

1 SOMNATH RAJ CHATTERJEE (CA SBN
177019)
2 SChatterjee@mofo.com
3 ANGELA E. KLEINE (CA SBN 255643)
4 AKleine@mofo.com
5 MORRISON & FOERSTER LLP
6 425 Market Street
7 San Francisco, California 94105
8 Telephone: 415.268.7000
9 Facsimile: 415.268.7200

10 JULIA HARUMI MASS (CA SBN 189649)
11 JMass@aclunc.org
12 AMERICAN CIVIL LIBERTIES UNION
13 FOUNDATION OF NORTHERN
14 CALIFORNIA, INC.
15 39 Drumm Street
16 San Francisco, California 94111
17 Telephone: 415.621.2493
18 Facsimile: 415.255.8437

19 NASRINA BARGZIE (CA SBN 238917)
20 nasrinab@advancingjustice-alc.org
21 ASIAN LAW CAUCUS
22 55 Columbus Avenue
23 San Francisco, California 94111
24 Telephone: 415.896.1701
25 Facsimile: 415.896.1702
26 Attorneys for Plaintiffs

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney
General
MARCIA BERMAN
Assistant Branch Director
LYNN Y. LEE (CA Bar 235531)
Trial Attorney
U.S. Department of Justice,
Civil Division Federal Programs Branch
P.O. Box 883
Washington, DC 20530
(202) 305-0531
(202) 616-8470 (fax)
lynn.lee@usdoj.gov

Attorneys for Defendants

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 THE AMERICAN CIVIL LIBERTIES UNION
20 OF NORTHERN CALIFORNIA, ASIAN LAW
21 CAUCUS, SAN FRANCISCO BAY
22 GUARDIAN,

Plaintiff,

v.

23 FEDERAL BUREAU OF INVESTIGATION,
24 DEPARTMENT OF JUSTICE,

Defendant.

Case No. 3:10-cv-03759-RS

**STIPULATION AND
~~PROPOSED~~ ORDER
REGARDING PRODUCTION OF
DOCUMENTS AND ENTRY OF
JUDGMENT**

Hon. Richard Seeborg

1 The parties to this action, through their attorneys of record listed below, hereby submit
2 this Stipulation and Proposed Order, and accompanying Proposed Judgment, pursuant to Civil
3 Local Rule 7-12 and Federal Rule of Civil Procedure 58(d).

4 WHEREAS, the parties filed cross motions for summary judgment regarding (1) the FBI's
5 application of FOIA exemptions 2, 5, and 7 to documents subject to Plaintiffs' FOIA request,
6 (2) Defendant's *Vaughn* index regarding the application of those exemptions, and (3) the
7 segregability of certain information withheld under those exemptions. (ECF Nos. 114, 119, 123,
8 125, 138, 140);

9 WHEREAS, on March 23, 2015, the Court issued an order on a threshold Exemption 7
10 issue, and subsequently further ordered that "[f]or the purpose of efficiency, the issues
11 surrounding Exemptions 2 and 5 shall be decided prior to consideration of a process for
12 disclosing any materials deemed improperly withheld or redacted." (ECF Nos. 128, 135.)

13 WHEREAS, on November 17, 2015, after further briefing regarding the materials
14 withheld under Exemptions 2 and 5, the Court ordered the FBI to produce within thirty days the
15 documents withheld under Exemptions 5 that Plaintiffs challenged, with the exception of certain
16 redacted material (ECF No. 152).

17 WHEREAS, the FBI is considering an appeal of the November 17, 2015 order, and wishes
18 to include in its consideration the Court's March 23, 2015 ruling on its assertion of Exemption 7,
19 which it believes is not presently appealable;

20 WHEREAS, the parties agree that in order to preserve Court and party resources, any
21 appeal of the Court's orders on Exemptions 5 and 7 should be made at the same time, and that if
22 the FBI files a notice of appeal its production of the impacted documents should be postponed
23 pending any such appeal;

24 WHEREAS, the parties further agree that Plaintiffs' motion to require the FBI to produce
25 additional non-exempt information that is reasonably segregable from the information withheld
26 under FOIA exemptions is now moot because Plaintiffs challenged such information withheld
27 under Exemption 7, and the Court has granted Plaintiffs' motion as to that material;

28

1 NOW THEREFORE, the parties have stipulated and agreed to a final order and entry of
2 judgment in the form filed herewith, as follows:

- 3 (1) Defendant is ordered to produce the following information that Plaintiffs challenged in
4 their motion for summary judgment: (a) the information to which Exemption 7 is applied
5 in the FBI's sampled *Vaughn* index, pursuant to the Court's March 23, 2015 Order
6 (ECF No. 135); (b) the information to which Exemption 5 is applied in FBI's sampled
7 *Vaughn* index, pursuant to the Court's November 17, 2015 Order (ECF No. 152); and
8 (c) similarly situated information that was withheld under Exemptions 5 or 7 but not listed
9 in the sampled *Vaughn* index;
- 10 (2) To the extent that specific information otherwise required to be produced under
11 paragraph 1 is also withheld pursuant to a FOIA exemption other than 5 or 7, the FBI is
12 not required to produce that information;
- 13 (3) Defendant shall produce the material required under paragraphs 1(a) and 1(b) within sixty
14 (60) days of entry of judgment, unless Defendant files a notice of appeal of this order, in
15 which case Defendant's obligation to produce the material is stayed pending resolution of
16 the appeal;
- 17 (4) In the event Defendant does not seek an appeal, the parties will meet and confer no later
18 than two weeks after the expiration of the time to file a notice of appeal to establish a
19 production schedule for the material required under paragraph 1(c);
- 20 (5) Defendant's motion for summary judgment on information withheld under Exemption 2 is
21 granted, as Plaintiffs do not challenge the application of the exemption to the applicable
22 documents;
- 23 (6) Plaintiffs' motion to compel production of additional non-exempt information that is
24 reasonably segregable from the information withheld a FOIA exemption is denied as
25 moot, as Plaintiffs challenged segregability only as to information withheld under
26 Exemption 7, and the Court has now ordered the production of the applicable information
27 withheld under Exemption 7; and
28

1 (7) The Court shall retain jurisdiction over this matter to enforce, if necessary, its order,
2 including to adjudicate any dispute related to the application of the Court's orders to
3 similarly-situated documents not included in the sampled *Vaughn* index or to issues of
4 segregability that may arise following an appeal.

5
6 Respectfully submitted this 7th day of December, 2015

7
8 By: /s/ Lynn Y. Lee
9 Lynn Y. Lee

/s/ Angela E. Kleine
Angela E. Kleine

10 BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
11 MARCIA BERMAN
Assistant Branch Director
12 LYNN Y. LEE
Trial Attorney
13 U.S. Department of Justice, Civil Division
Federal Programs Branch
14 P.O. Box 883
Washington, DC 20530
15 (202) 305-0531
16 (202) 616-8470 (fax)
lynn.lee@usdoj.gov
17 *Attorneys for Defendants*

SOMNATH RAJ CHATTERJEE
SChatterjee@mofocom
ANGELA E. KLEINE
AKleine@mofocom
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105
Telephone: 415.268.7000
Facsimile: 415.268.7200

JULIA HARUMI MASS
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39 Drumm Street
San Francisco, California 94111
Telephone: 415.621.2493
Facsimile: 415.255.8437

NASRINA BARGZIE
nasrinab@advancingjustice-alc.org
ASIAN LAW CAUCUS
55 Columbus Avenue
San Francisco, California 94111
Telephone: 415.896.1701
Facsimile: 415.896.1702

Attorneys for Plaintiffs

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 12/8/15



HON. RICHARD SEEBORG

United States District Judge

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ATTESTATION OF E-FILED SIGNATURE

I, Angela Kleine, am the ECF User whose ID and Password are being used to file this Joint Case Management Conference Statement. In compliance with General Order 45, X.B., I hereby attest that Lynn Y. Lee, Julia Harumi Mass, Nasrina Bargzie, and S. Raj Chatterjee have concurred in this filing.

Dated: December 7, 2015

By: /s/ Angela Kleine