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10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12 WESTERN DIVISION

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20 Hale, William John Walker and Paul R. )  
Weissman, )

21  
22 Plaintiffs, )

23 vs. )

24 National Aeronautics and Space )  
Administration, an Agency of the United )  
25 States; Michael Griffin, Director of )  
NASA, in his official capacity only; )  
Department of Commerce; Carlos M. )  
26 Gutierrez, Secretary of Commerce, in his )  
official capacity only; California Institute )  
27 of Technology; and Does 1-100, )

28 Defendants. )

Case No. CV-07-05669 ODW (VBKx)

**[PROPOSED] ORDER GRANTING  
CALTECH'S MOTION TO DISMISS  
FIRST AMENDED COMPLAINT  
FOR INJUNCTIVE AND  
DECLARATORY RELIEF**

Complaint Filed: August 30, 2007

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**[PROPOSED] ORDER**

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

Pursuant to the parties' Stipulation and Proposed Order to Amend Complaint and Set Proposed Briefing Schedule in Response to Amended Complaint, on October 22, 2007, Plaintiffs in this action filed their First Amended Complaint for Injunctive and Declaratory Relief seeking both declaratory relief and injunctive relief to enjoin the implementation of government promulgated security measures at Jet Propulsion Laboratory, a NASA-owned facility. These procedures were adopted pursuant to the NASA Interim Directive issued on May 24, 2007. Plaintiffs argue that such procedures violate their rights under the U.S. Constitution, including their Fourth and Fifth Amendment rights, the Administrative Procedure Act, and the California Constitution. Defendant Caltech filed a written Motion to Dismiss Plaintiff's First Amended Complaint on November 21, 2007. Having carefully considered the parties' arguments, allegations, and facts and documents subject to judicial notice, the Court **HEREBY ORDERS THAT** Plaintiffs' First Amended Complaint against Caltech is **DISMISSED WITH PREJUDICE**.

The Court makes the following findings in support of its dismissal of Plaintiffs' First Amended Complaint against Caltech.

1. As a matter of law, Plaintiffs cannot bring a claim against Caltech under the Administrative Procedure Act. The statute only applies to federal government agencies, and not private entities like Caltech. 5 U.S.C. §§ 701(b)(1), 702 (The APA defines "agency" as "each authority of the Government of the United States..." and the Act only allows judicial review for persons "suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action..."); *see also W. State Univ. of S. Cal. v. Am. Bar Ass'n*, 301 F. Supp. 2d 1129,1133 (C.D. Cal. 2004) ("By its own language, the APA does not extend to an entity that is not a federal agency...."). Caltech is a private entity and is not subject to the Act.

