

1 members at the time the Air Force briefed the 446th AES regarding the DoD and Air Force
2 regulations. *See id.* ¶ 6, Attach. The Air Force also emailed the curative instruction to the
3 official email address of every current member of the unit. *See id.* Moreover, the Air Force
4 posted a copy of the curative instruction in the squadron’s bulletin board. *See id.*

5 Having already taken these actions in response to the Court’s order, defendants
6 nonetheless respectfully request that the Court delete one sentence of that order, specifically, the
7 last sentence on the first page of the order:

8 The Court further **FINDS** that the Defendants’ instruction to non-party former and
9 current Air Force employees requiring Air Force consent before non-party former
10 and current Air Force employees may voluntarily speak with counsel for Plaintiff
concerning this litigation is contrary to Washington Rules of Professional Conduct
3.4(a).

11 Order at 1. Defendants seek this amendment to the Court’s order to avoid any potential issues,
12 ethical reporting, or collateral attacks that individual Air Force counsel may otherwise encounter.
13 Three reasons support defendants’ request. First, the requested deletion is of a further finding,
14 which is not necessary to the integrity of the Court’s order, or for compliance with the Court’s
15 order. Second, Air Force personnel were acting in good faith in their original instructions. *See*
16 *Carnes Decl.* ¶¶ 2-3; Declaration of Maj. Linell Letendre ¶¶ 2-3 (copy attached as Ex. 2).
17 Moreover, they were acting pursuant to federal regulations, which in the context of informal fact-
18 gathering, have never been found by any court to be inappropriate. Third, Washington Rule of
19 Professional Conduct 3.4(a) speaks only of “unlawful” efforts at obstructing access to evidence.
20 Defendants submit that in these circumstances with the presence of valid and lawful Department
21 of Defense and Air Force regulations, Air Force personnel should not as a consequence thereof
22 be confronted with potential ethics issues for actions taken in good faith.

23 Accordingly, defendants respectfully seek amendment of May 17, 2010 order through
24 deletion of the one identified sentence.

1 Dated: June 1, 2010

Respectfully submitted,

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6 /s/ Peter J. Phipps

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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2010, I electronically filed the foregoing Defendants' Motion to Amend the Order of May 17, 2010, with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons:

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