

1 TONY WEST
 Assistant Attorney General

2

3 ELIZABETH J. SHAPIRO
 Deputy Director, Federal Programs Branch

4 MARCIA BERMAN (PA Bar No. 66168)
 Senior Counsel, U.S. Department of Justice
 Civil Division, Federal Programs Branch
 20 Massachusetts Ave., N.W., Room 7132
 Washington, D.C. 20530
 Telephone: (202) 514-2205
 Facsimile: (202) 616-8470
 Email: marcia.berman@usdoj.gov
 8 *Attorneys for Defendants*

9

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN FRANCISCO

13

14 ELECTRONIC FRONTIER FOUNDATION, 15 Plaintiff, 16 17 v. 18 OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE and UNITED STATES DEPARTMENT OF JUSTICE, 19 Defendants. 20) Nos. 08-2997 JSW & 08-1023 JSW)) NOTICE OF MOTION AND MOTION) FOR LEAVE TO FILE MOTION) FOR RECONSIDERATION) AND REQUEST THAT) RECONSIDERATION BE GRANTED) WITHOUT FURTHER BRIEFING)) Date: [No Hearing – Local Rule 7-9(d)]) Time:) Courtroom:)
---	--

21

22 Pursuant to Local Rule 7-9, notice is hereby given of the filing of this motion by

23 defendants Office of the Director of National Intelligence (“ODNI”) and the Department of

24 Justice (“DOJ”) in this Freedom of Information Act (“FOIA”) case. On September 24, 2009, the

25 Court entered an order denying defendants’ motion for summary judgment and granting

26 plaintiff’s cross-motion for summary judgment. Dkt. No. 90. Defendants respectfully request

27 leave to file a motion for reconsideration of the Court’s order because the Court failed to

28 consider several of defendants’ arguments. Specifically, the Court failed to consider inter-

Defs’ Mtn. for Leave to File Mtn. for Reconsideration – C 08-2997 & 08-1023 (JSW)

1 agency and intra-agency communications that were not exchanged with Members of Congress or
2 their staffs; the Court failed to address defendants' common interest threshold argument for
3 documents exchanged with representatives of telecommunications companies; and the Court
4 failed to uphold defendants' assertion of FOIA's Exemption 3, which was uncontested by
5 plaintiff. The grounds for the motion are more fully set forth in the attached Memorandum of
6 Points and Authorities.

7 Defendants request that reconsideration be granted without further briefing, as the motion
8 for leave to file a motion for reconsideration incorporates the substantive basis for the motion for
9 reconsideration, and thus the motion for reconsideration would substantially repeat the
10 arguments presented here.

11
12 Dated: Oct. 6, 2009

Respectfully submitted,

13 TONY WEST
14 Assistant Attorney General

15 ELIZABETH J. SHAPIRO
16 Deputy Director, Federal Programs Branch

17 /s/ Marcia Berman
18 MARCIA BERMAN (PA Bar No. 66168)
19 Senior Counsel, U.S. Department of Justice
20 Civil Division, Federal Programs Branch
21 20 Massachusetts Ave., N.W., Room 7132
22 Washington, D.C. 20530
23 Telephone: (202) 514-2205
24 Facsimile: (202) 616-8470
25 E-mail: marcia.berman@usdoj.gov

26 *Attorneys for Defendants*
27
28