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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

11 LONG HAUL, INC. AND EAST BAY)
 12 PRISONER SUPPORT,)
 13 Plaintiffs,)
 14 v.)
 15 UNITED STATES OF AMERICA;)
 VICTORIA HARRISON; KAREN)
 16 ALBERTS; WILLIAM KASISKE; WADE)
 MACADAM; TIMOTHY J. ZUNIGA;)
 17 MIKE HART; LISA SHAFFER; AND)
 DOES 1-25.)
 18 Defendants.)
 19)
 20)

No. C 09-0168 JSW

ANSWER OF MIKE HART

DEMAND FOR JURY TRIAL

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1 Defendant Mike Hart hereby answers the plaintiffs' First Amended Complaint ("complaint")
2 filed May 29, 2009. The numbered paragraphs in this answer correspond to the numbered
3 paragraphs in the complaint.

4 **RESPONSES TO NUMBERED PARAGRAPHS**

- 5 1. Paragraph 1 of the complaint is a description of a party, to which no response is required. To
6 the extent a response is required, the paragraph is denied.
- 7 2. Paragraph 2 of the complaint is a description of a party, to which no response is required. To
8 the extent a response is required, the paragraph is denied.
- 9 3. In response to Paragraph 3 of the complaint, this answering defendant admits that on August
10 27, 2008, there was a search of the Long Haul premises. The remainder of the paragraph is
11 denied.
- 12 4. In response to Paragraph 4 of the complaint, this answering defendant is without knowledge
13 or information sufficient to form a belief as to the truth of the allegations in this paragraph
14 concerning what information was presented to the magistrate in connection with the search
15 warrant because this answering defendant was not present when the application for the
16 warrant was made. To the extent a further response is required, the paragraph is denied.
- 17 5. In response to Paragraph 5 of the complaint, this answering defendant admits that in
18 connection with the entry to the premises, this answering defendant has knowledge that the
19 back door to the premises was opened by unhooking a chain. Regarding the remainder of the
20 paragraph, this answering defendant is without knowledge or information sufficient to form a
21 belief as to the truth of the allegations.
- 22 6. In response to Paragraph 6 of the complaint, this answering defendant denies the allegations
23 in this paragraph that this answering defendant copied data on computers and storage media,
24 searched those materials and continues to search those materials.
- 25 7. In response to Paragraph 7 of the complaint, this answering defendant denies that plaintiffs
26 are entitled to the relief they allege in this paragraph.
- 27 8. In response to Paragraph 8 of the complaint, this paragraph is a description of the legal bases
28 for plaintiffs' causes of action and plaintiffs' pleading of jurisdiction, to which no response is

1 required. To the extent a response is required, this answering defendant admits plaintiffs
2 have alleged claims under the provisions of law described in the paragraph and this
3 answering defendant denies that plaintiffs are entitled to the relief they allege in this
4 paragraph.

5 9. In response to Paragraph 9 of the complaint, this paragraph also contains plaintiffs' pleading
6 of jurisdiction, which require no response.

7 10. In response to Paragraph 10 of the complaint, this paragraph contains plaintiffs' pleading of
8 venue, to which no response is required.

9 11. In response to Paragraph 11 of the complaint, this answering defendant admits that Long
10 Haul is located at the address given in the paragraph. The remainder of the paragraph is
11 denied.

12 12. In response to Paragraph 12 of the complaint, this answering defendant admits that East Bay
13 Prisoner Support occupies space within the premises of Long Haul. This answering
14 defendant is without knowledge or information sufficient to form a belief as to the truth of
15 the remaining allegations in this paragraph. To the extent a further response is required, the
16 paragraph is denied.

17 13. In response to Paragraph 13 of the complaint, this defendant admits that the United States of
18 America is a defendant.

19 14. In response to Paragraph 14 of the complaint, this answering defendant is without knowledge
20 or information sufficient to form a belief as to the truth of the allegations in this paragraph.
21 To the extent a further response is required, the paragraph is denied.

22 15. In response to Paragraph 15 of the complaint, this answering defendant is without knowledge
23 or information sufficient to form a belief as to the truth of the allegations in this paragraph.
24 To the extent a further response is required, the paragraph is denied.

25 16. In response to Paragraph 16 of the complaint, this answering defendant is without knowledge
26 or information sufficient to form a belief as to the truth of the allegations in this paragraph.
27 To the extent a further response is required, the paragraph is denied.

28 17. In response to Paragraph 17 of the complaint, this answering defendant is without knowledge

1 or information sufficient to form a belief as to the truth of the allegations in this paragraph.

2 To the extent a further response is required, the paragraph is denied.

3 18. In response to Paragraph 18 of the complaint, this answering defendant is without knowledge
4 or information sufficient to form a belief as to the truth of the allegations in this paragraph.

5 To the extent a further response is required, the paragraph is denied.

6 19. In response to Paragraph 19 of the complaint, this answering defendant is without knowledge
7 or information sufficient to form a belief as to the truth of the allegations in this paragraph.

8 To the extent a further response is required, the paragraph is denied.

9 20. In response to Paragraph 20 of the complaint, this answering defendant admits that defendant
10 Lisa Shaffer was a special agent of the FBI on the date of the search and participated in the
11 execution of the search warrant on the date and at the place described in the complaint. As
12 for the remainder of the paragraph, this answering defendant is without knowledge or
13 information sufficient to form a belief as to the truth of the allegations in this paragraph. To
14 the extent a further response is required, the paragraph is denied.

15 21. In response to Paragraph 21 of the complaint, this answering defendant admits that he is a
16 retired member of the Alameda County Sheriff's Department, that on the date of the search
17 alleged in the complaint, he was a deputized member of the FBI, and that on that date he
18 acted in the course of his FBI employment. The remainder of this paragraph is denied.

19 22. This answering defendant admits that in Paragraph 22 of the complaint plaintiffs purport to
20 sue Doe defendants. Except as expressly admitted herein, the allegations of this paragraph
21 are denied.

22 23. In response to Paragraph 23 of the complaint, this answering defendant denies the allegations
23 in this paragraph.

24 24. In response to Paragraph 24 of the complaint, other than the street address of Long Haul,
25 which is admitted, this answering defendant is without knowledge or information sufficient
26 to form a belief as to the truth of the allegations in this paragraph.

27 25. In response to Paragraph 25 of the complaint, this answering defendant admits that Long
28 Haul sells books and provides computers to the public for free use. Except as admitted

- 1 herein, this answering defendant denies the allegations in this paragraph.
- 2 26. In response to Paragraph 26 of the complaint, this answering defendant is without knowledge
3 or information sufficient to form a belief as to the truth of the allegations in this paragraph.
- 4 27. In response to Paragraph 27 of the complaint, this answering defendant is without knowledge
5 or information sufficient to form a belief as to the truth of the allegations in this paragraph.
- 6 28. In response to Paragraph 28 of the complaint, this answering defendant is without knowledge
7 or information sufficient to form a belief as to the truth of the allegations in this paragraph.
- 8 29. In response to Paragraph 29 of the complaint, this answering defendant is without knowledge
9 or information sufficient to form a belief as to the truth of the allegations.
- 10 30. In response to Paragraph 30 of the complaint, this answering defendant admits that Long
11 Haul offers an internet with computers providing online access to the public. As to the
12 remainder of this paragraph, this answering defendant is without knowledge or information
13 sufficient to form a belief as to the truth of the allegations.
- 14 31. In response to Paragraph 31 of the complaint, this answering defendant is without knowledge
15 or information sufficient to form a belief as to the truth of the allegations in this paragraph.
- 16 32. In response to Paragraph 32 of the complaint, this answering defendant is without knowledge
17 or information sufficient to form a belief as to the truth of the allegations in this paragraph.
- 18 33. In response to Paragraph 33 of the complaint, this answering defendant is without knowledge
19 or information sufficient to form a belief as to the truth of the allegations in this paragraph.
- 20 34. In response to Paragraph 34 of the complaint, this answering defendant is without knowledge
21 or information sufficient to form a belief as to the truth of the allegations in this paragraph.
- 22 35. This answering defendant admits to the facts in paragraph 35 of the complaint.
- 23 36. In response to Paragraph 36 of the complaint, this answering defendant denies the allegations
24 in this paragraph.
- 25 37. In response to Paragraph 37 of the complaint, this answering defendant admits that the
26 Statement of Probable Cause and warrant did not make any reference to EBPS. Except as
27 admitted herein, the allegations of this paragraph are denied.
- 28 38. In response to Paragraph 38 of the complaint, this answering defendant is without knowledge

1 or information sufficient to form a belief as to the truth of the allegations in this paragraph.

2 39. In response to Paragraph 39 of the complaint, this answering defendant admits that on August
3 27, 2008, at least four officers from the UCPD (Defendants Kasiske, MacAdam, Alberts and
4 Bauer) and at least two officers acting on behalf of the FBI (this answering defendant and
5 Defendant Shaffer) arrived at Long Haul. This answering defendant admits no one was
6 inside. This answering defendant admits that some members of the group executing the
7 warrant gained access to the premises by unchaining the back door. Except as expressly
8 admitted herein, the allegations in this paragraph are denied.

9 40. In response to Paragraph 40 of the complaint, this answering defendant admits that he did not
10 show the warrant to anyone during the execution of the warrant. As to the remaining
11 allegations, this answering defendant is without knowledge or information sufficient to form
12 a belief as to the truth of the allegations.

13 41. In response to Paragraph 41 of the complaint, this answering defendant admits that members
14 of the investigative team spent approximately two hours searching the premises, that the team
15 did not permit anyone to enter the building during the search, that members of the team
16 looked through the logs of individuals who borrowed books and/or purchased books. Except
17 as expressly admitted, this answering defendant is without knowledge or information
18 sufficient to form a belief as to the truth of the allegations

19 42. In response to Paragraph 42 of the complaint, this answering defendant admits that the team
20 executing the warrant removed all computers they located during the search, including
21 computers located in public spaces and in locked offices. The remainder of the allegations in
22 this paragraph are denied.

23 43. This answering defendant is without knowledge or information sufficient to form a belief as
24 to the truth of the allegations in Paragraph 43 of the complaint.

25 44. This answering defendant is without knowledge or information sufficient to form a belief as
26 to the truth of the allegations in Paragraph 44 of the complaint.

27 45. This answering defendant denies the allegations in Paragraph 45 of the complaint.

28 46. This answering defendant is without knowledge or information sufficient to form a belief as

- 1 to the truth of the allegations in Paragraph 46 of the complaint.
- 2 47. This answering defendant is without knowledge or information sufficient to form a belief as
3 to the truth of the allegations in Paragraph 47 of the complaint.
- 4 48. This answering defendant is without knowledge or information sufficient to form a belief as
5 to the truth of the allegations in Paragraph 48 of the complaint.
- 6 49. In response to Paragraph 49 of the complaint, this answering defendant denies the allegations
7 in the paragraph.
- 8 50. In response to Paragraph 50 of the complaint, this answering defendant is without knowledge
9 or information sufficient to form a belief as to the truth of the allegations in this paragraph.
- 10 51. In response to Paragraph 51 of the complaint, this answering defendant denies the allegations
11 in this paragraph.
- 12 52. In response to Paragraph 52 of the complaint, this answering defendant is without knowledge
13 or information sufficient to form a belief as to the truth of the allegations in this paragraph.
- 14 53. In response to Paragraph 53 of the complaint, this answering defendant is without knowledge
15 or information sufficient to form a belief as to the truth of the allegations in the first sentence
16 of this paragraph. This answering defendant denies the allegations in the remainder of this
17 paragraph.
- 18 54. In response to Paragraph 54 of the complaint, this answering defendant is without knowledge
19 or information sufficient to form a belief as to the truth of the allegations in this paragraph.
- 20 55. In response to Paragraph 55 of the complaint, this answering defendant admits that pursuant
21 to a stipulation dated May 19, 2009, all parties agreed that defendants would refrain from
22 searching any of the data seized or copied from Slingshot and EBPS without advance notice
23 to the plaintiffs. This answering defendant denies the remainder of the allegations in this
24 paragraph.
- 25 56. In response to Paragraph 56 of the complaint, this answering defendant denies the allegations
26 in this paragraph.
- 27 57. In response to Paragraph 57 of the complaint, this answering defendant denies the allegations
28 in this paragraph.

1 58. In response to Paragraph 58 of the complaint, this answering defendant denies the allegations
2 in this paragraph.

3 59. This answering defendant's responses to paragraphs 1-58 are incorporated by reference. This
4 paragraph is no longer operative following the Court's order granting defendants' motion to
5 dismiss in part. To the extent a response is required, this answering defendant denies the
6 allegations in this paragraph.

7 60. In response to Paragraph 60 of the complaint, this paragraph is no longer operative following
8 the Court's order granting defendants' motion to dismiss in part. To the extent a response is
9 required, this answering defendant denies the allegations in this paragraph.

10 61. This answering defendant's responses to paragraphs 1-60 are incorporated by reference.

11 62. In response to Paragraph 62 of the complaint, this answering defendant denies the allegations
12 in this paragraph.

13 63. This answering defendant's responses to paragraphs 1-62 are incorporated by reference. This
14 paragraph is not alleged against this answering defendant. Therefore, no response is required.
15 To the extent a response is required, this answering defendant denies the allegations in this
16 paragraph.

17 64. In response to Paragraph 64 of the complaint, this paragraph is not alleged against this
18 answering defendant. Therefore, no response is required. To the extent a response is
19 required, this answering defendant denies the allegations in this paragraph.

20 65. This answering defendant's responses to paragraphs 1-64 are incorporated by reference. To
21 the extent a response is required, this answering defendant denies the allegations in this
22 paragraph.

23 66. In response to Paragraph 66 of the complaint, this answering defendant denies the allegations
24 in this paragraph.

25 67. This answering defendant denies the allegations in Paragraph 67.

26 With respect to the six paragraphs in plaintiffs' prayer for relief, defendant denies that
27 plaintiffs are entitled to any of the relief prayed for therein and deny that plaintiffs are entitled to
28 judgment against defendant.

1 All allegations not specifically admitted, denied or modified, are hereby denied.

2 **AFFIRMATIVE DEFENSES**

3 **FIRST AFFIRMATIVE DEFENSE**

4 The complaint fails to state a claim upon which relief can be granted.

5 **SECOND AFFIRMATIVE DEFENSE**

6 The complaint fails to state a violation of any of the provisions of the United States
7 Constitution cited by plaintiffs.

8 **THIRD AFFIRMATIVE DEFENSE**

9 This defendant has qualified immunity from suit for plaintiffs' causes of action arising under
10 the United States Constitution.

11 **FOURTH AFFIRMATIVE DEFENSE**

12 Any injury to plaintiffs, and any loss or other damage to plaintiffs, was not proximately
13 caused by any negligent or otherwise wrongful act or omission of this answering defendant.

14 **FIFTH AFFIRMATIVE DEFENSE**

15 Defendant was at all times material hereto acting with both subjective and objective good
16 faith, such that any claim for relief that Plaintiffs may have is barred by law.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 Defendant's conduct was at all times material hereto privileged and/or justified under
19 applicable law.

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 To the extent plaintiffs may have failed to mitigate their damages, any recovery or other
22 award must be reduced accordingly.

23 **EIGHTH AFFIRMATIVE DEFENSE**

24 For each claim or cause of action, any damages or injuries alleged were proximately caused
25 in whole or in part by the negligence, fault, carelessness, or willful acts or omissions of plaintiffs,
26 or of parties whom this answering defendant neither controlled nor had the right to control, and
27 not by any acts, omissions or other conduct of this answering defendant. Therefore, any damages
28 sustained by plaintiffs are barred against defendants or must be reduced under principles of

1 comparative fault or equitable indemnity.

2 **NINTH AFFIRMATIVE DEFENSE**

3 Plaintiffs have failed to state a claim for declaratory relief.

4 **TENTH AFFIRMATIVE DEFENSE**

5 Plaintiffs have failed to state a claim for injunctive relief.

6 **ELEVENTH AFFIRMATIVE DEFENSE**

7 Probable cause existed to justify the search and seizure of items listed in the search warrant at
8 issue in this case.

9 **TWELFTH AFFIRMATIVE DEFENSE**

10 This answering defendant had a reasonable good faith belief in the lawfulness of his conduct,
11 under 42 U.S.C. § 2000AA-6(B).

12
13 This defendant reserves the right to amend his Answer with additional defense of which he
14 may become aware as this matter progresses and to raise any other matter constituting an
15 avoidance or affirmative defense.

16
17 **WHEREFORE**, Defendant prays that:

- 18 1. The complaint be dismissed;
19 2. Plaintiffs take nothing by this action;
20 3. The Court enter judgment in favor of Defendant on all claims; and
21 4. The Court grant such other and further relief as it deems proper.

22
23 DATED: January 15, 2010

JOSEPH P. RUSSONIELLO
United States Attorney

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25
26 /s/
JONATHAN U. LEE
Assistant United States Attorney
Attorneys for Defendant Hart
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DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Defendant Hart hereby demands a trial by jury in this matter.

DATED: January 15, 2010

JOSEPH P. RUSSONIELLO
United States Attorney

/s/

JONATHAN U. LEE
Assistant United States Attorney
Attorneys for Defendant Hart