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8 Attorneys for the Plaintiff

9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

11 ELECTRONIC FRONTIER FOUNDATION,)	
)	
12 Plaintiff,)	Case No. 4:09-cv-03351-SBA
)	
13 v.)	Answer
)	
14 CENTRAL INTELLIGENCE AGENCY, <i>et al.</i> ,)	Case Management Conference Set
)	for Oct. 29, 2009 at 3:00 p.m.
15 Defendants.)	

16
 17 The defendants – the Central Intelligence Agency (“CIA”); the Department of
 18 Homeland Security (“DHS”); the Department of Defense (“DOD”); the National Security
 19 Agency (“NSA”); the Department of Justice (“DOJ”); the Office of the Director of
 20 National Intelligence (“ODNI”); the Department of Energy (“DOE”); and the Department
 21 of State (“DOS”) – through the undersigned counsel, hereby answer the complaint of the
 22 plaintiff, the Electronic Frontier Foundation.

23 **First Affirmative Defense**

24 The complaint purports to impose obligations upon the defendants that exceed
 25 those imposed by the Freedom of Information Act (“FOIA”).
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1 **Second Affirmative Defense**

2 The plaintiff is not entitled to compel the production of records that are exempt
3 from disclosure under FOIA or under other provisions of law, or to compel the production
4 of records that are not subject to FOIA.

5 **Third Affirmative Defense**

6 This Court lacks subject-matter jurisdiction over all or part of the complaint.

7 **Fourth Affirmative Defense**

8 The plaintiff has failed to exhaust its administrative remedies.

9 **Fifth Affirmative Defense**

10 The plaintiff seeks to compel a response to one or more FOIA requests that the
11 defendant agencies have not received.

12 **Sixth Affirmative Defense**

13 The plaintiff's claims are barred in whole or in part by issue preclusion.

14 **Seventh Affirmative Defense**

15 The plaintiff's claims are barred in whole or in part by accord and satisfaction.

16 **Eighth Affirmative Defense**

17 Answering the numbered paragraphs of the plaintiff's complaint, the defendants
18 respond as follows:

19 1. This paragraph contains only a characterization of the complaint, which speaks
20 for itself, and to which no response is required.

21 2. This paragraph contains only conclusions of law and not averments of fact to
22 which a response would be required.

23 3. This paragraph contains only conclusions of law and not averments of fact to
24 which a response would be required.

25 4. This paragraph contains only conclusions of law and not averments of fact to
26 which a response would be required.
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1 5. The defendants lack sufficient knowledge to form a belief as to the truth or
2 falsity of the allegations in this paragraph.

3 6. Admit.

4 7. Admit.

5 8. Admit.

6 9. Admit.

7 10. Admit.

8 11. Admit.

9 12. Admit.

10 13. Admit.

11 14. Deny the first sentence, except to admit that the Intelligence Oversight Board
12 (“IOB”) performs oversight of the Executive Branch’s intelligence activities. Deny the
13 second sentence, except to admit that the IOB is part of the President’s Intelligence
14 Advisory Board (formerly the President’s Foreign Intelligence Advisory Board), and to
15 separately aver that the IOB was created by Executive Order 11,905 on February 18,
16 1976.

17 15. Admit the first sentence. The remainder of the paragraph contains only
18 conclusions of law and not averments of fact to which a response would be required.

19 16. This paragraph contains only a characterization of Executive Order 12,863,
20 which speaks for itself, and to which no response is required.

21 17. This paragraph contains only a characterization of Executive Order 12,333,
22 Executive Order 12,863, and Executive Order 13,462, which speak for themselves, and to
23 which no response is required.

24 18. This paragraph contains only a characterization of Executive Order 13,462,
25 which speaks for itself, and to which no response is required.
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1 19. Deny the first sentence, except to admit that, on February 25, 2008, the CIA,
2 DHS's components the Office of the Inspector General ("OIG") and the Office of General
3 Counsel ("OGC"), DOD, the Defense Intelligence Agency ("DIA"), NSA, the Federal
4 Bureau of Investigation ("FBI"), ODNI, and DOE received letters via fax from the
5 plaintiff, and to separately aver that, on June 19, 2009, DOS received a letter via fax from
6 the plaintiff that purported to be dated February 25, 2008, but that DOS lacks any record
7 of prior receipt of that letter. The second sentence contains only a characterization of
8 these letters, which speak for themselves, and to which no response is required.

9 20. Deny the first sentence. Deny the second sentence, except to admit that a
10 representative of the plaintiff called the CIA's FOIA Requester Service Center on June
11 18, 2009, and inquired into the status of the request.

12 21. Admit the first and second sentences. Deny the third sentence, except to admit
13 that, on April 30, 2009, DHS issued its final response to the February 25, 2008 request,
14 producing 46 pages of responsive documents (35 of which were partially redacted) and
15 withholding 10 pages. Admit the fourth and fifth sentences.

16 22. Deny the first sentence. Deny the second sentence, except to admit that a
17 representative of the plaintiff called DOD's FOIA Requester Service Center on June 18,
18 2009, and inquired into the status of the request.

19 23. Admit the first sentence. Deny the second sentence, except to admit that NSA
20 produced 235 pages of records to the plaintiff, that the records produced dated through
21 the first quarter of fiscal year 2006, and that a portion of those records were redacted.
22 The third and fourth sentences contain only characterizations of the letter of June 8, 2009,
23 which speaks for itself, and to which no response is required. Admit the fifth sentence.
24 Deny the sixth sentence.

25 24. Admit.
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1 25. Deny the first sentence, except to admit that FBI acknowledged receipt of the
2 plaintiff's February 25, 2008 request by letter dated March 21, 2008, and indicated that it
3 was searching for responsive documents. The defendants lack sufficient information to
4 admit or deny the allegations of the second sentence.

5 26. Deny the first sentence. Deny the second sentence, except to admit that a
6 representative of the plaintiff called ODNI's FOIA Requester Service Center on June 18,
7 2009, and inquired into the status of the request.

8 27. Deny the first sentence, except to admit that DOE responded in full to the
9 plaintiff's February 25, 2008 request by letters of December 12, 2008 and January 12,
10 2009, and that DOE released several hundred pages of records without redaction. Admit
11 the second sentence.

12 28. Deny the first sentence. Deny the second sentence, and separately aver that
13 DOS received a letter from the plaintiff via fax on June 19, 2009 that purported to be
14 dated February 25, 2008, but that DOS lacks any record of prior receipt of that letter. The
15 defendants lack sufficient information to admit or deny the allegations of the third
16 sentence, except to admit that the plaintiff sent an email to DOS's FOIA Requester
17 Service Center on June 18, 2009; the defendants respectfully refer the Court to that email
18 for a complete and accurate statement of its contents. The defendants lack sufficient
19 information to admit or deny the allegations of the fourth sentence, except to admit that
20 DOS sent an email to the plaintiff on June 22, 2009; the defendants respectfully refer the
21 Court to that email for a complete and accurate statement of its contents.

22 29. Deny the first sentence, except to admit that the Office of Information Policy
23 ("OIP"), a component of DOJ, received on behalf of the Office of the Attorney General
24 ("OAG") a letter via fax from the plaintiff dated February 13, 2009. The second sentence
25 contains only a characterization of the letter, which speaks for itself, and to which no
26 response is required.
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1 30. Deny.

2 31. Deny the first sentence, except to admit that, on June 19, 2009, the CIA,
3 DHS's component OIG, DOD, DIA, NSA, FBI, OIP (which received the letter on behalf
4 of OAG), ODNI, DOE, and DOS received letters via fax from the plaintiff, and to
5 separately aver that DHS's component OGC lacks a record of receipt of any letter of that
6 date from the plaintiff. The second sentence contains only a characterization of these
7 letters, which speak for themselves, and to which no response is required.

8 32. Admit.

9 33. The first sentence of this paragraph contains only conclusions of law and not
10 averments of fact to which a response would be required. Deny the second sentence,
11 except to aver that DHS's component OGC lacks a record of receipt of any letter dated
12 June 19, 2009 from the plaintiff, and to admit that, with respect to the remaining FOIA
13 requests at issue in this complaint, more than 20 working days have passed since the
14 defendants received those requests.

15 34. The first sentence of this paragraph contains only conclusions of law and not
16 averments of fact to which a response would be required. Admit the second sentence.

17 35. This paragraph contains only conclusions of law and not averments of fact to
18 which a response would be required.

19 36. Deny.

20 37. This paragraph contains only conclusions of law and not averments of fact to
21 which a response would be required.

22 38. This paragraph contains only conclusions of law and not averments of fact to
23 which a response would be required.

24 39. The defendants hereby incorporate by reference their responses to the
25 allegations contained in paragraphs 1 through 38 of the complaint as if fully set forth
26 herein.
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1 40. This paragraph contains only conclusions of law and not averments of fact to
2 which a response would be required.

3 41. This paragraph contains only conclusions of law and not averments of fact to
4 which a response would be required.

5 42. This paragraph contains only conclusions of law and not averments of fact to
6 which a response would be required.

7 43. This paragraph contains only conclusions of law and not averments of fact to
8 which a response would be required.

9 44. This paragraph contains only conclusions of law and not averments of fact to
10 which a response would be required.

11 The defendants specifically deny all allegations in the complaint not otherwise
12 answered herein. In addition, the defendants deny that the plaintiff is entitled to the relief
13 requested in the prayer for relief, or to any relief whatsoever.
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1 WHEREFORE, the defendants request that the plaintiff's prayer for relief be
2 denied, that this action be dismissed, and that the defendants be awarded their costs and
3 such other relief as may be appropriate.

4 Dated: August 28, 2009

Respectfully submitted,

5 TONY WEST
Assistant Attorney General

6 ELIZABETH SHAPIRO
7 Deputy Branch Director

8
9 /s/ Joel McElvain
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14 Attorneys for the Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2009, I electronically filed the foregoing Answer with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system.

/s/ Joel McElvain
JOEL McELVAIN

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