 propose to formally consolidate their monopoly position by forming a joint venture
11 that will combine their EELV launch businesses into a single entity.

12 6. Boeing and Lockheed Martin also have shut SpaceX and potential
13 competitors out of the business by corrupting the government procurement process
14 for awarding EELV contracts. The Air Force found that Boeing was stealing
15 proprietary and trade secret information from Lockheed Martin and using that
16 information to prepare EELV contract bids. As a result, competitive bidding on the
17 merits was eliminated from the procurement process and, instead, the Air Force has
18 adopted an acquisition policy that awards all EELV launch contracts on a
19 noncompetitive basis to Boeing and Lockheed Martin. This prevents SpaceX from
20 competing on the merits of its superior cost structure and advanced technologies.

21 7. SpaceX has suffered significant injury from Boeing and Lockheed
22 Martin's coordinated efforts to exclude competition from SpaceX (and others) and
23 to monopolize the EELV business. Their conduct has also injured competition,
24 other competitors, the U.S. Government and taxpayers. By this action, SpaceX
25 seeks compensatory damages, treble damages, and injunctive relief to put an end to
26 Boeing and Lockheed Martin's anticompetitive and exclusionary conduct and their
27 ongoing efforts to keep SpaceX out of the market.

28

1 businesses into a single monopoly named the United Launch Alliance (the “ULA”)
2 to strengthen their stranglehold on the market.

3 17. Boeing and Lockheed Martin’s agreement to merge their government
4 EELV businesses into the monopoly ULA, and their coordinated efforts to maintain
5 their dominant positions through actions designed to preclude competition in the
6 EELV market – including competition from SpaceX – have destroyed any pretense
7 of competition in the sale of EELVs to the government, and have thereby directly
8 caused significant injury to competition and to SpaceX, its employees and
9 shareholders.

10 18. Boeing and Lockheed Martin’s anticompetitive conspiracy and
11 conduct – which eliminate competition between themselves and further preclude
12 the possibility of competition from third parties – also have injured, and will
13 continue to injure, U.S. taxpayers and the U.S. Government. Absent competitive
14 pressures of any sort, Defendants’ space launch prices will continue to escalate and
15 their reliability will continue to deteriorate.

16 19. Because the U.S. Air Force (acting on behalf of the U.S. Government)
17 is the single largest purchaser of EELVs, exclusion from the sale of EELVs to the
18 Air Force has the effect of making it extremely difficult, if not impossible, to
19 develop the economies of scale necessary to compete successfully over time in the
20 sale of EELVs to other government agencies and commercial customers.

21 20. In addition, many commercial customers develop and configure launch
22 payloads, such as satellites with specific design and integration elements,
23 specifically for launch by EELVs. Accordingly, exclusion from the EELV market
24 also has the direct effect of precluding competitors, including SpaceX, from
25 competing effectively for the sale of launch services to commercial customers.
26 SpaceX has been, and will continue to be, injured by this reduction in competition
27 and its exclusion from the sale of EELVs to commercial customers.

28

THE AIR FORCE'S EELV PROGRAM

1
2 21. The EELV Program is a multi-billion dollar space program
3 administered by the Department of the Air Force, Space and Missile Systems
4 Center, Evolved Expendable Launch Vehicle Systems Program Office. The Air
5 Force initiated the EELV program in 1995 in an attempt to ensure the government
6 affordable access to space.

7 22. Through the EELV program, the Air Force is purchasing commercially
8 goods from private companies, and the Air Force is acting in its capacity as a
9 commercial participant in the market for EELVs and launch services.

10 23. The EELV program's original objectives were to encourage the
11 development of a national launch capability that satisfied the Air Force's satellite
12 launching requirements and to increase the U.S. space launch industry's
13 international competitiveness in the commercial launch services business.

14 24. On June 9, 1998, a Justification & Approval ("J&A") that authorized
15 the Air Force to contract solely with Boeing and Lockheed Martin for EELV launch
16 services was approved. The Air Force justified the limited competition by
17 determining that Boeing and Lockheed Martin were the only two competitors
18 capable at the time of delivering the required EELV services.

19 25. Since 1998, the Air Force has pursued an acquisition strategy of
20 awarding short term (1 to 3 year) contracts to both Lockheed Martin and Boeing, in
21 an attempt to ensure that competition would be maintained between the two
22 companies by maintaining two viable EELV providers. The use of short term
23 contracts also provided any new EELV manufacturers with the opportunity to
24 compete for contracts in the short to medium term.

25 26. On or about March 5, 2005, Acting Secretary of the Air Force, Peter B.
26 Teets, announced that the Air Force would issue requests for proposals ("RFPs")
27 relating to the purchase of a third production lot of EELVs (the "Buy 3 Launches"),
28 and that RFPs would "probably be for a two-three year period."

1 27. On March 17, 2005, the Air Force executed an amendment to the J&A
2 to cover the purchase of the Buy 3 Launches. The amended J&A approved an
3 acquisition strategy that would once again award all EELV launch contracts
4 exclusively to Boeing and Lockheed Martin on a non-competitive basis. Upon
5 information and belief, the Air Force was aware at this time that Boeing and
6 Lockheed Martin planned to merge their EELV businesses into the monopoly ULA
7 joint venture.

8 28. The March 17, 2005 J&A also approved, for the first time in
9 connection with the EELV program, an award of exclusive EELV contracts that
10 could remain in place for five years or longer.

11 29. The amended J&A expressly provides that the Air Force did not
12 believe that competitive bidding between Boeing and Lockheed Martin based on
13 price would be possible, largely due to Boeing's history of committing Procurement
14 Integrity Act violations by obtaining Lockheed Martin's confidential pricing
15 models for use by Boeing in its own EELV business.

16 30. The amended J&A also permits the Air Force to award Boeing and
17 Lockheed Martin non-competitive cost reimbursement launch capability contracts
18 on a sole-source basis to subsidize Defendants' fixed costs associated with their
19 EELV businesses. These contracts constitute a taxpayer-financed subsidy of
20 Boeing and Lockheed Martin's EELV businesses and will assist Defendants in
21 maintaining their dominant positions in the sale of EELVs and related launch
22 services because no other EELV competitor – including SpaceX – is able to receive
23 a comparable subsidy.

24 31. In addition to creating an unlevel playing field in the sale of EELVs to
25 government agencies, this subsidy interposes the U.S. Air Force as a significant
26 force in impairing competition in the sales of EELVs to commercial customers,
27 because the discriminatory taxpayer subsidy raises significantly the relative cost
28 structure of SpaceX and other non-favored competitors.

1 32. Among other things, the amended J&A added:

2 a. A determination that the Commercial Space Act does not apply
3 to the EELV program, exempting the EELV program from the requirement to use
4 U.S. commercial providers and to use FAR Part 12 procurement procedures;

5 b. The industrial mobilization basis for limiting competition,
6 despite the fact that the same J&A supported the award of a cost-plus-award-fee
7 contract for "infrastructure services" to each contractor to provide "annual basic
8 launch capability, factors support, engineering support, program management,
9 launch and range site activities, mission integration, and mission specific design
10 and qualification"; and

11 c. A determination that SpaceX was not capable of providing
12 launch services for Buy 3 – notwithstanding the contradiction that SpaceX *will* be
13 ready to provide EELVs and EELV launch services by fiscal year 2007 and the
14 amended J&A applies to launches for the next five years or longer.

15 33. On or about April 21, 2005, the Air Force issued RFPs for the Buy 3
16 EELV launch services exclusively to Boeing and Lockheed Martin. The cover
17 letters to the RFPs state that the performance period shall “begin in FY06 and
18 eventually continue through FY11 or beyond,” and includes a “mission allocation
19 matrix” that shows how the Air Force already plans to allocate all 23 launch
20 missions contemplated by the RFP between Boeing and Lockheed Martin.

21 34. SpaceX only learned for the first time through the issuance of the
22 RFPs about the long-term duration of the Buy 3 contracts and that Boeing and
23 Lockheed Martin would continue to serve as duopoly EELV launch providers – or,
24 if allowed to consummate their proposed ULA joint venture, a single monopoly
25 EELV launch provider – through fiscal year 2011 and potentially beyond.

26
27
28

1 **BOEING AND LOCKHEED MARTIN'S PATTERN OF MISCONDUCT**
2 **AND SUBVERSION OF THE EELV PROCUREMENT PROCESS**

3 35. Boeing and Lockheed Martin have a long history of engaging in
4 anticompetitive conduct that corrupts the U.S. Government's EELV procurement
5 process.

6 36. In 1998, during the early stages of the EELV program, the U.S. Air
7 Force considered whether to award the initial EELV contract to only one vendor –
8 Boeing or Lockheed Martin. The Air Force's planned initiative caused increased
9 competition between Boeing and Lockheed Martin, as each fought to win what
10 might have been an exclusive contract.

11 37. On October 16, 1998, the U.S. Air Force opted to award \$500 million
12 EELV Engineering and Manufacturing Development contracts to both Boeing and
13 Lockheed Martin. The Air Force also awarded Initial Launch Services contracts,
14 awarding twenty-eight (28) launch missions and allocating them exclusively to
15 Boeing and Lockheed Martin. Boeing received more than two-thirds of the total
16 number of awarded launches, with the Air Force awarding Boeing nineteen (19)
17 missions and Lockheed Martin eight (8) missions.

18 38. It subsequently became clear that Boeing had an improper and
19 unlawful advantage during the 1998 EELV bid process. Specifically, the U.S. Air
20 Force determined that Boeing committed Procurement Integrity Act violations by
21 improperly acquiring and using confidential pricing data of Lockheed Martin in
22 connection with preparing Boeing's own EELV bid. In this regard, former
23 Undersecretary of the Air Force, Peter Teets, stated that Boeing "committed serious
24 and substantial violations of federal law," and further emphasized that "I've never
25 heard of a case of this scale." As punishment for this malfeasance, the Air Force
26 suspended Boeing from participating in the EELV program and shifted over \$1
27 billion in launch orders from Boeing to Lockheed Martin.

1 39. The U.S. Air Force lifted Boeing's suspension from bidding for new
2 EELV contracts shortly before commencing the current Buy 3 Launch procurement
3 process.

4 40. Lockheed Martin alleged in a lawsuit against Boeing that U.S. Air
5 Force procurement officers unlawfully favored Boeing during the procurement
6 process. One former Air Force official, Darleen Druyun, has admitted to giving
7 preferential treatment to Boeing in at least one procurement, in return for
8 assurances of employment from Boeing. Ms. Druyun approved one of the
9 amendments to the 1998 J&A that the Air Force relies upon as the basis for
10 sole-sourcing the EELV Buy 3 contracts exclusively to Boeing and Lockheed
11 Martin. Ms. Druyun pled guilty to charges that she manipulated the procurement
12 process to benefit Boeing and for her personal benefit, and she was sentenced to
13 serve 9 months in prison. The former Chief Financial Officer of Boeing, Michael
14 Sears, also pled guilty to aiding and abetting illegal employment negotiations in
15 connection with these events and has been sentenced to four months imprisonment.

16 41. Lockheed Martin has alleged in a lawsuit that Ms. Druyun unlawfully
17 favored Boeing in the EELV bidding process in 1998. Lockheed Martin has
18 alleged that Ms. Druyun attended a 1998 meeting with senior Boeing executives –
19 including former Chief Executive Officer Harry Stonecipher – during which Boeing
20 allegedly became privy to Lockheed Martin's confidential pricing data. The EELV
21 program is just one of many Air Force procurements that were corruptly tainted by
22 Boeing's malfeasance.

23 42. In its complaint, Lockheed made the additional allegations that:

24 a. Boeing's conduct was part of an unlawful scheme to "attempt
25 to monopolize [the] medium, intermediate, and heavy-lift U.S. Government space
26 launch market, and the national international space launch market in violation of
27 [Section 2 of the Sherman Act,] 15 U.S.C. § 2."
28

1 b. Boeing's conduct had the effect of lessening competition in the
2 sale of EELVs, which had the effect of harming consumers and will likely lead to
3 "higher prices, lower quality and less innovation in these relevant markets in the
4 future."

5 c. "There is a continuing threat that the U.S. Government and
6 other purchasers of EELV satellite launch services will continue to pay higher
7 prices if Boeing is successful in its scheme to monopolize the relevant markets
8 described herein."

9 43. Boeing responded to Lockheed Martin's allegations of trade secret
10 theft and anticompetitive conduct by counterclaiming that Lockheed Martin had
11 made false and misleading statements to the government during the EELV
12 procurement process relating to Boeing's conduct, and that Lockheed Martin was
13 engaged in an unlawful pattern of conduct to inflict reputational and competitive
14 harm on Boeing.

15 44. Against this backdrop of anticompetitive conduct, the U.S.
16 Government Accountability Office recently concluded that the EELV program,
17 with Boeing and Lockheed Martin as the sole providers, is on track for cost
18 overruns of *\$13.2 billion*, more than a 70% overrun over the approved budget of
19 *\$18.8 billion*, which includes substantial government subsidies of Defendants'
20 commercial launch businesses.

21 45. Moreover, the GAO concluded that neither Boeing nor Lockheed
22 Martin have satisfied all four of the key performance parameters of the EELV
23 program.

24 **THE PROPOSED BOEING / LOCKHEED MARTIN JOINT VENTURE**

25 46. In a joint statement released on May 2, 2005, approximately one week
26 after the Air Force released the Buy 3 RFPs, Boeing and Lockheed Martin publicly
27 announced their intentions to combine their respective EELV businesses and form a
28 joint venture, the United Launch Alliance.

1 47. Defendants now claim that the elimination of competition that has
2 existed between Boeing and Lockheed Martin will not lead to an increase in EELV
3 launch prices, or a reduction in the quality of EELV products and services. The
4 fundamental economic principles that underlie the antitrust laws, however, belie
5 any such contention. On the contrary, the formation of this monopoly will
6 ultimately harm the U.S. Government and commercial customers who utilize
7 EELVs by further increasing costs and reducing innovation. These anticompetitive
8 effects are, of course, precisely those alleged by Lockheed Martin in its
9 monopolization action against Boeing.

10 48. In connection with the merger of their EELV businesses and formation
11 of the monopoly ULA, Boeing and Lockheed Martin also have agreed to settle their
12 existing lawsuits relating to the companies' respective unlawful and anticompetitive
13 behavior. The settlement of those lawsuits will allow the companies to avoid
14 bringing to light facts relating to their most egregious anticompetitive practices.

15 **BOEING AND LOCKHEED MARTIN'S AGREEMENT TO**
16 **MONOPOLIZE EELV LAUNCHES AND PRECLUDE COMPETITION**

17 49. SpaceX presents Boeing and Lockheed Martin with the first
18 competitive challenge the Defendants have faced in this market in years.
19 Moreover, SpaceX's low cost business model and advanced technologies threaten
20 to upset entirely the Defendants' lucrative conspiracy by reducing costs by as much
21 as a factor of 10, while simultaneously providing improved reliability.

22 50. Defendants, who have enjoyed taxpayer subsidies in the form of non-
23 competitive contracts from the U.S. Air Force, have significant financial incentives
24 to protect their dominant position and preclude competition for government EELV
25 launches and related services, including competition from SpaceX.

26 51. Upon information and belief, Boeing and Lockheed Martin acted
27 pursuant to an anticompetitive conspiracy, explicit or tacit, between the companies,
28 the object of which was a shared commitment to acquire and maintain market

1 power, through their existing duopoly, in the sale of EELVs and related launch
2 services and to engage in anticompetitive acts with the specific intent to preclude
3 competition from other EELV providers, including SpaceX.

4 52. Upon information and belief, Boeing and Lockheed Martin engaged in
5 the following anticompetitive acts, pursuant to their anticompetitive conspiracy, to
6 foreclose competition, protect their dominant positions, maintain market power and
7 ultimately acquire monopoly power in the sale of EELVs and related launch
8 services:

9 a. Beginning in or about June 2004, and continuing to this day,
10 Boeing and Lockheed Martin have acted in concert to rely on their own history of
11 anticompetitive and corrupt practices to insist that competitive bidding for the
12 launches to be awarded pursuant to the Buy 3 RFP would be impractical.
13 Defendants argued that competitive price bids would be impossible due to Boeing's
14 illegal acquisition and misuse of confidential pricing information from Lockheed
15 Martin.

16 b. Beginning in or about June 2004 and continuing to this day,
17 knowing the U.S. Air Force's historic preference for maintaining two separate
18 EELV platforms (Boeing's Delta IV rocket and Lockheed Martin's Atlas V rocket),
19 Boeing and Lockheed Martin acted in concert to use strong arm tactics to corrupt
20 the bidding process and compel the Air Force, acting as a commercial participant in
21 the market, to deal with the companies only on common terms and to award the
22 Buy 3 contract exclusively to both Defendants for launches through fiscal year
23 2011 or beyond. In particular, Boeing and Lockheed Martin threatened either to
24 boycott the EELV procurement or to withdraw from the EELV business if the Air
25 Force did not grant the companies a long-term exclusive contract.

26 c. Beginning in or about June 2004 and continuing to this day,
27 Boeing and Lockheed Martin further corrupted the bidding process by threatening
28 to boycott or exit the EELV business unless the Air Force would provide both

1 companies and no other competitors with taxpayer subsidies to their EELV
2 businesses, thereby interposing the Air Force as participant in the launch business
3 and providing Defendants significant taxpayer-funded advantages in competing for
4 government and commercial business.

5 d. In May 2005, Boeing and Lockheed Martin agreed to merge
6 their dominant EELV businesses into the monopoly ULA, to eliminate any prospect
7 of competition between the companies and provide the companies with even greater
8 negotiating power to maintain the ULA's monopoly position, to demand exclusive
9 and exclusionary contracts from customers and to eliminate potential competition,
10 including competition from SpaceX.

11 53. A June 2004 report from the U.S. General Accounting Office (now
12 known as the Government Accountability Office) states: “[a]ccording to the two
13 launch providers, they have incurred substantial financial losses as a result of the
14 failure of commercial launch market to materialize, leading them to work with the
15 EELV System Program Office to modify the acquisition strategy and contract
16 approach. They are considering changing from a "fee for service" firm fixed price
17 contract to an approach that will use a combination of fixed price contracts for
18 actual launch services and cost reimbursement/fixed price contracts to pay for
19 contractors' fixed costs. Under this new approach, the EELV System Program
20 Office will pay for infrastructure upkeep previously absorbed by the launch
21 provider.” Upon information and belief, Boeing and Lockheed Martin have not
22 “worked with” the EELV System Program Office in the traditional sense, but have
23 instead engaged in an unlawful boycott directed at the EELV System Program
24 Office.

25 54. Defendants' conspiracy and conduct in furtherance of their conspiracy,
26 including among other things their boycott of the EELV procurement process,
27 refusal to deal except on common and exclusionary terms, agreement to merge their
28 EELV businesses into the ULA and agreement to settle their existing lawsuits

1 relating to their EELV business, have deprived, and threaten to continue to deprive,
2 EELV customers and competitors of the benefits of a competitive marketplace. In a
3 competitive marketplace, Boeing and Lockheed Martin would challenge
4 aggressively the price and performance of each other's EELVs. Such conduct is the
5 essence of competition and is beneficial for customers and competitors, including
6 SpaceX, which would have an opportunity to participate in this competition. By
7 their conspiracy and unlawful conduct, Boeing and Lockheed Martin have
8 eliminated this element of competition between themselves and the opportunity for
9 competition by others, causing direct injury to customers and competitors,
10 including SpaceX.

11 55. Defendants' conspiracy and conduct in furtherance of their conspiracy,
12 including among other things their boycott of the EELV procurement process and
13 refusal to deal except on common and exclusionary terms, corruptly deprived the
14 entire Air Force EELV procurement process of its legitimacy.

15 56. By foreclosing competition for government EELV launches, and by
16 using their market power to demand that the U.S. Air Force deal with Defendants
17 on common terms to subsidize their EELV businesses, Defendants also have
18 significantly injured competition in the sale of EELVs and related launch services
19 to commercial customers.

20 **INJURY TO COMPETITION AND TO SPACEX**

21 57. Boeing and Lockheed Martin's conspiracy and anticompetitive acts in
22 furtherance of their conspiracy have substantially and adversely affected
23 competition in the sale of EELVs and launch services to government and
24 commercial customers, and have caused direct and significant injury to SpaceX.

25 58. Boeing and Lockheed Martin's conspiracy and anticompetitive acts in
26 furtherance of their conspiracy, including among other things their exclusionary
27 conduct and the elimination of competition between Boeing and Lockheed Martin,
28 have reduced output in the market for EELVs and related services, have caused an

1 increase in current and future prices for EELVs and EELV launch services to the
2 detriment of customers, and have thereby reduced customer demand for EELVs and
3 EELV launch services. SpaceX has been injured directly by this reduction in
4 competition and its exclusion from the market.

5 59. Absent Defendants' conspiracy and anticompetitive conduct, SpaceX
6 would be able to compete on the merits to obtain EELV launch contracts from the
7 U.S. Air Force. At a minimum, SpaceX's low prices and advanced technologies
8 would infuse significant new competition into the marketplace and would force
9 Boeing and Lockheed Martin to improve their own cost structures and performance.

10 60. In a free and fair competition, SpaceX would win at least a share of
11 government EELV launches, and SpaceX may win a substantial share of launches
12 away from Boeing and Lockheed Martin, given the disparity in price and reliability
13 between SpaceX's launch vehicles and those of Boeing and Lockheed Martin.
14 Defendants' anticompetitive conspiracy and conduct in furtherance of their
15 conspiracy have foreclosed SpaceX from competing for U.S. Air Force EELV
16 contracts, which constitute the overwhelming majority of U.S. government EELV
17 contracts.

18 61. Defendants' agreement and conduct in furtherance of their conspiracy
19 also have significantly injured competition in the sale of EELVs to commercial
20 customers and have damaged SpaceX's ability to compete for commercial
21 customers.

22 **Relevant Markets**

23 62. The principal relevant product market affected by Defendants'
24 conspiracy and conduct is the market for the sale of EELVs and related launch
25 services.

26 63. As Lockheed Martin alleged in its verified complaint against Boeing,
27 EELVs and related launch services for medium, intermediate and heavy lift
28 launches are a highly complex and unique product, for which there are no economic

1 or technological substitutes. Therefore, EELVs and related launch services
2 constitute a relevant product market.

3 64. For purposes of the military and other national security needs of the
4 U.S. Government, domestic EELV manufacturers are the only suppliers of EELVs
5 who can supply launch services for medium, intermediate and heavy lift satellites.
6 Therefore, for purposes of procurement of EELVs and related launch services by
7 the U.S. Government, the United States is the relevant geographic market. For
8 purposes of commercial satellite launches, consumers can use both domestic and
9 foreign suppliers and the relevant geographic market is worldwide.

10 **Market Effects**

11 65. Boeing and Lockheed Martin's unlawful agreement and conduct has
12 foreclosed competition from other EELV providers (including SpaceX) and has
13 allowed one or both of Defendants to maintain market power (and collectively to
14 control virtually a 100% share) in the market for the sale of EELVs and related
15 launch services to the U.S. Air Force, as agent of the U.S. Government.
16 Defendants' conduct has precluded current and future competition in this market,
17 thereby protecting their dominant position and ensuring that U.S. Government
18 customers pay higher prices.

19 66. There is a dangerous probability that Boeing and Lockheed Martin's
20 unlawful agreement and conduct will allow the companies to acquire and maintain
21 market power in the market for the sale of EELVs and related launch services to
22 commercial customers. Defendants' conduct already has substantially diminished
23 current and future competition in this market, thereby extending their dominant
24 position in the U.S. Government EELV market and ensuring that commercial
25 customers will pay higher prices.

26 67. Boeing and Lockheed Martin's unlawful agreement and conduct has
27 significantly injured the only current potential competitor to Defendants, SpaceX,
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1 and has significantly diminished the incentive for others to invest in developing
2 competitive products for sale in the relevant markets.

3 **FIRST CAUSE OF ACTION:**

4 **VIOLATION OF SECTION 1 OF THE SHERMAN ACT**

5 68. SpaceX incorporates the allegations of paragraphs 1 through 67 as if
6 fully set forth herein.

7 69. Boeing and Lockheed Martin conspired and reached a collusive
8 agreement to engage in a collective boycott of the U.S. Air Force procurement
9 process unless the Air Force, acting as a commercial participant in the marketplace,
10 agreed to deal with the companies on common terms and provide the companies
11 with long-term exclusive contracts to provide EELVs and launch services through
12 2011 or beyond. Acting pursuant to their unlawful conspiracy, Boeing and
13 Lockheed Martin engaged in a group boycott and collectively refused to deal with
14 the U.S. Government unless the Air Force agreed to deal with the companies on
15 common, and exclusionary, terms.

16 70. Boeing and Lockheed Martin's conspiracy further included a collusive
17 agreement to engage in unfair business conduct with the object of suppressing
18 competition in the sale of EELVs and launch services and eliminating viable
19 competitors like SpaceX in the government and commercial EELV markets.

20 71. Defendants' conspiracy also included the elimination of normal and
21 aggressive competition between Boeing and Lockheed Martin, including
22 competition aimed at exposing the weaknesses of the other, which reduced overall
23 competition in the market to the detriment of customers and competitors alike.

24 72. Upon information and belief, Boeing and Lockheed Martin entered
25 into the conspiracy, and acted in furtherance of their conspiracy, with the bad faith
26 intent to harm competition, reduce output and increase prices.

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1 73. Boeing and Lockheed Martin's conspiracy and conduct in furtherance
2 of their conspiracy has had a direct and substantial effect on interstate trade and
3 commerce.

4 74. Due to Boeing and Lockheed Martin's anticompetitive conspiracy and
5 conduct in furtherance of their conspiracy, SpaceX, among others in the industry,
6 has been directly and significantly injured by: (a) the elimination of aggressive
7 competition between Boeing and Lockheed Martin, which benefits overall
8 competition in the U.S. Government and commercial markets, and competitors such
9 as SpaceX; (b) the exclusion from the U.S. Government market; and (c) the
10 exclusion from receiving taxpayer subsidies, which substantially increases
11 SpaceX's cost structure relative to the subsidized cost structures of Boeing and
12 Lockheed Martin and therefore significantly reduces SpaceX's ability to compete in
13 the U.S. Government and commercial markets.

14 75. Boeing and Lockheed Martin's anticompetitive conspiracy and
15 conduct in furtherance of their conspiracy have no legitimate business objective and
16 constitute a *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

17 76. Upon information and belief, among other things, the conspiracy
18 includes a *per se* unlawful group boycott and refusal to deal except on common
19 terms, an agreement to refrain from competing aggressively against each other and
20 an agreement to engage in unfair methods of competition to exclude competitors,
21 including SpaceX, from competing in the relevant market.

22 77. Alternatively, Boeing and Lockheed Martin's conspiracy unreasonably
23 restrains competition in the relevant markets and violates Section 1 of the Sherman
24 Act under the Rule of Reason.

25 78. Boeing and Lockheed Martin are liable under Section 1 of the
26 Sherman Act to SpaceX for damages in an amount to be proven at trial, including,
27 without limitation, the lost business, expenses and reduction in company value
28 SpaceX has suffered as a direct result of the conspiracy, which damages should be

1 trebled pursuant to 15 U.S.C. § 15(a), plus interest, costs and expenses, including
2 attorneys' fees.

3 **SECOND CAUSE OF ACTION:**

4 **VIOLATION OF SECTION 2 OF THE SHERMAN ACT**

5 79. SpaceX incorporates the allegations of paragraphs 1 through 78 as if
6 fully set forth herein.

7 80. Boeing and Lockheed Martin conspired to monopolize and maintain
8 their monopoly of the U.S. Government EELV market, and to attempt to
9 monopolize the commercial EELV market.

10 81. Boeing and Lockheed Martin conspired and reached a collusive
11 agreement to engage in predatory and anticompetitive conduct to secure long-term
12 exclusive contracts from the U.S. Air Force, acting in a commercial capacity as a
13 market participant, and thereby to foreclose competition in the relevant market and
14 destroy potential competitors, including SpaceX.

15 82. Upon information and belief, Boeing and Lockheed Martin entered
16 into the conspiracy with the specific intent to foreclose competition in the market
17 for the sale of EELVs and related launch services to the U.S. Government, to
18 protect and maintain their dominant position in that market and ultimately to
19 consolidate their position formally and create a single monopoly EELV provider
20 through the formation of their ULA joint venture. The conspiracy has been
21 successful; Boeing and Lockheed Martin continue to be the dominant providers of
22 EELVs to the U.S. Air Force and Defendants have effectively precluded
23 competitive threats to their dominance of this market.

24 83. Even without Defendants' anticompetitive conduct, barriers to entry in
25 the government and commercial EELV markets are extremely high. The research,
26 development and manufacture of EELVs for government and commercial
27 customers are very expensive and time-consuming, and the technology and
28 expertise required to manufacture EELVs takes many years to develop. Thus, it is

1 very unlikely that there will be additional entry into the relevant markets in the next
2 few years.

3 84. Upon information and belief, Boeing and Lockheed Martin entered
4 into the conspiracy with the specific intent to foreclose competition and acquire a
5 monopoly in the market for the sale of EELVs and related launch services to
6 commercial customers. As a result of Boeing and Lockheed Martin's conspiracy,
7 and their conduct in furtherance of their conspiracy (including the proposed ULA),
8 other competitors (including SpaceX) have been excluded from, among other
9 things, participating in the EELV program and receiving important infrastructure
10 subsidies from the U.S. Government. There is a dangerous probability that as a
11 result of Defendants' predatory and exclusionary conduct described herein that
12 Boeing and Lockheed Martin, either collectively through their conspiracy or
13 through the ULA monopoly, will acquire monopoly power in the market for the
14 sale of EELVs and related launch services to commercial customers.

15 85. Boeing and Lockheed Martin's conspiracy to foreclose competition,
16 monopolize and maintain their monopoly position in the U.S. Government market,
17 and to attempt to monopolize the commercial market, and their conduct in
18 furtherance of the conspiracy, have no legitimate business objective.

19 86. Boeing and Lockheed Martin's conspiracy and conduct in furtherance
20 of their conspiracy has had a direct and substantial effect on interstate trade and
21 commerce.

22 87. Due to Boeing and Lockheed Martin's anticompetitive conspiracy and
23 conduct in furtherance of their conspiracy, SpaceX, among others in the industry,
24 has been directly and significantly injured by being excluded from the U.S.
25 Government market and the commercial market.

26 88. Boeing and Lockheed Martin's unlawful conspiracy and conduct to
27 foreclose competition, acquire and maintain a monopoly in the U.S. Government
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1 market, and to attempt to monopolize the commercial EELV market, violate
2 Section 2 of the Sherman Act, 15 U.S.C. § 2.

3 89. Boeing and Lockheed Martin are liable under Section 2 of the
4 Sherman Act to SpaceX for damages in an amount to be proven at trial, including,
5 without limitation, the lost business, expenses and reduction in company value
6 SpaceX has suffered as a direct result of the conspiracy, which damages should be
7 trebled pursuant to 15 U.S.C. § 15(a), plus interest, costs and expenses, including
8 attorneys' fees.

9 **THIRD CAUSE OF ACTION:**

10 **VIOLATION OF SECTION 7 OF THE CLAYTON ACT**

11 90. SpaceX incorporates the allegations of paragraphs 1 through 89 as if
12 fully set forth herein.

13 91. The consolidation of Boeing and Lockheed Martin's EELV businesses
14 into the ULA would have the effect of substantially lessening competition in the
15 sale of EELVs and related launch services.

16 92. The proposed consolidation would have the following effects, among
17 other things:

18 a. competition in the sale of EELVs and related launch services to
19 the U.S. Government would be substantially diminished;

20 b. competition in the sale of EELVs and related launch services to
21 commercial customers would be significantly lessened as the ULA would provide
22 Boeing and Lockheed Martin with excessive information regarding each company's
23 business practices, technology, innovations, production processes, and cost
24 structure;

25 c. Boeing and Lockheed Martin, through the ULA, would possess
26 a market dominance sufficient to continue engaging in anticompetitive conduct,
27 such as their concerted refusal to deal with the U.S. Air Force except on common
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1 terms, and would exercise their market power to exclude competition from rivals,
2 including SpaceX, in the U.S. Government and commercial EELV markets;

3 d. Boeing and Lockheed Martin, through the ULA and with the
4 benefit of taxpayer subsidies unlawfully extracted from the U.S. Government, will
5 engage in predatory and anticompetitive conduct in the sale of EELVs and related
6 launch services to commercial customers.

7 93. Barriers to entry in the government and commercial EELV markets are
8 extremely high. The research, development and manufacture of EELVs for
9 government and commercial customers are very expensive and time-consuming,
10 and the technology and expertise required to manufacture EELVs takes many years
11 to develop. Thus, it is very unlikely that there will be additional entry into the
12 relevant markets in the next few years.

13 94. The combination of Boeing and Lockheed Martin's EELV businesses
14 into the ULA will have a direct and substantial effect on interstate trade and
15 commerce.

16 95. The combination of Boeing and Lockheed Martin's EELV businesses
17 into the ULA will cause significant injury to SpaceX, among others in the industry,
18 by providing Defendants greater market power to effectuate their anticompetitive
19 conduct, exclude competition and facilitate predatory conduct in the sale of EELVs
20 and related launch services to commercial customers.

21 96. The combination of Boeing and Lockheed Martin's EELV businesses
22 into the ULA, which would formally consolidate Boeing and Lockheed Martin's
23 dominant positions into a monopoly in the sale of EELVs and related launch
24 services to U.S. Air Force, would substantially lessen competition in the markets
25 for the sale of EELVs and related launch services to government and commercial
26 customers, and is unlawful pursuant to Section 7 of the Clayton Act, 15 U.S.C. §
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**FOURTH CAUSE OF ACTION:
VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT
ORGANIZATIONS ACT – 18 U.S.C. § 1962(c)**

97. SpaceX incorporates the allegations of paragraphs 1 through 96 as if fully set forth herein.

98. SpaceX pleads this cause of action against Boeing for violation of the Racketeer Influenced and Corrupt Organizations Act – 18 U.S.C. § 1962(c) (“RICO”).

99. Boeing has violated RICO through a pattern and practice of economic espionage to corrupt the government procurement process, to preclude lawful competition on the merits and to harm competitors, including SpaceX. Boeing and persons acting in concert with it fraudulently acquired highly sensitive, proprietary and trade secret information from Lockheed Martin and used that information to secure EELV launch contracts from the Air Force. These unlawful acts have injured competition, the U.S. Government, the Air Force, taxpayers, SpaceX and other competitors in the EELV market by corrupting the procurement process for EELV services, eliminating fair, lawful and aggressive competition for EELV launch contracts from the Air Force, and precluding SpaceX from competing for launch contracts on the merits of SpaceX’s superior cost structure and technology.

100. Boeing’s illegal activity is described in detail in pleadings filed by Lockheed Martin in the United States District Court for the Middle District of Florida, Orlando Division, Case No. 6:03-CV-796-ORL-28-KRS. SpaceX pleads the following allegations on information and belief based on those pleadings.

RICO Enterprise

101. Boeing is a corporation capable of holding a legal or beneficial interest in property and therefore is a “person” within the meaning of 18 U.S.C. § 1961(3).

102. William Erskine was formerly employed by Boeing. On August 2, 1999, Boeing terminated Erskine’s employment for the stated reason that Erskine

1 violated company policy by receiving from Kenneth Branch and maintaining in his
2 possession Lockheed Martin proprietary documents related to the EELV Program.

3 103. Branch was an employee of Lockheed Martin until January 1997.
4 Branch began working as a Boeing employee on January 28, 1997. On August 2,
5 1999, Boeing terminated Branch's employment for the stated reason that he
6 violated company policy by possessing and distributing Lockheed Martin
7 proprietary documents related to the EELV Program.

8 104. Larry Satchell was Manager of Strategic Planning and Analysis for
9 Boeing's EELV Program. Satchell participated in Boeing's efforts to acquire
10 Lockheed Martin's proprietary information.

11 105. Boeing, Lockheed Martin, Erskine, Branch and Satchell, together with
12 others known and unknown to SpaceX, have unlawfully, knowingly and
13 intentionally conducted and are continuing to conduct an enterprise referred to
14 herein as the "Boeing-Lockheed Anticompetitive Enterprise," an association-in-
15 fact. The common purpose of the Boeing-Lockheed Anticompetitive Enterprise is
16 to eliminate fair, lawful and aggressive competition in the market for EELV
17 services and to corrupt the government procurement process for awarding EELV
18 contracts. Boeing's illegal conduct in furtherance of the common purpose of the
19 Boeing-Lockheed Anticompetitive Enterprise has harmed competitors in the market
20 for EELV services, including SpaceX.

21 106. The Boeing-Lockheed Anticompetitive Enterprise constitutes a RICO
22 enterprise within the meaning of 18 U.S.C. § 1961(4) that is engaged in, or the
23 activities of which affect, interstate or foreign commerce.

24 **Unlawful Conduct and Pattern of Racketeering Activity**

25 107. Boeing and others acting on its behalf have conducted the activities of
26 the Boeing-Lockheed Anticompetitive Enterprise through a pattern of racketeering
27 activity in furtherance of their ongoing scheme to eliminate fair, lawful and
28 aggressive competition in the market for EELV services, to corrupt the government

1 procurement process for awarding EELV contracts and to harm competitors,
2 including SpaceX, in the market for EELV launch services. This pattern of
3 racketeering activity includes the use of the U.S. mails, and private and commercial
4 interstate carriers, and the interstate use of wires, to devise and execute a scheme to
5 defraud and to obtain money or property by means of false and fraudulent
6 pretenses, representations and promises, and the interstate transportation of property
7 obtained by theft, conversion, or fraud having a value of more than \$5,000.

8 108. Boeing, and those acting in concert with and on behalf of Boeing, have
9 unlawfully, knowingly, and intentionally engaged in two or more acts indictable
10 under the Federal Mail Fraud Statute, 18 U.S.C. § 1341, the Federal Wire Fraud
11 Statute, 18 U.S.C. § 1343, and the Federal Interstate Transportation of Stolen
12 Property Statutes, 18 U.S.C. §§ 2314 and 2315, and have therefore unlawfully,
13 fraudulently, and intentionally engaged in predicate acts of racketeering within the
14 meaning of 18 U.S.C. § 1961(1)(B).

15 109. Boeing, and those acting in concert with and on behalf of Boeing,
16 unlawfully, knowingly, and intentionally used the U.S. mails, private or
17 commercial interstate carriers, and interstate wires, in furtherance of their scheme to
18 defraud competitors in the EELV market and the Air Force and to deprive them of
19 their property rights, including, but not limited to, the following:

20 a. In late December 1996 or early January 1997, Branch sent by
21 U.S. mail and other interstate communications a request for an employment
22 position within Boeing's EELV program.

23 b. Shortly after Branch began working for Boeing, and at least
24 through early to mid-1998, Satchell and Branch had several interstate telephone
25 conversations concerning Lockheed Martin information, during which Branch
26 conveyed Lockheed Martin trade secrets to Satchell.

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1 c. In early 1998, Branch sent Satchell by U.S. mail or commercial
2 or private interstate carrier a manila envelope containing Lockheed Martin
3 proprietary and trade secret information.

4 d. In or about mid to late 1997, Branch sent Satchell by mail or
5 commercial or private interstate carrier at least one other document containing
6 Lockheed Martin trade secrets.

7 e. On July 20, 1998, by commercial or private carrier, Boeing
8 submitted its EELV development and launch services proposals to the Air Force.
9 On information and belief, the information contained in the proposals was based in
10 part on Lockheed Martin trade secrets, and Boeing fraudulently failed to disclose,
11 and actively concealed, that the information contained in the proposals was based in
12 part on Lockheed Martin trade secrets.

13 f. On or about June 29, 1999, by use of interstate wires, Boeing
14 in-house counsel Gary Black telephoned Lockheed Martin in-house counsel
15 Stephen E. Smith, faxed him two Lockheed Martin documents that Black stated
16 were the only two Lockheed Martin proprietary documents found at Boeing at that
17 time and falsely represented to Smith that no one on Boeing's EELV Proposal
18 Team had access to or used the documents.

19 g. On or about June 30, 1999, by the use of interstate wires, Black
20 telephoned Lockheed Martin in-house counsel Michael Kramer, discussed with him
21 two Lockheed Martin documents that Black stated were the only ones found at
22 Boeing and falsely represented to Kramer that no one on Boeing's EELV Proposal
23 Team had access to or used the documents.

24 h. On or about November 1, 1999, in a telephone conversation
25 with Kramer, by use of interstate wires, Black stated that an additional set of
26 documents, about one-inch thick, were the only significant documents found in
27 Branch's possession and falsely represented that no one on Boeing's EELV
28 Proposal Team had access to or used the documents. Black further falsely

1 represented that Branch had played no role in Boeing's EELV proposal and had
2 worked in ground support as a low-level first line engineer.

3 i. During April and May of 2002, Boeing's in-house counsel
4 made numerous false and misleading statements to Lockheed Martin, both orally by
5 interstate wires and in writing by U.S. mails or commercial carrier, concerning the
6 quantity of Lockheed Martin proprietary and trade secrets information in Boeing's
7 possession, as well as false statements as to the extent to which this information
8 was used in connection with the preparation of Boeing's proposal to the Air Force
9 for the EELV Program. These statements were known to be false and were made in
10 furtherance of efforts to obtain additional orders from the Air Force under a
11 fraudulently obtained EELV launch services contract.

12 110. Boeing, and those acting in concert with and on behalf of Boeing,
13 unlawfully, knowingly, and intentionally transported and caused to be transported,
14 and received, possessed, concealed, stored, and caused to be received, possessed,
15 concealed, and stored, goods, wares, or merchandise, *i.e.*, the highly sensitive,
16 proprietary and trade secret information of Lockheed Martin and other competitors,
17 which had crossed a state boundary after being stolen, unlawfully converted, or
18 taken, knowing the same to have been stolen, unlawfully converted and taken,
19 including, but not limited to, the following:

20 a. In August 1996, Branch flew from Florida or Denver to
21 Huntington Beach, California to meet with Boeing personnel, including Erskine and
22 Boeing employee Tom Alexiou, and carried with him a stack of Lockheed Martin
23 proprietary documents containing Lockheed Martin proprietary and trade secret
24 information.

25 b. In August 1996, after meeting with Branch, Erskine flew from
26 California to his Florida home carrying Lockheed Martin proprietary documents
27 that he had received from Branch during Branch's initial job interview.
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1 c. On or about January 7, 1997, Boeing offered Branch a job as a
2 quid pro quo for handing over to Boeing proprietary information and trade secrets
3 of Lockheed Martin.

4 d. On or about January 28, 1997, Branch started work at Boeing,
5 and was immediately assigned to work on Boeing's EELV Proposal Team.

6 e. In January or February 1997, Branch again traveled from
7 Florida to Huntington Beach, California and carried with him a binder of Lockheed
8 Martin proprietary materials that had been provided or presented to the Air Force.

9 f. In or about February 1997, Alexiou introduced Branch to
10 members of Boeing's EELV Proposal Team, so that Branch could supply them with
11 Lockheed Martin proprietary and trade secret information that had been unlawfully
12 converted and stolen from Lockheed Martin.

13 g. From 1997 through 1999, high-level personnel on Boeing's
14 EELV Proposal Team pressured Branch to disclose Lockheed Martin proprietary
15 and trade secret information that had been unlawfully converted and stolen from
16 Lockheed Martin.

17 h. Shortly after Branch started work at Boeing on January 28,
18 1997, Alexiou introduced Branch to the Delta IV Vice President and Program
19 Manager, for the purpose of having Branch disclose to members of Boeing's EELV
20 Proposal Team Lockheed Martin proprietary and trade secret information that had
21 been unlawfully converted and stolen from Lockheed Martin.

22 i. On or about February 19, 1997, Branch met with members of
23 the capture team of Boeing's EELV Proposal Team, and provided them with
24 Lockheed Martin proprietary and trade secret information that had been unlawfully
25 converted and stolen from Lockheed Martin.

26 j. On or about March 3, 1997, a member of Boeing's management
27 wrote a memorandum to Satchell and other personnel on Boeing's EELV Proposal
28 Team, encouraging them to seek out former Lockheed Martin personnel in order to

1 obtain their impressions of Lockheed Martin's likely approach to its EELV
2 proposal.

3 k. Between January 28, 1997 and July 20, 1998, during his
4 employment at Boeing, Branch flew from Florida to meet with Boeing's EELV
5 Proposal Team in Huntington Beach, California approximately forty-three (43)
6 times in order to provide Lockheed Martin proprietary and trade secret information
7 to personnel on Boeing's EELV Proposal Team.

8 l. On July 20, 1998, Boeing submitted its EELV development and
9 launch services proposals to the Air Force. On information and belief, the
10 information contained in the proposals was based in part on Lockheed Martin
11 proprietary and trade secret information that had been unlawfully converted and
12 stolen from Lockheed Martin.

13 m. During the course of the EELV competition, Erskine used the
14 knowledge that he had obtained by review of the Lockheed Martin proprietary and
15 trade secret information that Branch provided to disparage Lockheed Martin's
16 EELV bid proposal during a presentation to the Air Force.

17 **Continuity and Relatedness of the Pattern of Racketeering**

18 111. Each of the foregoing acts of racketeering by Boeing and those acting
19 on its behalf in furtherance of the common purpose of the Boeing-Lockheed
20 Anticompetitive Enterprise, was unlawfully, fraudulently, and intentionally related,
21 continuous, and part of a pattern of conduct related to multiple bid competitions and
22 awards for U.S. Government development contracts and launch services contracts
23 and to multiple contracts for commercial launch services contracts, directed towards
24 multiple victims, and continuing over a substantial period of time. It remains and
25 continues to be the common purpose of the Boeing-Lockheed Anticompetitive
26 Enterprise to eliminate fair, lawful and aggressive competition in the market for
27 EELV services, to corrupt the government procurement process for awarding EELV
28 contracts and to harm and exclude competitors from the EELV market.

1 others would compete aggressively and lawfully on the merits for EELV contracts.
2 The absence of fair, competitive bidding for EELV contracts in the procurement
3 process prevents SpaceX from competing on the merits of its superior cost structure
4 and technology. Boeing's unlawful conduct has precluded fair competition and
5 caused significant injury to SpaceX and Boeing's other competitors.

6 116. Boeing's conduct also has eliminated the possibility of *any* price
7 competition in the sale of EELVs to the Air Force and other government agencies.
8 After Boeing corrupted the bidding process, both Boeing and Lockheed Martin
9 argued that competitive price bids would no longer be possible due to Boeing's
10 illegal acquisition and misuse of Lockheed Martin's confidential pricing
11 information. The Air Force concluded that competitive bidding on price would be
12 impossible because of Boeing's history of committing Procurement Integrity Act
13 violations. Thus, as a direct result of Boeing's actions, the government adopted an
14 acquisition strategy that awards all EELV launch contracts on a *non-competitive*
15 basis. The elimination of price competition in the sale of EELVs has directly and
16 significantly injured SpaceX, which has developed new technology and a new
17 business model that will allow it to reduce dramatically the cost of access to space.
18 Absent Boeing's unlawful conduct, SpaceX would be able to compete aggressively
19 on price for EELV launch contracts and would win at least a share of launches
20 away from Boeing and Lockheed Martin. The absence of price competition in the
21 procurement process shuts SpaceX out of the EELV market. SpaceX has been and
22 will continue to be injured by Boeing's conduct.

23 **FIFTH CAUSE OF ACTION:**

24 **RICO CONSPIRACY – 18 U.S.C. § 1962(d)**

25 117. SpaceX incorporates the allegations of paragraphs 1 through 116 as if
26 fully set forth herein.

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