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TONY WEST  
Assistant Attorney General  
MELINDA L. HAAG  
United States Attorney  
JOHN TYLER  
Assistant Branch Director  
KIMBERLY L. HERB  
Illinois Bar No. 6296725  
Trial Attorney  
Civil Division, Federal Programs Branch  
U.S. Department of Justice  
P.O. Box 883  
Washington, D.C. 20044  
Telephone: (202) 305-8356  
Facsimile: (202) 616-8470

Attorneys for DEFENDANTS

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ELECTRONIC FRONTIER FOUNDATION, )  
Plaintiff, ) Case No. 3:09-CV-05640-SI  
vs. ) **STIPULATION AND ~~[PROPOSED]~~**  
DEPARTMENT OF DEFENSE, ET AL., ) **ORDER TO AMEND BRIEFING**  
Defendants. ) **SCHEDULE**

1 Pursuant to Federal Rule of Civil Procedure 6(b)(1) and Civil L.R. 6-2, Plaintiff Electronic  
2 Frontier Foundation (“EFF”) and Defendants Department of Justice, Criminal Division; U.S. Secret  
3 Service; Federal Bureau Investigation; and Department of Homeland Security (collectively  
4 “Defendants”) hereby stipulate to and respectfully request that this Court extend the briefing  
5 schedule for the filing of the parties’ reply briefs related to their dispositive motions. Defendants  
6 requested the revisions to the briefing schedule due to the illness of Defendants’ counsel.

7  
8 1. Defendants submit that the Declaration of Kimberly L. Herb establishes good cause for  
9 the requested enlargement as follows:

10 a. On September 22, 2011, the parties filed a stipulation proposing the following dates  
11 for briefing on the parties dispositive motions: Defendants file their motion for  
12 summary judgment on October 21, 2011; EFF files its opposition and cross-motion  
13 on November 18, 2011; Defendants file their reply and opposition to EFF’s cross-  
14 motion on December 2, 2011; EFF files its reply to its cross- motion on December  
15 16, 2011; the Court holds a hearing on the parties’ dispositive motions on January  
16 13, 2012. The Court granted the parties’ stipulation on September 27, 2011. (Dkt.  
17 54.)

18 b. Defendants filed their motion for summary judgment on October 21, 2011. (Dkt.  
19 55.) EFF filed its opposition to Defendants’ motion and cross moved for summary  
20 judgment on November 17, 2011. (Dkt. 56.)

21 c. Counsel for Defendants became ill on November 21, 2011 with respiratory and  
22 sinus infections. She has been out of the office for much of the last ten days due to  
23 illness and reactions to medication. As a result, she has not had adequate time to  
24 prepare Defendants’ reply brief and requested that EFF grant an extension of the  
25 briefing schedule.

26 d. On December 1, 2011, defense counsel conferred with EFF’s counsel regarding the  
27 briefing schedule for the parties’ reply brief related to their dispositive motions.

28 The parties agreed to revise the briefing schedule as follows: Defendants file their



1 DATED: December 2, 2011

2 Respectfully submitted,

3 /s/ Jennifer Lynch  
4 ELECTRONIC FRONTIER FOUNDATION  
Jennifer Lynch, Esq.  
5 Marcia Hoffman, Esq.  
454 Shotwell Street  
6 San Francisco, CA 94110  
Telephone: (415) 436-9333  
7 Facsimile: (415) 436-9993  
E-mail: jlynch@eff.org

TONY WEST  
Assistant Attorney General

JOSEPH P. RUSSONIELLO  
United States Attorney

JOHN TYLER  
Assistant Branch Director

8 Jason M. Schultz  
9 SAMUELSON LAW, TECHNOLOGY &  
PUBLIC POLICY CLINIC  
10 UC Berkeley School of Law  
396 Simon Hall  
11 Berkeley, CA 94720-7200  
Telephone: (510) 642-0499  
12 Facsimile: (510) 643-4625  
13 E-mail: jschultz@law.berkeley.edu

/s/ Kimberly L. Herb  
Kimberly L. Herb  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Ave. NW  
Washington, DC 20530  
Telephone: (202) 305-8356  
Facsimile: (202) 616-8470  
E-mail: Kimberly.L.Herb@usdoj.gov

14 Attorneys for Plaintiff

Attorneys for Defendants

15  
16 **GENERAL ORDER NO. 45(X) CERTIFICATION**

17 I attest that I have obtained Jennifer Lynch's concurrence in the filing of this document.

18 /s/ Kimberly L. Herb  
19 Kimberly L. Herb

20 \* \* \*

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22  
23 Dated: 12/6/11

  
24 Hon. Susan Ilston  
United States District Judge

1 TONY WEST  
Assistant Attorney General  
2 MELINDA L. HAAG  
United States Attorney  
3 JOHN TYLER  
Assistant Branch Director  
4 KIMBERLY L. HERB  
Illinois Bar No. 6296725  
5 Trial Attorney  
Civil Division, Federal Programs Branch  
6 U.S. Department of Justice  
P.O. Box 883  
7 Washington, D.C. 20044  
Telephone: (202) 305-8356  
8 Facsimile: (202) 616-8470

9 Attorneys for DEFENDANTS

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION  
13

14 ELECTRONIC FRONTIER FOUNDATION,

15 Plaintiff,

16 v.

17 DEPARTMENT OF DEFENSE, *et al.*,

18 Defendants.  
19  
20

Case No. CV 09-5640 SI

**DECLARATION OF KIMBERLY L.  
HERB IN SUPPORT OF STIPULATION  
TO AMEND BRIEFING SCHEDULE**

21 I, Kimberly L. Herb, hereby declare as follows:

22 1. I am a Trial Attorney in the Federal Programs Branch, Civil Division of the United  
23 States Department of Justice. I am lead counsel and represent Defendants in this case.

24 2. On September 22, 2011, the parties filed a stipulation proposing the following  
25 dates for briefing on the parties dispositive motions: Defendants file their motion for summary  
26 judgment on October 21, 2011; EFF files its opposition and cross-motion on November 18, 2011;  
27 Defendants file their reply and opposition to EFF's cross-motion on December 2, 2011; EFF files  
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1 its reply to its cross- motion on December 16, 2011; the Court holds a hearing on the parties'  
2 dispositive motions on January 13, 2012. The Court granted the parties' stipulation on September  
3 27, 2011. (Dkt. 54.)

4 3. Defendants filed their motion for summary judgment on October 21, 2011. (Dkt.  
5 55.) EFF filed its opposition to Defendants' motion and cross moved for summary judgment on  
6 November 17, 2011. (Dkt. 56.)

7 4. I became ill on November 21, 2011 with respiratory and sinus infections. I have  
8 been out of the office for much of the last ten days due to illness and reactions to medication. As  
9 a result, I have not had adequate time to prepare Defendants' reply brief and requested that EFF  
10 grant an extension of the briefing schedule.

11 5. On December 1, 2011, defense counsel conferred with EFF's counsel regarding  
12 the briefing schedule for the parties' reply briefs related to their dispositive motions. The parties  
13 agreed to revise the briefing schedule as follows: Defendants file their reply brief in support of  
14 Defendants' motion for summary judgment and opposition to EFF's cross-motion for summary  
15 judgment on December 16, 2011; EFF files its reply for its cross-motion on January 6, 2012; the  
16 Court holds a hearing on the parties' dispositive motions on January 20, 2012.

17 6. To date, there have been seven time modifications in this case:

- 18 a. On June 10, 2010, the parties filed a stipulation and proposed order requesting  
19 that the Court change the time for the filing of dispositive motions, which the  
20 Court granted on July 6, 2010.
- 21 b. On July 9, 2010, the parties filed a Joint Case Management Statement and  
22 appeared for the Case Management Conference on July 16, 2010. At that time  
23 the parties informed the court that they planned to meet and confer by August  
24 31, 2010 to determine the issues remaining in this action and to propose a  
25 timeline for the resolution of those issues. The parties met again on August 30,  
26 2010 and discussed a tentative motion schedule as well as Defendant  
27 Department of Justice Criminal Division's final document production,  
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scheduled for September 30, 2010. Because Plaintiff needed time to review Defendant’s final disclosures, on September 3, 2010, the parties filed a stipulation and proposed order to continue the Case Management Conference. The Court granted the motion on September 8, 2010 and continued the Case Management Conference to October 26, 2010.

- c. On October 19, 2011, the parties filed a stipulation and proposed order to continue the Case Management Conference because the parties had submitted a proposed schedule for resolution of the case. The Court granted the motion on October 21, 2010 and continued the Case Management Conference to January 14, 2011.
- d. On January 7, 2011, the parties filed a stipulation and proposed order to change the time of the Case Management Conference from January 14, 2011 to January 28, 2011. EFF had filed a motion to consolidate the present action with a related case, and the motion was scheduled for a hearing on January 28, 2011. The parties’ stipulation sought to consolidate the hearing with the Case Management Conference. The Court granted the parties’ stipulation on January 10, 2011.
- e. On January 27, 2011, the parties filed a stipulation and proposed order to change the time of the Case Management Conference from January 28, 2011 to February 25, 2011. The Court granted EFF’s motion to consolidate and ordered the parties to confer regarding a briefing schedule for the filing of dispositive motions in the consolidated action. The parties sought to continue the Case Management Conference so that they could negotiate the briefing schedule. The Court granted the parties’ stipulation on January 28, 2011.
- f. On February 25, 2011, during the Case Management Conference, the parties presented the Court with a joint proposed briefing schedule for the filing of dispositive motions. The proposed briefing schedule amended an earlier

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schedule for the filing of such motions and was necessitated by the Court's order consolidating cases. The Court granted the parties' joint briefing schedule on March 1, 2011.

g. On September 22, 2011, the parties stipulated to extend the briefing schedule for the filing of dispositive motions due to the unavailability of counsel for one of the defendant agencies. The Court granted the parties' stipulation on September 27, 2011.

7. While the requested enlargement will affect the present briefing schedule for this case, the parties believe a short extension of the briefing schedule is warranted given the circumstances. Furthermore, the parties believe this case will be resolved on summary judgment, and thus this case can be resolved expeditiously after the filing of the parties' motions.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, DC on December 1, 2011.

/s/ Kimberly L. Herb  
Kimberly L. Herb