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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

AL-HARAMAIN ISLAMIC FOUNDATION, *et al.*,

Plaintiffs,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

Case No. CV 06-274-KI

PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ORDER COMPELLING DISCOVERY

INTRODUCTION

Defendants refuse to respond to plaintiffs' interrogatories, invoking the state secrets privilege. According to defendants, "there is a reasonable danger that disclosure of the information implicated by Plaintiffs' First Set of Interrogatories would harm the national security of the United States." Defendants' Opposition to Plaintiffs' Motion for Order Compelling Discovery [Docket No. 55] (hereafter "Defendants' Discovery Opposition") at 9.

Defendants' assertions are conclusory and, particularly in light of defendants' past admissions regarding their warrantless surveillance program, *see* Plaintiffs' Memorandum of Law in Support of Motion for Order Compelling Discovery at 2 fn. 1, offer no justification for invoking the privilege. Plaintiffs' motion to compel should be granted.

ARGUMENT

I. THE COURT SHOULD NOT CONSIDER DEFENDANTS' *IN CAMERA*, *EX PARTE* SUBMISSIONS WITHOUT THEIR DISCLOSURE TO PLAINTIFFS.

A. Defendants Have Not Asserted Specific Facts to Justify Consideration of the *In Camera*, *Ex Parte* Declarations of John D. Negroponte and Keith B. Alexander.

Once again, defendants have filed *in camera*, *ex parte* declarations, despite the Court's admonition that it "should avoid, if possible, receiving secret declarations from one side and basing decisions on facts or arguments not disclosed to the other side." Transcript of Telephonic Conference Proceedings (Apr. 25, 2005) ("Tr.") at 23. Before defendants can make such submissions in support of the state secrets privilege, they must show that it is not possible for them to make the submissions publicly without disclosing the very information that they are attempting to withhold for national security reasons. *Pollard v. F.B.I.,* 705 F.2d 1151, 1153 (9th

Cir. 1983). This Court has ordered in the context of a previous filing by defendants that they demonstrate specific facts, not conclusory statements, to justify *in camera* and *ex parte* submissions. Tr. at 18, 23-24; *see also* Plaintiffs' Opposition to Defendants' Lodging of Material *Ex Parte* and *In Camera*. [Docket No. 30].

Plaintiffs' interrogatories seek two categories of information. The first is information regarding whether plaintiffs were subjected to electronic surveillance, when they were subjected to such surveillance, and whether a warrant was obtained prior to the surveillance. (Interrogatories 1 to 20). Mr. Negroponte claims that the interests of national security require defendants' refusal to confirm or deny whether plaintiffs have been subjected to surveillance. *See* Declaration of John D. Negroponte, pp. 5-7 (Negroponte Declaration). The declaration of Keith B. Alexander essentially makes the same points as the Negroponte declaration.

Negroponte offers two justifications for refusing to confirm or deny whether plaintiffs were subjected to electronic surveillance:

> "The harm of revealing targets of foreign intelligence surveillance should be obvious. If an individual knows or suspects he is a target of U.S. intelligence activities, he would naturally tend to alter his behavior to take new precautions against surveillance, thereby compromising valuable intelligence collection." Negroponte Declaration, p. 6.

This argument makes no sense, however, when plaintiffs *already know* they were surveilled. The government supplied the proof when it accidentally disclosed the document filed under seal. If plaintiffs were going to alter their behavior, they would have done so years ago, when the document was first disclosed.

> "[C]onfirming or denying whether a particular person is subject to surveillance would tend to reveal intelligence information, sources and methods that are at issue in the surveillance, thus compromising those methods and severely undermining surveillance activities in general." *Id*.

Plaintiffs' interrogatories seek no information about intelligence sources and methods other than confirmation that no warrants were sought when and if plaintiffs were surveilled. Defendants have publicly admitted that they did not, and do not believe they must, obtain warrants before conducting the type of surveillance in this case. Therefore, an *ex parte* explanation of the mechanics of surveillance and how decisions are made to conduct surveillance is irrelevant to the legal issues presented in this case. There is no need for the Court to consider such a filing.

The second category of information sought by plaintiffs relates to why the decision was made to classify the sealed document, as to which Mr. Negroponte asserts the privilege. *See* Negroponte Declaration, pp. 5, 7-8. But plaintiffs have already seen the document. They seek information not about the document itself, but only when and why the decision was made to classify it, facts which are relevant to plaintiffs' assertion that the document was classified in order to hide illegal activity. Mr. Negroponte's declaration does not show why this information cannot be disclosed.

Defendants' attempt to file these documents *ex parte* should be rejected unless they are disclosed to plaintiffs' attorneys.

B. Defendants Admit There is No Need to Consider Their *Ex Parte*, *In Camera* Filings.

Defendants state that "[j]udicial review of whether the claim of privilege has been properly asserted and supported does not require the submission of classified information to the court for *in camera* and *ex parte* review." Defendants' Discovery Opposition at 8. Plaintiffs

agree. The matter can be decided without defendants' *ex parte* and *in camera* submissions. Defendants assert the public declarations of Negroponte and Alexander to support their claim of a danger to national security from disclosure of the information sought by plaintiffs' first set of interrogatories. *Id.* at 9. If defendants believe that their public filings prove their case for applying the state secrets privilege, then there is no need for supplemental secret declarations to be considered.

II. FISA ABROGATES THE STATE SECRETS PRIVILEGE IN FOREIGN ELECTRONIC SURVEILLANCE CASES

An assertion of the state secrets privilege should be scrutinized with particular care where, as here, the plaintiffs allege a private cause of action for unlawful electronic surveillance under FISA, 50 U.S.C. § 1810. That is because, under 50 U.S.C. § 1806(f), when the Executive claims that disclosure of materials relating to electronic surveillance would jeopardize national security, the statute expressly vests the court with discretion to "disclose to the aggrieved person, under appropriate security procedures and protective orders," material that "is necessary to make an accurate determination of the legality of the surveillance." 50 U.S.C. § 1806(f). This provision effectively preempts the common law state secrets privilege by supplanting it with a statutory prescription for judicial determination of national security concerns in FISA proceedings, giving the court the tools it needs – "appropriate security procedures and protective orders," 50 U.S.C. § 1806(f) – to protect national security.

"As the state secrets privilege is an evidentiary privilege rooted in federal common law, [citation], the relevant inquiry in deciding if [a statute] preempts the state secrets privilege 'is

whether the statute "[speaks] *directly* to [the] question" otherwise answered by federal common law.'" *Kasza v. Browner*, 133 F.3d 1159, 1167 (9th Cir. 1998), emphasis in original (quoting *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 236-37 (1985)). There is a presumption favoring retention of the privilege "'except when a statutory purpose to the contrary is evident.'" *Id*. (quoting *United States v. Texas*, 507 U.S. 529, 534 (1952)).

FISA speaks directly to the question of national security by vesting the courts with control over materials relating to electronic surveillance, subject to "appropriate security procedures and protective orders." 50 U.S.C. § 1806(f). And FISA's legislative history evinces Congressional intent to supplant the state secrets privilege with FISA's statutory prescription for judicial oversight. As explained in a 1978 House Conference Report, the provision in section 1806(f) "for security measures and protective orders *ensures adequate protection* of national security interests." House Conference Report No. 95-1720 at 31-32 (Oct. 5, 1978) (emphasis added). Congress having determined that section 1806(f) adequately ensures protection of national security, the state secrets privilege becomes superfluous in FISA litigation.

If the courts were not vested with oversight over national security interests in FISA litigation, then Congress's prescription in section 1810 for a private FISA cause of action would be meaningless, for the Executive would be able to evade, at its whim, whatever private FISA actions it wishes merely by invoking the state secrets privilege. Congress cannot possibly have intended that. And the fact that the Executive might not always invoke the state secrets privilege in FISA cases does not mitigate the damage that would be done to FISA by rote application of the state secrets privilege upon "the caprice of executive officers." *United States v. Reynolds*, 345 U.S. 1, 9-10 (1953).

The situation here is analogous to *Halpern v. U.S.*, 258 F.2d 36 (2d Cir. 1958), a lawsuit arising under the Invention Secrecy Act, 35 U.S.C. § 181 *et seq.*, which allowed the patent office to withhold a patent grant for inventions implicating national security, but also allowed inventors to sue for compensation if a patent was denied. When the plaintiff was denied a patent and sued for compensation, the government invoked the state secrets privilege. The Second Circuit rejected the assertion of the privilege because "the trial of cases involving patent applications placed under a secrecy order will always involve matters within the scope of this privilege," and "[u]nless Congress has created rights which are completely illusory, existing only at the mercy of government officials, the Act must be viewed as waiving the privilege . . . dependent upon the availability and adequacy of other methods of protecting the overriding interest of national security during the course of a trial." *Id*. at 43.

Similarly here, a private FISA action "will always involve matters within the scope of" the state secrets privilege. *Id*. Unless section 1810 creates "rights which are completely illusory, existing only at the mercy of government officials," *id*., FISA must be viewed as supplanting the common law state secrets privilege with FISA's statutory prescription for judicial oversight, vesting courts with the power to ensure national security with "appropriate security procedures and protective orders." 50 U.S.C. § 1806(f).

III. IF ASSERTION OF THE STATE SECRETS PRIVILEGE IS PROPER IN THIS CASE, IT NONETHELESS REQUIRES CLOSE JUDICIAL SCRUTINY.

Even if the state secrets privilege is properly asserted here, its assertion is subject to judicial review. Defendants gloss over the critical role of the judiciary in evaluating whether the

privilege is applicable in a particular case. *See Kasza v. Browner*, 133 F.3d 1159, 1166 (9th Cir. 1998) ("Once the privilege is properly invoked *and the court is satisfied* as to the danger of divulging state secrets, the privilege is absolute.") (emphasis added); *Doe v. Tenet*, 329 F.3d 1135, 1149-50 (9th Cir. 2003), *overruled on another point* in *Tenet v. Doe*, 544 U.S. 1 (2005).[1]

Courts are competent to entertain cases implicating even the most sensitive national security issues, and have done so routinely. In the past five years, in cases arising from the same "war on terror" that defendants invoke to preclude judicial review here, courts have decided whether the President may detain enemy combatants captured on the battlefield in Afghanistan and whether those captured are entitled to due process, *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004); whether individuals detained at Guantánamo Bay may challenge their detention, *Rasul v. Bush*, 542 U.S. 466 (2004); and whether those detainees may be subjected to trials not conforming to rules set by Congress, *Hamdan v. Rumsfeld*, 2006 WL 1764763 (June 29, 2006). In the past, courts have determined whether the military may try individuals detained inside and outside zones of conflict during times of hostility and peace, *e.g.*, *United States ex rel. Toth v. Quarles*, 350 U.S. 11 (1955) (court martial proceedings in Korea); and whether the government could prevent newspapers from publishing the Pentagon Papers because it allegedly would harm national security, *New York Times Co. v. United States*, 403 U.S. 713 (1971). Likewise, nothing

[1]At footnote 2 of Defendants' Discovery Opposition, they challenge plaintiffs' citation of *Doe v. Tenet* because of the Supreme Court's reversal there. But the Supreme Court reversed the Ninth Circuit because it applied the balancing analysis of the state secrets privilege to an action that the Supreme Court held was categorically barred by a rule prohibiting lawsuits against the government based on covert espionage agreements, *see* 544 U.S. at 10, not because of any error in the Ninth Circuit's pronouncements regarding state secrets privilege analysis. Those pronouncements are accurate, are based on prior precedents including *Kasza*, are the Ninth Circuit's most recent statements on this issue and, even if dicta, should be considered by this Court.

precludes judicial review in this case. *See, generally*, Fuchs, "Judging Secrets: The Role Courts Should Play in Preventing Unnecessary Secrecy," 58 *Administrative Law Review* 131, 158 (2006) ("Even in cases in which the government invokes the state secrets privilege, concerns over separation of powers do not prohibit courts from considering the legitimacy of the claims. In a democracy, courts are charged with exactly that task – ensuring that power is not improperly invoked.").

Plaintiffs agree with defendants that the Court should consider the plausibility and substantiality of their allegations of danger to national security. *See* Defendants' Discovery Opposition at 8. But it is the very implausibility of those allegations, particularly in the context of the document filed under seal, that supports an order compelling defendants to answer the interrogatories. As discussed above and in numerous other filings in this case by both parties, defendants have publicly acknowledged and explained their warrantless surveillance program in great detail. But now they say they cannot identify who has been targeted by the program without jeopardizing national security. This makes no sense in the context of plaintiffs, who *know* they have been subjected to electronic surveillance. And precisely because the warrantless surveillance program "has received widespread publicity and has even been acknowledged by the President of the United States and other high-level government officials," at least one court has observed that "any claim that sensitive secrets would be revealed by the government's disclosure of whether conversations between plaintiffs and their counsel [ ] were monitored [is] hard to fathom." *Turkmen v. Ashcroft*, No. 02-CV-2307, 2006 U.S. Dist. LEXIS 40675, *20 - *21 (E.D.N.Y. May 30, 2006).

IV. THERE IS NO DANGER THAT STATE SECRETS WILL BE REVEALED IF DEFENDANTS ARE COMPELLED TO ANSWER PLAINTIFFS' INTERROGATORIES.

Defendants have refused to give plaintiffs any information about the warrantless surveillance program. They have refused to provide documents in response to Plaintiffs' First Request for Production of Documents; they have objected to Plaintiffs' Notice of Deposition of Barbara C. Hammerle; and they refuse to answer even one interrogatory.

Some courts have rejected such blanket assertions of the state secrets privilege during discovery, finding an item-by-item determination of the privilege more appropriate. *See In re United States*, 872 F.2d 472, 477 (D.C. Cir. 1989). This Court should do the same. "The 'broad sweep' of the privilege, likewise, requires that the privilege not be used to shield any material not strictly necessary to prevent potential harm to national security." *Id*. at 476; *see also Ellsberg v. Mitchell*, 709 F.2d 51, 57 (D.C. Cir. 1983).

Defendants rely on *Halkin v. Helms*, 598 F.2d 1 (D.C. Cir. 1978) (*Halkin I*) to invoke a "mosaic" argument, but then fail to show how the information requested by plaintiffs can be part of any larger mosaic that would implicate national security concerns. Unlike *Halkin I*, where the acquisition of the plaintiffs' communications was a fact vital to their claims and their suit depended on the discovery of this information, *see* 598 F.2d at 6, 9, in this case plaintiffs are already aware of the very information lying at the heart of defendants' claim of privilege – that plaintiffs were subjected to warrantless surveillance.

The burden on defendants is not insubstantial. "The critical feature of the inquiry . . . is whether the *showing* of the harm that might reasonably seem to flow from disclosure is adequate in a given case to trigger the absolute right to withhold information sought in that case." *Halkin*

v. Helms, 690 F.2d 977, 990 (D.C. Cir. 1982 (*Halkin II*) (emphasis in original). The official invoking the privilege "must set forth, with enough particularity for the court to make an informed decision, the nature of the material withheld and of the threat to the national security should it be revealed." *Kinoy v. Mitchell*, 67 F.R.D. 1, 8 (S.D.N.Y. 1975); *see Jabara v. Kelly*, 75 F.R.D. 475, 484 (E.D. Mich. 1977) ("[C]ourts must ensure that the claim of privilege is substantiated by the government's showing that disclosure of the information sought might reveal military secrets"). Defendants have failed to make this showing.

As discussed above, the Negroponte and Alexander assertions that national security will be threatened if defendants reveal who is or who is not subject to surveillance makes no sense when the victims of that surveillance already know of it. Defendants cannot effectively "clos[e] the barn door after the horse has already bolted." *Doe v. Gonzales*, 449 F.3d 415, 423 (2d Cir. 2005) (Cardamone, J., concurring).

Defendants' assertions of a threat to national security are not plausible. Because of the tremendous publicity given to the warrantless surveillance program after its disclosure by The New York Times in December 2005, it is absurd to think that even potential but unconfirmed targets of surveillance would not have changed their behavior. Additionally, plaintiffs seek no information related to "sources" or "methods;" nor do plaintiffs seek information relating to the operational details of the program.

If courts should be more deferential to the assertion of the state secrets privilege the more plausible and substantial the government's allegations of danger to national security, *see* Defendants' Discovery Opposition at 8, then the converse should likewise be true: Implausible and unfounded allegations of danger to national security deserve little deference.

V. DEFENDANTS' STATUTORY PROTECTIONS PROVIDE NO BASIS TO WITHHOLD THE INFORMATION SOUGHT BY PLAINTIFFS' INTERROGATORIES.

Defendants assert two non-disclosure statutes – one proscribing disclosure of any information about NSA activities, 50 U.S.C. § 402, and the other requiring the Director of National Intelligence (DNI) to protect intelligence "sources and methods" from unauthorized disclosure, 50 U.S.C. § 403-1(i)(1). But defendants cite no case law to justify transforming these non-disclosure statutes into broad evidentiary privileges. In all cases defendants cite, the plaintiffs did not yet have any of the information they were requesting. Here, in contrast, plaintiffs merely seek to build on information they already know – that they were surveilled. And plaintiffs seek no information related to intelligence "sources and methods." Plaintiffs know they were surveilled so any information relating to "sources" is irrelevant, and plaintiffs do not need to know the "methods" by which they were surveilled in order to show that the surveillance was unlawful.

Most cases addressing these statutory protections did so in the context of the Freedom of Information Act (FOIA), assessing whether the statutes were "withholding statutes" under the FOIA and whether the information sought was properly withheld under exemptions to the FOIA, or where the plaintiffs were searching for information they did not already have. *See Central Intelligence Agency v. Sims*, 471 U.S. 159, 167-68 (1985) (predecessor DNI statute qualified as "withholding statute," and information pertaining to individual researchers and research institutions for project financed by CIA qualified as "intelligence sources"); *Fitzgibbon v. CIA,* 911 F.2d 755, 760-61 (D.C. Cir. 1990) (predecessor DNI statute invoked, and information

pertaining to foreign intelligence services qualified as "sources."); *ACLU v. Dep't. of Defense,* 389 F. Supp. 2d 547, 560-65 (S.D.N.Y. 2005) (predecessor DNI statute invoked for information specifying CIA interrogation methods and CIA detention facilities outside the U.S.); *Hayden v. NSA,* 608 F.2d 1381, 1389 (D.C. Cir. 1979) (NSA statute invoked to deny FOIA request for all documents pertaining to pre-FISA surveillance of petitioners)[2]; *Linder v. NSA*, 94 F.3d 693, 695-96 (D.C. Cir. 1996) (NSA statute used to quash third-party subpoena seeking documents numerous in number and broad in range to help plaintiffs "establish their claims in the underlying lawsuit"). These cases are inapposite here because plaintiffs seek neither a broad range of information nor information to establish the very basis of their claims, which they already know.

One of the cases defendants cite, *Founding Church of Scientology of Washington, D.C., Inc. v. National Security Agency*, 610 F.2d 824 (D.C. Cir. 1979), warned that "[e]ven the most casual reading" of the NSA statute suggests "a potential for unduly broad construction." *Id.* at 828.[3] "A proper claim of privilege requires a specific designation and description of the documents within its scope as well as precise and certain reasons for preserving their confidentiality. Unless the affidavit is precise to bring the documents within the rule, the Court has no basis on which to weigh the applicability of the claim of privilege. An improperly

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[2] *Hayden* also states that "where the function or activity [of the NSA] is authorized by statute and not otherwise unlawful, NSA materials integrally related to that function or activity fall within [the NSA statute]." 608 F.2d at 1389. Obviously, illegally activity by the NSA may not be shielded by the statute.

[3] The court noted that the NSA affidavit in that case "furnishes precious little that would enable a determination as to whether the materials actually do bear on" the issues, and that "[b]arren assertions that an exempting statute has been met cannot suffice to establish that fact." 610 F.2d at 828.

asserted claim of privilege is no claim of privilege at all." *International Paper Co. v. Fibreboard Corp.,* 63 F.R.D. 88, 94 (D.Del. 1974); *see also Kinoy v. Mitchell,* 67 F.R.D. 1, 8 (S.D.N.Y. 1975).

The application of these statutory protections requires far more factual specificity than the conclusory justifications defendants offer for withholding information. Defendants merely claim a need to protect "any intelligence-related information, sources and methods implicated by Plaintiffs' First Set of Interrogatories[.]" Defendants' Discovery Opposition at 12. The Negroponte and Alexander declarations offer no more specificity and rely on the nonsensical argument that to disclose what plaintiffs already know – that they were surveilled – would reveal critical intelligence sources and methods. This would not be enough to invoke the statutory protections even if they did apply here, which they do not.

VI. THE CIRCUMSTANCES INDICATE A REASONABLE BASIS TO CONCLUDE THE INFORMATION SOUGHT BY PLAINTIFFS WAS CLASSIFIED TO HIDE ILLEGAL CONDUCT.

Defendants claim that plaintiffs rely on nothing more than speculation to infer that defendants have improperly classified information in order to conceal violations of law. This inference is hardly speculative, however, in light of the circumstances surrounding this program.

When the President approved the program in 2001, defendants were fully aware that FISA governed electronic foreign surveillance, yet they chose to circumvent the law. After the New York Times broke the story in December of 2005, defendants launched a crusade to convince the American public of the legality and necessity of the program through numerous public appearances and their 42-page "White Paper." Defendants have admitted that

surveillance of this type is "normally governed by FISA." *See* Attorney General Gonzales, *Press Briefing by Attorney General Alberto Gonzales and General Michael Hayden, Principal Deputy Director for National Intelligence* (Dec. 19, 2005), *available at* http://www.whitehouse.gov/news/releases/2005/12/print/20051219-1.html. ("[T]he Foreign Intelligence Surveillance Act . . . requires a court order before engaging in this kind of surveillance . . . unless otherwise authorized by statute or by Congress.").

Defendants have also admitted that the warrantless surveillance program was designed to evade FISA's requirements. *See* General Michael Hayden, *Press Briefing by Attorney General Alberto Gonzales and General Michael Hayden* (Dec. 19, 2005) ("[T]his is a more... 'aggressive' program than would be traditionally available under FISA."); General Hayden, *General Michael Hayden, Principal Deputy Director of National Intelligence, Address to the National Press Club* (Jan. 23, 2006), *available at* http://www.dni.gov/release_letter_012306.html. ("The trigger [to intercept communications] is quicker and a bit softer than it is for a FISA warrant."); *id.* ("In the instances where this program applies, FISA does not give us the operational effect that the authorities that the president has given us give us."); Assistant Attorney General William E. Moschella, Letter from William E. Moschella, Assistant Attorney General, to Pat Robert, Chairman of Senate Select Committee on Intelligence; John D. Rockefeller IV, Vice Chairman of Senate Select Committee on Intelligence; Peter Hoekstra, Chairman, Permanent Select Committee on Intelligence; Jane Harman, Ranking Minority Member, Permanent Select Committee on Intelligence (Dec. 22, 2005), *available at* http://files.findlaw.com/news.findlaw.com/hdocs/docs/nsa/dojnsa122205ltr.pdf. ("[T]he President determined that it was necessary following September 11 to create an early warning

detection system. FISA could not have provided the speed and agility required for the early warning detection system.").

Defendants did not believe Congress would amend FISA to relax its standards to their liking, so they ignored the law. *See* Attorney General Gonzales, *Press Briefing by Attorney General Alberto Gonzales and General Michael Hayden* (Dec. 19, 2005) ("We've had discussions with members of Congress . . . about whether or not we could get an amendment to FISA [to authorize warrantless electronic surveillance], and we were advised that that was not likely to be – that was not something we could likely get, certainly not without jeopardizing the existence of the program, and therefore, killing the program.").

In light of these facts, the inference is not just reasonable, but compelling, that defendants' decision to classify the document filed under seal was motivated by a desire to shield FISA violations from the American public and from judicial review. Interrogatory Requests 20-25 are intended to probe that inference further.

CONCLUSION

For the reasons set forth above, this Court should grant plaintiffs' motion to compel.

DATED this ____ day of July, 2006.

Respectfully submitted,

_____
STEVEN GOLDBERG
J. ASHLEE ALBIES
Of Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing PLAINTIFFS' REPLY upon the following:

Anthony J. Coppolino / Andrew Tannenbaum / Andrea Gacki
U.S. Dept. of Justice
P.O. Box 883, Rm. 6102
Washington D.C. 20044

Attorney for Defendant

_X_ by **MAILING** a full, true and correct copy in a sealed envelope, with postage paid, addressed to the above-named party at last known address, and deposited with U.S. Postal Service in Portland, Oregon on this date.

___ by **ELECTRONIC DELIVERY VIA E-MAIL** a full, true and correct copy to the above-named party(ies) to the last known e-mail address on this date via the Court CM/ECF electronic filing system.

___ by **FAXING** a full, true and correct copy to the above-named party to the fax listed above on this date. Said attorney's facsimile was operating at the time of service. The transmission was recorded and confirmed.

___ by **HAND DELIVERING** a full, true and correct copy to the above-named party by messenger service to the last known office address of said party.

___ by **OVERNIGHT COURIER** a full, true and correct copy to the above-named party in a sealed envelope, with courier fees paid to the last know office street address of said party.

DATED: July 10, 2006.

_____
Steven Goldberg, OSB No. 75134