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8 Attorneys for Plaintiff, PINNACLE ARMOR, INC.

9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

11 PINNACLE ARMOR, INC,

12 Plaintiff,

13 v.

14 UNITED STATES OF AMERICA,

15 Defendant.

Case No.: 1:07-cv-01655-LJO-SAB

**STIPULATION RE DISCOVERY AND  
ORDER**

1 IT IS HEREBY STIPULATED by and between Plaintiff on the one hand, and Defendant,  
2 on the other hand, by and through their counsel of record, that:

3 1. On February 12, 2013, the Court issued its Order re Plaintiff's Motion to  
4 Supplement the Administrative Record (ECF 81). The Order allowed Plaintiff to file a very  
5 narrow motion for discovery to uncover whether the National Institute of Justice ("NIJ")  
6 considered additional data from the Army or DOD, and set the deadline for filing said motion for  
7 March 1, 2013

8 2. Accordingly, counsel for Plaintiff and Defendant met and conferred over a  
9 stipulation as to the nature of any discovery and/or to supplement the Revised Administrative  
10 Record ("RAR") with Army or DOD data.

11 3. On February 28, 2013, the Court issued an Order, based on the stipulation of the  
12 parties, extending the deadlines for the filing of the discovery motion and response, to March 29,  
13 2013, and April 5, 2013, respectively.

14 4. Due to the continuing discussions of the parties, additional time was required to  
15 attempt to resolve the remaining discovery issues in order to obviate the need for a discovery  
16 motion. Accordingly, on April 4, 2013, the Court issued a further Order based on the stipulation  
17 of the parties, extending the deadlines for the filing of the discovery motion and response to  
18 April 19, 2013, with the response deadline continued accordingly to April 26, 2013.

19 5. The parties were subsequently able to stipulate to some, but not all of, the  
20 information sought by Plaintiff.

21 6. With respect to the information sought, Plaintiff requested that the NIJ provide  
22 documents and/or information regarding:

- 23 a. Any and all documents sent by the Army and/or the Department of  
24 Defense ("DoD") to the NIJ or its affiliated offices regarding Pinnacle  
25 Armor, Inc.'s products during the years 2006 and 2007;  
26 b. Any and all documents sent by the NIJ or its affiliated offices to the Army  
27 and/or DoD regarding Pinnacle Armor Inc.'s products during the years  
28 2006 and 2007;

1 c. Any and all documents received by the NIJ or its affiliated offices from  
2 any source which it is aware was also provided to or possessed by the  
3 Army and/or DoD regarding Pinnacle Armor Inc.'s products during the  
4 years 2006 and 2007;

5 d. Any and all transmittal letters, cover sheets, or the like which  
6 accompanied any of the material in items [a through c] above;

7 7. In response to these four requests, the NIJ responded that the only documents it  
8 had that were responsive to these requests were already in the Revised Administrative Record.  
9 Accordingly, the parties stipulate and agree that formal written discovery would not result in the  
10 production of any additional documents that were not already in the Revised Administrative  
11 Record.

12 8. Plaintiff also requested information on the nature and substance of any  
13 conversations that took place between the NIJ, on the one hand, and the Army/DOD, on the  
14 other. The questions were as follows:

15 a. Please identify any and all persons from or affiliated with the Army and/or  
16 DoD who had conversations with NIJ personnel or affiliated offices  
17 regarding Pinnacle Armor Inc.'s products during the years 2006 and 2007;

18 b. Please identify any and all persons from or affiliated with the NIJ or its  
19 affiliated offices who had any conversation with the Army and/or DoD  
20 regarding Pinnacle Armor Inc.'s products during the years 2006 and 2007;

21 c. Please state the substance of any and all conversations identified in items  
22 [a and b] above.

23 9. The NIJ responded that conversations between it and the Army/DOD did indeed  
24 take place regarding Pinnacle Armor, Inc.'s products during the years 2006 and 2007, but that it  
25 would not state the substance of those conversations. The NIJ further responded that the  
26 identities of the persons who may have participated in such conversations could be gleaned from  
27 the Revised Administrative Record, but declined to provide plaintiff with a list of individuals  
28 who actually had engaged in such conversations.

1           10.     Accordingly the parties have been unable to reach a complete agreement as to the  
2 documents or information that would supplement the Revised Administrative Record. Plaintiff  
3 therefore will file a discovery motion on April 19, 2013, which the NIJ will oppose on April 26,  
4 2013, as authorized by the February 12, 2013 Order.

5           11.     The parties have agreed, however, that once the ruling on the discovery motion,  
6 and any discovery as may be allowed is completed, that the case may be resolved on the parties'  
7 cross-motions for summary judgment in accordance with a briefing schedule generally as  
8 follows:

- 9                   a.   The NIJ will file its Motion for Summary Judgment;  
10                  b.   Plaintiff will file its Opposition and Cross-Motion for Summary  
11                     Judgment;  
12                  c.   The NIJ will file its Opposition and Reply in Support of its Motion for  
13                     Summary Judgment;  
14                  d.   Plaintiff will file its Reply in Support of its Cross-Motion for Summary  
15                     Judgment.

16           12.     The parties agree that the final briefing schedule should take into account counsel  
17 for the parties' existing work commitments and trial schedules and they will confer on proposing  
18 a briefing schedule to the court.

19     ///

20     ///

21     ///

1           13.     In light of the parties' decision to file cross-motions for summary judgment, the  
2     NIJ agrees to withdraw its Third Motion to Dismiss or in the Alternative Motion for Summary  
3     Judgment, ECF No. 64.<sup>1</sup>

4  
5     Dated: April 19, 2013

RADCLIFF & SAIKI, LLP

6  
7           By: /s/ Eric H. Saiki

Eric H. Saiki

8           Attorneys for Plaintiff

9           PINNACLE ARMOR, INC.

10     Dated: April 19, 2013

11           By: /s/ Tamra T. Moore

Tamra T. Moore

12           Attorneys for Defendant

13           UNITED STATES OF AMERICA

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16  
17     IT IS SO ORDERED.

18  
19           Dated: **April 19, 2013**

20             
UNITED STATES MAGISTRATE JUDGE

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25     \_\_\_\_\_  
26     <sup>1</sup> Although this Court has ruled that plaintiff's suit is not moot, *see, e.g.*, Oct. 26, 2012 Order,  
27     ECF No. 69, the NIJ respectfully disagrees with the Court's conclusion and contends that this  
28     suit should be dismissed for lack of jurisdiction. The NIJ reserves its right to raise this argument  
   should any appeal follow. Notwithstanding the NIJ's contention that jurisdiction does not exist  
   in this case, the agency will move for summary judgment in accordance with this Court's  
   October 26, 2012 Order.