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**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA**

|                                    |   |                               |
|------------------------------------|---|-------------------------------|
| <b>MICHAEL SCHULZE,</b>            | ) | <b>1:05cv0180 AWI GSA</b>     |
|                                    | ) |                               |
| <b>Plaintiff,</b>                  | ) |                               |
|                                    | ) | <b>MEMORANDUM OPINION</b>     |
| <b>v.</b>                          | ) | <b>AND ORDER ON</b>           |
|                                    | ) | <b>DEFENDANTS' MOTION TO</b>  |
| <b>FEDERAL BUREAU OF</b>           | ) | <b>DISMISS NON-DEPARTMENT</b> |
| <b>INVESTIGATION, DRUG</b>         | ) | <b>LEVEL AGENCIES AND</b>     |
| <b>ENFORCEMENT ADMINISTRATION,</b> | ) | <b>SETTING TIME LIMIT FOR</b> |
| <b>UNITED STATES MARSHALS</b>      | ) | <b>FILING OF THIRD</b>        |
| <b>SERVICE and DEPARTMENT OF</b>   | ) | <b>DISPOSITIVE MOTION</b>     |
| <b>JUSTICE,</b>                    | ) |                               |
|                                    | ) | <b>Doc. #'s 89 and 108</b>    |
| <b>Defendants.</b>                 | ) |                               |

In this action under the Freedom of Information Act, defendant United States Department of Justice (“Department”) has filed a motion to dismiss agency defendants Federal Bureau of Investigation (“FBI”), Drug Enforcement Administration (“DEA”), and United States Marshals Service (“USMS”) on the ground Department is the proper party defendant where individual “components” within the Department are sued. Department has voluntarily dismissed its pending motion for summary judgment and requested additional time to determine its position following the decision of the Ninth Circuit Court of Appeals in Pickard v. Dep’t of Justice, 653 F.3d 782 (9th Cir. 2011). In response, plaintiff Michael Schulze (“Plaintiff”) requests the court impose a deadline for any filing of further dispositive motions by Department.



1 Plaintiff's claim that the "Glomar" response is not appropriate where the identity of a paid  
2 informant who is the subject of the FOIA request is made public. On December 9, 2011,  
3 Department filed its reply brief which set forth its counter-arguments with regard to dismissal  
4 of the "component" sub-divisions within Department and voluntarily withdrew its motion for  
5 summary judgment without prejudice pending review of the impact of Pickard on their  
6 response to Plaintiff's FOIA requests. Department's reply brief did not specify a time by  
7 which it would make a decision as to how it would proceed. On March 19, 2012, Plaintiff  
8 moved for the establishment of a deadline by which Department would be required to either  
9 file a dispositive motion or indicate its intentions with regard to Plaintiff's FOIA requests as  
10 to Ahlo and Oales.

11 The court will consider first Department's motion to dismiss and then will address  
12 Plaintiff's request for a time certain for Department's further response.

### 13 **LEGAL STANDARD**

14 A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil  
15 Procedure can be based on the failure to allege a cognizable legal theory or the failure to  
16 allege sufficient facts under a cognizable legal theory. Robertson v. Dean Witter Reynolds,  
17 Inc., 749 F.2d 530, 533-34 (9th Cir.1984). To withstand a motion to dismiss pursuant to  
18 Rule 12(b)(6), a complaint must set forth factual allegations sufficient "to raise a right to  
19 relief above the speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555  
20 (2007) ("Twombly"). While a court considering a motion to dismiss must accept as true the  
21 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425  
22 U.S. 738, 740 (1976), and must construe the pleading in the light most favorable to the party  
23 opposing the motion, and resolve factual disputes in the pleader's favor, Jenkins v.  
24 McKeithen, 395 U.S. 411, 421, reh'g denied, 396 U.S. 869 (1969), the allegations must be  
25 factual in nature. See Twombly, 550 U.S. at 555 ("a plaintiff's obligation to provide the  
26 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a  
27 formulaic recitation of the elements of a cause of action will not do"). The pleading standard  
28 set by Rule 8 of the Federal Rules of Civil Procedure "does not require 'detailed factual

1 allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me  
2 accusation.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (“Iqbal”).

3 The Ninth Circuit follows the methodological approach set forth in Iqbal for the  
4 assessment of a plaintiff’s complaint:

5 “[A] court considering a motion to dismiss can choose to begin by identifying  
6 pleadings that, because they are no more than conclusions, are not entitled to  
7 the assumption of truth. While legal conclusions can provide the framework  
8 of a complaint, they must be supported by factual allegations. When there are  
9 well-pleaded factual allegations, a court should assume their veracity and then  
10 determine whether they plausibly give rise to an entitlement to relief.”

11 Moss v. U.S. Secret Service, 572 F.3d 962, 970 (9th Cir. 2009) (quoting Iqbal, 129 S.Ct. at  
12 1950).

## 13 **DISCUSSION**

### 14 **I. Motion to Dismiss FBI, DEA and USMS**

15 Federal agencies may not be sued in their own name except to the extent Congress  
16 may specifically allow such suits. Blackmar v. Guerre, 342 U.S. 512, 514 (1952). Federal  
17 departments and agencies are proper party defendants in FOIA litigation. This rule is derived  
18 from the plain language of the Act, which vests the district courts with jurisdiction to enjoin  
19 “the agency” from withholding records. 5 U.S.C. § 552(a)(4)(B). Department contends that  
20 FBI, DEA and USMS are “components” within Department and are not properly considered  
21 “agencies” for purposes of FOIA actions. As a consequence, Department argues, Department  
22 is the only proper party defendant for purposes of FOIA and the other entities should be  
23 dismissed.

24 Of some significance, neither party can point to any case in which the Ninth Circuit  
25 has spoken to this issue. Further, it appears that such case authority as exists in the context of  
26 FOIA actions involving or potentially involving entities within the Department of Justice is  
27 to be found in either the D.C. District Court or the D.C. Circuit Court of Appeals.

28 Department cites three cases, each from the D.C. District Court, that address, albeit  
tangentially, the issue of proper party defendant in FOIA actions against components of the  
Department of Justice. In Sonds v. Huff, 391 F.Supp.2d 152 (D.D.C. 2005), the district court

1 dismissed FOIA claims against the DEA and against an individual official who was  
2 presumably a DEA official. In reaching its decision to dismiss, the Sonds court noted simply  
3 that “[t]he Drug Enforcement Administration is a component of the Department of Justice.  
4 Moreover, the FOIA’s comprehensive remedial scheme addresses all claims relating to the  
5 disclosure of government records and therefore precludes any recovery against individual  
6 officials for the processing of a FOIA request.” Id. at 155. The court concludes the decision  
7 in Sonds is thin support for the proposition that a FOIA action cannot be maintained against a  
8 “component part” of the Department of Justice.

9 Department offers two cases from 2011, again, both from the D.C. District Court. In  
10 Mingo v. U.S. Dep’t of Justice, 793 F.Supp.2d 447 (D.D.C. 2011) and in Vazquez v. U.S.  
11 Dep’t of Justice, 764 F.Supp.2d 117 (D.D.C. 2011), the district court recognized the division  
12 of opinion among the judges of that district on the question of whether a component of the  
13 Department could be sued in its own name under FOIA. See Vazques, 764 F.Supp.2d at 119  
14 (noting the disagreement in that circuit as expressed in Prison Legal News v. Lappin, 436  
15 F.Supp.2d 17, 21 (D.D.C. 2006)); Mingo, 793 F.Supp.2d at 451 (citing cases to illustrate the  
16 different conclusions reached by various courts on the issue). In both Vazques and Mingo,  
17 the district courts noted the lack of opposition to Department’s motion to dismiss and  
18 dismissed the “component” entities within Department of Justice without actually resolving  
19 the dispute.

20 The only decision by an appellate court cited by either party that directly pertains to  
21 the issue of Department of Justice as sole proper party defendant in FOIA actions against its  
22 “component” entities is Peralta v. U.S. Attorney’s Office, 136 F.3d 169, 329 U.S.App.D.C.  
23 (D.C. Cir. 1998). As Department correctly notes, the appellate court did not actually decide  
24 the question of whether Department was the sole proper party defendant because that issue  
25 was not raised in the court below. Rather, what the Peralta court did was devote substantial  
26 attention to pointing out that its prior decisions tended to establish that FBI has been and  
27 could be sued in its own name under FOIA. See id. at 173-174 (“FBI has litigated numerous  
28 FOIA cases in its own name before the Supreme Court, this court, and other circuit courts,

1 with the DOJ or one of its components appearing as counsel”). The Peralta, court also noted  
2 that the jurisdictional provision of FOIA grants jurisdiction over “agencies” as defined in 5  
3 U.S.C. § 551(1). That definition, the court pointed out, ““means each authority of the  
4 Government of the United States, whether or not it is within or subject to review by another  
5 agency . . . .”” Id. at 173.

6 From the foregoing, this court draws a few observations. First, there is no  
7 jurisdictional impediment to a suit against FBI, DEA or USMS in their own names under  
8 FOIA as they are all “agencies” subject to FOIA within the meaning of section 551(1).  
9 Second, in a case where Department is a named party, courts may dismiss Department of  
10 Justice component entities where there is no objection to the dismissal without impairing the  
11 rights of either party. Whether or not the components are dismissed, the court retains  
12 jurisdiction to issue injunctive orders that are binding on the components. Third, where  
13 Department is a named defendant along with other named components of Department, there  
14 is no clear and unambiguous authority for the proposition that the component entities are  
15 *entitled* to dismissal. Fourth and finally, the court can see no reason why it would matter  
16 much either way.

17 Department has the burden to present facts and law sufficient to show entitlement to  
18 dismissal of FBI, DEA, and USMS. The court finds Department has not made that showing.  
19 Given that the court is not appraised of any reason why the dismissal requested would make  
20 much difference with regard to the benefits or burdens to any of the parties, the court is not  
21 inclined to exert the effort to plow new judicial ground in this case at this time.

22 Department’s motion to dismiss will be denied. Leave will be granted to amend the motion  
23 should new authority or facts become available. The court also notes that there are no  
24 contentions currently before the court that go to the question of whether there are any  
25 remaining claims against USMS following the grant of summary judgment as to Plaintiff’s  
26 claim under the privacy act. While the court has some doubt that any active claims remain  
27 against USMS, the court will leave it to the parties to make that determination and file further  
28 motions as appropriate.

