

**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.

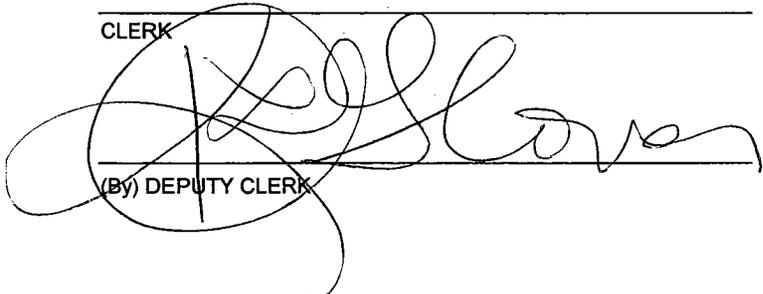
SHERRI R. CARTER

OCT 19 2005

CLERK

DATE

(By) DEPUTY CLERK



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SHERRI B. CARTER

CLERK



KERRI GLOVER

(By) DEPUTY CLERK

OCT 19 2005

DATE

COPY

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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

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

