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U.S. DISTRICT COURT
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HAIPING SU,
Plaintiff,

v.

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION, an Agency of
the United States; CHRISTOPHER
SCOLESE, in his official capacity as Acting
Administrator of NASA; SIMON PETER
WORDEN, in his official capacity as
Director of NASA Ames Research Center;
ROBERT DOLCI, in an individual capacity
and in his official capacity as Installation
Security Chief at NASA Ames; REGINALD
WADDELL, in an individual capacity and in
his official capacity at NASA; FEDERAL
BUREAU OF INVESTIGATION; ROBERT
SWAN MUELLER III, in his official
capacity as Director of the Federal Bureau of
Investigation; SHERMAN KWOK, in an
individual capacity and in his official
capacity as an FBI Agent; TOM ROSS, in an
individual capacity and in his official
capacity at the FBI; and Does 1-100,

Defendants.

C 09 Case No. 02838

RS

COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF AND FOR
DAMAGES

I. VIOLATION OF THE
ADMINISTRATIVE PROCEDURE ACT,
5 U.S.C. § 706(2)(c), UNDER THE APA
AND THE FIFTH AMENDMENT TO
THE U.S. CONSTITUTION

II. VIOLATION OF FIFTH
AMENDMENT RIGHT TO DUE
PROCESS (*Bivens*)

III. VIOLATION OF RIGHTS
PROTECTED BY THE CALIFORNIA
CONSTITUTION

IV. VIOLATION OF PRIVACY ACT

V. VIOLATION OF INFORMATIONAL
PRIVACY RIGHTS

JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. Dr. Haiping Su is a Chinese-born American citizen. He moved to the United
3 States in 1986. His daughter was born in Kansas in 1988, and he earned both a Master's degree
4 and a Ph.D. in Agriculture from Kansas State University. In May, 2005, Dr. Su began working
5 at NASA Ames for the University Affiliated Research Center, a research organization operated
6 by the University of California at Santa Cruz.

7 2. Three years into his work at NASA Ames, Dr. Su was abruptly made the target of
8 a cryptic and unwarranted joint NASA-FBI investigation. During this investigation, Dr. Su was
9 interviewed multiple times by FBI agents and by members of NASA security staff. Although his
10 questioners became increasingly hostile and repeatedly refused to disclose the reason for their
11 inquiry, Dr. Su gave them his full cooperation.

12 3. On or about June 24, 2008, NASA security informed Dr. Su that he was "no
13 longer permitted access" to the NASA Ames premises on the grounds that his "continued
14 presence on NASA property constitutes a security risk." NASA Ames made this determination
15 despite the following facts: (1) Dr. Su's work at NASA Ames did not put him into contact with
16 classified information; (2) Dr. Su has no criminal history whatsoever; and (3) Dr. Su was never
17 given an opportunity to address whatever evidence allegedly supported the determination against
18 him. Moreover, upon his expulsion from the facility, NASA **failed to apprise Dr. Su of his**
19 **right to appeal** the determination—a notice requirement found in NASA's own regulations.

20 4. Plaintiff is informed and believes and thereon alleges that defendants widely
21 reported their determination that Dr. Su is a security risk. Plaintiff is informed and believes and
22 thereon alleges that recipients of this information included non-employees of NASA, including
23 other contractors at NASA Ames.

24 5. Plaintiff is informed and believes and thereon alleges that defendants also
25 impermissibly reported to Dr. Su's employer, and others, the purported reason or reasons for the
26 determination that Dr. Su is a security risk.

27 6. Defendants' handling of the investigation and expulsion of Dr. Su violates
28 NASA's own policies and procedures—and has deprived Dr. Su of his due process rights.

1 Defendants' conduct has also robbed Dr. Su of his personal and professional reputation, and
2 continues to cause Dr. Su undue hardship and stress.

3 7. Dr. Su respectfully asks this Court to give him an opportunity to clear his good
4 name and to provide relief for the economic harm caused to him by the defendants.

5 **JURISDICTION AND VENUE**

6 8. This Court has jurisdiction over plaintiff's claims pursuant to 28 U.S.C. § 1331.
7 Venue is proper in this district pursuant to 28 U.S.C. § 1391(e), because defendants include
8 officers and employees of the United States and the acts and conduct complained of herein
9 occurred in this judicial district.

10 **INTRADISTRICT ASSIGNMENT**

11 9. Assignment of this action to the San Jose Division is proper under Civil Local
12 Rule 3-2(e), because a substantial part of the events giving rise to the claims alleged herein
13 occurred in the County of Santa Clara.

14 **PARTIES**

15 10. Plaintiff, Dr. Haiping Su ("Dr. Su"), is a United States citizen who resides in San
16 Jose, California.

17 11. Defendant National Aeronautics and Space Administration ("NASA") is a federal
18 agency that was created by the National Aeronautics and Space Act of 1958 as a purely civilian
19 agency. Pub. L. 85-568, § 102, 72 Stat. 433.

20 12. Defendant Christopher Scolese is Acting Administrator of NASA. He is sued in
21 his official capacity.

22 13. Defendant Simon Peter Worden is Director of NASA Ames Research Center. He
23 is sued in his official capacity.

24 14. Defendant Robert Dolci is Installation Security Chief at NASA Ames. He is sued
25 in his individual capacity and official capacity.

26 15. Defendant Federal Bureau of Investigation ("FBI") is a department of the United
27 States government.

28 16. Defendant Robert Swan Mueller III is Director of the FBI. He is sued in his

1 official capacity.

2 17. Defendant Sherman Kwok is an FBI Agent. He is sued in his individual and
3 official capacity.

4 18. On information and belief, defendant Tom Ross is an individual employed by the
5 FBI. He is sued in his individual and official capacity.

6 19. On information and belief, Reginald Waddell is an individual employed by
7 NASA. He is sued in his individual and official capacity.

8 20. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
9 DOES 1-100, inclusive, and therefore sues these defendants by such fictitious names and
10 capacities. Plaintiff will amend this complaint to allege their true names and capacities when
11 ascertained. Plaintiff is informed and believes and on that basis alleges, that each fictitiously
12 named defendant is responsible in some manner for the occurrences herein alleged and that the
13 injuries to plaintiff herein alleged were proximately caused by the conduct of such defendants.

14 21. At all times herein mentioned, defendants, including those sued as Does 1-100,
15 were the agents, servants, and employees of their co-defendants and in doing the things herein
16 alleged were acting in the scope of their authority as such agents, servants, and employees, under
17 the direction and supervision and with the permission of their co-defendants.

18 22. Plaintiff is further informed and believes, and on that basis alleges, that
19 defendants, including those sued as Does 1-100, conspired to commit one or more of the acts
20 complained herein and aided and abetted in their commission.

21 **GENERAL ALLEGATIONS**

22 23. Dr. Haiping Su is an American citizen of Chinese ethnicity. He was born in the
23 People's Republic of China, and he moved to the United States in 1986.

24 24. Dr. Su is a highly skilled scientist specializing in Agriculture. He received his
25 Master's degree in 1988 and his Ph.D. in 1991, both from Kansas State University.

26 25. Dr. Su's work has earned him multiple honors and awards, and Dr. Su has
27 received particular attention for his contributions to the public interest. Dr. Su, for example, has
28 helped in the development of innovations that will help track and reduce wildfires and forest

1 fires.

2 26. From April, 2005, to June, 2008, Dr. Su worked at NASA Ames Research Center
3 ("NASA Ames") as an analyst for University Affiliated Research Center ("UARC"). UARC is a
4 research cooperative operated by the University of California Santa Cruz and funded by NASA.

5 27. When Dr. Su started working full time at NASA Ames, he updated his
6 background information and obtained a badge that gave him physical access to the building in
7 which he worked. **At no time during his work at NASA Ames did Dr. Su have—or seek—**
8 **access to classified information or classified areas.**

9 28. On or about July 5, 2007, pursuant to a new NASA badging process, Dr. Su
10 submitted a Standard Form 85 Questionnaire for Non-Sensitive Positions through an electronic
11 "e-QIP" application. Dr. Su received a new badge in January 2008. He did not have any
12 interviews before receiving the new badge. On information and belief, this badging process was
13 to ensure proper identification of people entering the NASA Ames facility and not to screen out
14 individuals who might be deemed a "security risk."

15 29. In February, 2008, FBI Special Agent Sherman Kwok ("Agent Kwok")
16 telephoned Dr. Su and requested an in-person interview. Agent Kwok told Dr. Su that the
17 interview would only take about one hour, and that it was part of a continuing background check.
18 On or about February 14, 2008, Agent Kwok, NASA employee Reginald Waddell ("Waddell"),
19 and a third person interviewed Dr. Su in a small room at NASA Ames. The interview lasted for
20 close to two hours. Upon its conclusion, the interviewers told Dr. Su they would get in touch
21 with him if they had further questions.

22 30. Plaintiff is informed and believes and thereon alleges that none of his coworkers
23 was subjected to interviews similar to his interview of February 14, 2008.

24 31. Shortly after the interview of February 14, 2008, Dr. Su was contacted again by
25 Agent Kwok and told that some remaining "issues" regarding his background needed to be
26 "clarified." Agent Kwok would not specify the issues to which he referred. Agent Kwok and
27 Waddell conducted a second interview, which lasted for approximately one hour, in March,
28 2008. During this interview, Dr. Su was told he would need to take a polygraph test.

1 32. On March 21, 2008, the FBI administered a polygraph test of Dr. Su. During this
2 examination, Dr. Su asked the polygraph tester, Tom Ross ("Ross"), if Ross thought he was a
3 spy. Ross did not answer his question. Dr. Su asked if he could leave, but Ross told him, "You
4 still have questions."

5 33. During the polygraph test, Ross refused to answer questions about the reason for
6 the continuous interviews.

7 34. Immediately after the polygraph test, Agent Kwok told Dr. Su that he did "not do
8 well," that he could not retake the test, and that the FBI would be sending a report to NASA.

9 35. On or about April 4, 2008, Dr. Su underwent yet a fourth interview at NASA
10 Ames, on the grounds that issues from the polygraph needed to be "clarified."

11 36. On or about June 24, 2008, Dr. Su was escorted off of the NASA Ames premises
12 by NASA Ames security officers.

13 37. On or about June 24, 2008, Dr. Su received by hand delivery a letter signed by
14 Robert Dolci ("Dolci"), the Installation Security Chief at NASA Ames. The letter, dated June
15 24, 2008, informs Dr. Su that his "access privileges to the NASA Ames Research Center" are
16 revoked "pursuant to NASA Procedural Requirement (NPR) 1600.1, Section 1.4.1, based upon a
17 determination that your continued presence on NASA property constitutes a security risk." The
18 letter further states, "[t]he Ames Research Center Director concurs [*sic*] with this action."

19 38. On information and belief, on or about June 24, 2008, shortly after Dr. Su was
20 escorted from the NASA Ames premises, Dolci held a conference with Dr. Su's coworkers.

21 39. On or about June 24, 2008, immediately after receiving Dolci's letter, Dr. Su
22 immediately called Dolci's office. Dolci, however, was unavailable to speak with Dr. Su.

23 40. On information and belief, at Dolci's conference, Dr. Su's coworkers, including
24 people not employed by NASA, were informed by Dolci that Dr. Su was a security risk and that
25 Dr. Su was no longer allowed to work at NASA Ames.

26 41. Dolci's letter of June 24, 2008, does not refer to any appeal procedure. Nor does
27 the letter suggest in any way that Dr. Su had any administrative remedies whatsoever. However,
28 Dr. Su is informed and believes, and thereon alleges, that NPR-1600.1, NASA Security Program

1 Procedural Requirements ("NPR-1600.1"), specifically states that, once the decision to deny
2 issuance of a Badge is made and reviewed, the Center Chief of Security will send an official
3 letter to the applicant and his sponsor advising them of the unfavorable determination *and*
4 appeals procedures.

5 42. NPR-1600.1 was issued on or about May 24, 2007. On information and belief,
6 NPR-1600.1 applies to all NASA facilities, organizational components, employees, and
7 contractors, which are to include contractor organizations and employees or subcontractors,
8 recipients of grants and cooperative agreements and employees or sub-recipients, and all other
9 organizations or employees that are reimbursed by NASA through appropriated funds. Also on
10 information and belief, NPR-1600.1 was effective when Dolci issued his letter of June 24, 2008.

11 43. On information and belief, the nature of Dr. Su's work at NASA Ames qualified
12 him for treatment under NPR-1600.1.

13 44. On information and belief, Dr. Su was entitled under NASA regulations to appeal
14 NASA's determination against him.

15 45. On information and belief, Dr. Su was entitled under NASA regulations to be
16 given notice of his right to appeal NASA's determination against him.

17 46. On or about July 1, 2008, seven days after the date of Dolci's letter, Dr. Su again
18 called Dolci. Dolci told Dr. Su that NASA and a lawyer for the FBI had reviewed Agent Kwok's
19 report, and had made the determination to restrict Dr. Su from NASA Ames. Dolci told Dr. Su
20 that the determination against Dr. Su involved concerns over Dr. Su's involvement with "a
21 former organization" but Dolci would not elaborate or explain this comment any further. Dolci
22 then disclosed that he had said "too much" and that he could not identify what organization he
23 was talking about.

24 47. On or about July 3, 2008, Dr. Su's supervisor, Jeff Myers ("Myers"), sent a letter
25 to Dr. Su, informing him that he would be terminated from his position as Senior Data Analyst as
26 of July 11, 2008, due to Dr. Su's exclusion from NASA Ames.

27 48. Also on July 3, 2008, Dr. Su had lunch with Myers. At this lunch, Myers told Dr.
28 Su that the reason for defendants' determination against Dr. Su was that he had failed one

1 question on his polygraph.

2 49. On information and belief, NPR-1600.1 requires that, when NASA makes a
3 negative determination regarding physical or logical access, a contractor is not to be informed of
4 the reasons for determination unless the subject of the negative determination provides consent.

5 50. The current NASA Ames Research Center Director is Dr. Simon Peter Worden.

6 51. On or about July 17, 2008, six days after Dr. Su's employment was terminated,
7 Myers wrote to Dr. Su again, this time informing him that the Notice of Intent to Terminate,
8 which had been issued on July 3, 2008, was rescinded. Myers's July 17, 2008, letter reconfirmed
9 that Dr. Su had been restricted from NASA Ames, and that Dr. Su was no longer permitted
10 access to the Center, its information systems, or non-public information located at the Center.
11 The letter enclosed a revised position description and a telecommuting agreement, with
12 instructions to sign and return the agreement via electronic mail. Neither of Myers's letters
13 informed Dr. Su that he had the right to appeal his exclusion from NASA Ames.

14 52. Dr. Su has never been informed by NASA Ames, or anyone affiliated with
15 UARC, of his right to appeal the decision to exclude him from the facility.

16 53. Dr. Su would have immediately appealed the determination that he is a "security
17 risk" if he had been provided adequate notice of his right to do so.

18 54. As a direct result of Dr. Su's exclusion from NASA Ames, Dr. Su has only been
19 able to work for UARC from remote locations. These remote locations include weekly work
20 done approximately 100 miles from his former work-site at NASA Ames. Dr. Su has not been
21 reimbursed for any of the costs associated with travel to his new work site, including gas, wear
22 on his car, or bridge tolls.

23 55. Defendants' decision to exclude Dr. Su from NASA Ames has caused severe
24 harm to Dr. Su's personal and professional reputation, and defendants' conduct has deprived Dr.
25 Su's ability to obtain other jobs in his field. Indeed, the allegation that Dr. Su is a security risk
26 has deprived Dr. Su of his ability to seek the employment he desires.

27 56. NASA has labeled Dr. Su a security risk without providing Dr. Su any meaningful
28 opportunity to clear his name.

57. Dr. Su contests NASA's determination that he is a security risk. The labeling of Dr. Su as a security risk is particularly inimical for him as a Chinese American and as someone whose prospective work in the private sector could involve access to proprietary information.

58. The labeling of Dr. Su as a security risk in the context of his work at NASA Ames is also arbitrary and capricious and lacks any rational basis insofar as Dr. Su was not exposed to, nor did he ever seek, confidential information.

59. For all intents and purposes related to federal government employment, Dr. Su has effectively been blacklisted.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(c) (Against All Defendants)

60. Plaintiff fully incorporates by reference paragraphs 1 through 59 of this Complaint as though set forth herein.

61. NASA's determination that Dr. Su represents a security risk was and is false, and Dr. Su has never made any admission to the contrary.

62. Pursuant to NASA's own regulations, NPR 1600.1, Dr. Su was entitled to notice of his right to appeal NASA's decision to exclude him from his former workplace.

63. This Court has the authority to compel agency action unlawfully withheld under the Administrative Procedures Act. 5 U.S.C. § 706(1).

64. This Court has the authority to hold unlawful and to set aside agency action, findings, and conclusions found to be: "(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (D) without observance of procedure required by law; . . . or (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court." 5 U.S.C. § 706(2).

65. Defendants' above-described actions were arbitrary, capricious, an abuse of discretion, and not in accordance with law, including its own regulations.

1 66. Defendants' above-described actions were contrary and without observance to Dr.
2 Su's constitutional right to due process. Dr. Su has a protected liberty interest in remaining free
3 from stigmatizing statements in connection with the loss of a right or status, namely, his ability
4 to obtain employment in his highly specialized field.

5 67. Defendants' above-described actions were in excess of statutory jurisdiction,
6 authority, or limitations, or short of statutory right.

7 68. Defendants' above-described actions were without observance of due process
8 required by NASA's own procedural requirements for its badging process.

9 69. Defendants' above-described actions were unwarranted by the facts, in that (1)
10 Dr. Su's work at NASA Ames did not put him into contact with classified information; (2) Dr.
11 Su has no criminal history whatsoever; and (3) Dr. Su was never given an opportunity to know
12 and address whatever evidence allegedly supported the determination against him.

13 70. Dr. Su has suffered damages as a result of defendants' above-described actions,
14 including loss of income, harm to his reputation, harm to his ability to obtain other employment,
15 and other damages.

16 71. An actual and immediate controversy has arisen and now exists between plaintiff
17 and defendants related to their respective rights and duties. Defendants have unlawfully failed to
18 comply with constitutional requirements by engaging in the acts and omissions described in this
19 Complaint. Defendants have also failed to comply with NASA regulations by engaging in the
20 acts and omissions described in this Complaint. Plaintiff is therefore entitled, on either basis, to
21 a declaration of rights over this controversy.

22 72. On information and belief, NASA's regulations required Dr. Su to appeal by July
23 3, 2008.

24 73. Dr. Su attempted to appeal NASA's determination before July 3, 2008, but he was
25 rebuffed by Dolci.

26 74. Plaintiff has no adequate remedy at law. Defendants have acted, and continue to
27 act, to deprive plaintiff of his constitutional rights. Plaintiff is suffering and will continue to
28

1 suffer irreparable injury as a result of the policies and practices described in this Complaint
2 unless those policies and practices are enjoined by this Court. Plaintiff has no plain, adequate, or
3 speedy remedy at law and is entitled to injunctive relief against defendants. Plaintiff has no
4 administrative remedy because defendants' policies and practices preclude any administrative
5 determinations from affording actual relief.
6

7 **SECOND CAUSE OF ACTION**
8 **VIOLATION OF FIFTH AMENDMENT RIGHTS (*Bivens*)**
9 **(Against All Defendants)**

10 75. Plaintiff fully incorporates by reference paragraphs 1 through 74 of this
11 Complaint as though set forth herein.

12 76. The Fifth Amendment to the United States Constitution provides, among other
13 rights, that a person shall be afforded due process of law.

14 77. Dolci's conduct has had the effect of blacklisting Dr. Su from employment at jobs
15 similar to his job at NASA Ames. Dolci's conduct has also ensured that Dr. Su will very likely
16 be unable to work either at NASA Ames, or other governmental facilities, in the future.

17 78. Dolci's conduct formally and automatically excludes Dr. Su from work in a
18 category of future contracts, namely any work that could be performed on the premises of NASA
19 Ames, and from other government employment opportunities.

20 79. Dolci's conduct has had the broad effect of largely precluding Dr. Su from
21 pursuing his desired employment.

22 80. Dr. Dolci's determination that Dr. Su represents a "security risk" was stigmatizing
23 in that it implies Dr. Su is not trustworthy.

24 81. The assertion that Dr. Su is a security risk and therefore cannot be trusted with
25 physical or logical access privileges is the NASA Ames facility.

26 82. The assertion that Dr. Su is a security risk is false.

27 83. Dolci's labeling of Dr. Su as a "security risk" was entirely unwarranted because
28 (1) he was not involved with the handling of, nor was he exposed to, confidential information,

1 and (2) there is no evidence that Dr. Su is a security risk.

2 84. Dolci's determination that Dr. Su represents a "security risk" was published to
3 others, including employees of UARC.

4 85. On information and belief, under NASA's regulations, the deadline for Dr. Su to
5 appeal NASA's determination was July 3, 2008.

6 86. Dr. Su attempted to appeal NASA's determination before July 3, 2008, but he was
7 impermissibly rebuffed by Dolci.

8
9 **THIRD CAUSE OF ACTION**
10 **VIOLATION OF RIGHTS PROTECTED BY THE CALIFORNIA CONSTITUTION**
11 **(Against All Defendants)**

12 87. Plaintiff fully incorporates by reference paragraphs 1 through 86 of this
13 Complaint as though set forth herein.

14 88. Dr. Su has an interest in precluding the dissemination or misuse of sensitive and
15 confidential information about him, including his alleged status as a "security risk" and the
16 purported reasons for this determination.

17 89. Dr. Su had a reasonable expectation of privacy that defendants would not share
18 their determination that Dr. Su is a security risk with Dr. Su's colleagues, coworkers, and peers.

19 90. Dr. Su also had a reasonable expectation of privacy that defendants would not
20 share the purported reasons for the determination that Dr. Su is a security risk.

21 91. On information and belief, defendants in fact shared with others, including Dr.
22 Su's colleagues, coworkers, and peers, defendants' determination that Dr. Su is a security risk
23 and, additionally, their purported reasons for this determination.

24 92. The above described acts and omissions of defendants, and each of them, strongly
25 conflict with the social norms underlying Dr. Su's privacy right under the California
26 Constitution.

27 ///

28 ///

**FOURTH CAUSE OF ACTION
VIOLATION OF PRIVACY ACT
(Against All Defendants)**

93. Plaintiff fully incorporates by reference paragraphs 1 through 92 of this Complaint as though set forth herein.

94. The Privacy Act states in pertinent part: "No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains. . . ." 5 U.S.C. § 552a(b). The term "record" is defined as "any item, collection, or grouping of information about an individual that is maintained by an agency, including but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name or the identifying number, symbol, or other identifying particular assigned to the individual" 5 U.S.C. § 552a(a)(4).

95. On information and belief, defendants communicated to third parties, without written authorization from Dr. Su, records about Dr. Su purportedly related to defendants' determination that Dr. Su is a "security risk."

96. On information and belief, at least some of the recipients of these records were not officers or employees of NASA.

97. On information and belief, at least some of the recipients of Dr. Su's records did not have a need for the records to perform their duties.

98. On information and belief, at least some of the recipients of these records were not agencies of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity.

99. On information and belief, the communication of Dr. Su's records to at least one of the recipients of his records was not an activity authorized by law.

100. On information and belief, at least one of the recipients of Dr. Su's records did not receive the records pursuant to a request from the head of NASA.

///

**FIFTH CAUSE OF ACTION
VIOLATION OF INFORMATIONAL PRIVACY RIGHTS
(Against All Defendants)**

101. Plaintiff fully incorporates by reference paragraphs 1 through 100 of this Complaint as though set forth herein.

102. In perpetrating the above described acts and omissions, defendants, and each of them, have violated, or threatened to violate, the informational privacy rights of plaintiff, Dr. Su, as protected by the United States Constitution.

103. Specifically, plaintiff is informed and believes and thereon alleges that defendants have impermissibly disclosed to third parties personal information about Dr. Su of an extremely private nature. This information includes Dr. Su's alleged status as a security risk and the purported reasons behind the determination that Dr. Su is a security risk.

104. Unless and until defendants' unlawful practices as alleged herein are enjoined and restrained by order of this court, defendants will continue to cause great and irreparable injury to plaintiff. Dr. Su has no plain, speedy, or adequate remedy at law, in that it is difficult to measure the amount of monetary damages that would compensate him for the wrongful acts of defendants and, in any event, pecuniary compensation alone would not afford Dr. Su adequate and complete relief.

PRAYER

WHEREFORE, Dr. Su seeks judgment in his favor and against Defendants, and in particular seeks:

- (A) A declaration that Defendants' actions violated Dr. Su's rights under NASA's own regulations and the Fifth Amendment to the Constitution;
- (B) A name-clearing hearing to refute the charge that he is a security risk;
- (C) An order requiring NASA to provide adequate notice and a hearing as mandated in its regulations and by the Fifth Amendment to the United States Constitution;
- (D) For compensatory damages, according to proof at trial;
- (E) Costs, interest, and attorneys' fees; and

1 (F) Any other relief deemed appropriate by the Court.

2
3 DATED: June 24, 2009

McMANIS FAULKNER

4 

5 JAMES McMANIS
6 TYLER ATKINSON

7 Attorneys for Plaintiff, DR. HAIPING SU

8
9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a jury trial as provided by Rule 38(b) of the Federal Rules of
11 Civil Procedure and Article VII of the United States Constitution.

12
13 Dated: June 24, 2009

McMANIS FAULKNER

14 

15 JAMES McMANIS
16 TYLER ATKINSON

17 Attorneys for Plaintiff, DR. HAIPING SU