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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

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12 Electronic Frontier Foundation,) Case No. 15-cv-03186-MEJ
)
13 Plaintiff,) ANSWER
)
14 v.)
)
15 Department of Justice,)
)
16 Defendant.)
17 _____)

18 Defendant United States Department of Justice (“Defendant”) answers Plaintiff’s Complaint in
19 like numbered paragraphs as follows:

20 Paragraph 1: This paragraph contains Plaintiff’s characterization of this action and requires no
21 response. To the extent a response is required, Defendant admits this is an action under the Freedom of
22 Information Act (“FOIA”) in which Plaintiff is requesting records concerning “the ‘Hemisphere’
23 program” and denies the remaining allegations in this paragraph.

24 **PARTIES**

25 Paragraph 2: Defendant lacks knowledge or information sufficient to form a belief as to the truth
26 of the allegations in this paragraph and therefore denies those allegations.

1 Paragraph 3: Defendant admits the allegations in this paragraph, except that the acronym “DEA”
2 stands for “Drug Enforcement Administration” and not “Drug Enforcement Agency” as alleged.

3 **JURISDICTION**

4 Paragraph 4: This paragraph contains jurisdictional allegations to which no response is required.
5 To the extent a response is required, Defendant admits that this Court has jurisdiction pursuant to 5
6 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). However, reference to 28 U.S.C. § 1331 is unnecessary
7 given the provisions of the FOIA.

8 **VENUE AND INTRADISTRICT ASSIGNMENT**

9 Paragraph 5: This paragraph contains allegations pertaining to venue to which no response is
10 required. To the extent a response is required, Defendant admits that venue is proper pursuant to 5
11 U.S.C. §§ 552(a)(4)(B). However, reference to 28 U.S.C. § 1391(e) is not necessary given the
12 provisions of the FOIA.

13 Paragraph 6: This paragraph contains allegations pertaining to intradistrict assignment to which
14 no response is required. To the extent a response is required, Defendant admits that assignment to the
15 San Francisco division is proper pursuant to Local Rule 3-2(c) and (d).

16 **FACTUAL ALLEGATIONS**

17 A. **“The ‘Hemisphere’ Program”**

18 Paragraphs 7, 8, and the first paragraph numbered 10: These paragraphs contain material
19 characterized by Plaintiff as “factual” about “the ‘Hemisphere’ program.” Because this material is
20 unrelated to FOIA and to Plaintiff’s claims under the FOIA, these paragraphs require no response. To
21 the extent a response is required, they are denied.

22 B. **Plaintiff’s FOIA Requests and Requests for Expedited Processing**

23 The second paragraph numbered 10: Defendant admits that a letter dated February 5, 2014 was
24 received by facsimile and e-mail. However, Defendant denies that this letter requested electronic
25 records.

26 Paragraph 11: Defendant admits that the date of the FOIA Unit’s first letter to the Plaintiff is
27 February 21, 2014. Defendant further admits that, by letter dated March 11, 2014, the FOIA Unit denied

1 Plaintiff's request for expedited processing. Defendant further admits that the FOIA Unit did write
2 another letter to Plaintiff dated March 19, 2014. However, that letter speaks for itself and requires no
3 response. To the extent a response is required, Defendant denies Plaintiff's description of the content of
4 that letter.

5 Paragraph 12: Defendant admits that the date of Plaintiff's reformulated letter is April 15,
6 2014. However, that letter speaks for itself and requires no response. To the extent a response is
7 required, Defendant denies Plaintiff's description of the content of that letter.

8 Paragraph 13: Plaintiff's April 15, 2014 letter speaks for itself and requires no response. To the
9 extent a response is required, Defendant admits that subparagraphs (a) through (f) accurately describe
10 the content of that letter in material respects. However, Defendant denies that the allegations in the
11 beginning of paragraph 13 (concerning the DEA offices to be searched and the time period of responsive
12 records) apply to subparagraph 13(g).

13 Paragraph 14: Defendant denies that DEA acknowledged receipt of the reformulated request by
14 letter dated May 23, 2014; the correct date of DEA's acknowledgement letter is May 13, 2014. That
15 letter speaks for itself and requires no response. To the extent a response is required, Defendant denies
16 Plaintiff's description of the content of that letter.

17 Paragraph 15: Defendant admits that the cover letter transmitting DEA's response to the
18 Plaintiff is dated April 7, 2015. DEA's response speaks for itself and requires no response. To the
19 extent a response is required, Defendant admits Plaintiff's description of the response, except that the
20 phrase "heavily redacted" is vague and ambiguous.

21 Paragraph 16: DEA's April 7, 2014 letter speaks for itself and requires no response. To the
22 extent a response is required, Defendant denies Plaintiff's description of the content of that letter.

23 Paragraph 17: Defendant admits that Plaintiff timely filed an administrative appeal of DEA's
24 response to Plaintiff's request. Defendant admits that the Office of Information Policy's (OIP) date-
25 stamp on the Plaintiff's administrative appeal is "Apr 28 2015." Defendant further admits that the OIP
26 date stamp is on a fax cover sheet. Plaintiff's administrative appeal speaks for itself and requires no
27 response. To the extent a response is required, Defendant denies that it applied its claimed exemptions

1 more broadly than the FOIA allows. Plaintiff's characterization of FOIA law sets forth legal
2 conclusions and requires no response. To the extent a response is required, Defendant denies Plaintiff's
3 characterization of FOIA law. Defendant denies for lack of knowledge whether the faxed appeal was
4 sent to the alleged number, although Defendant admits that OIP date stamped Plaintiff's fax cover sheet.

5 Paragraph 18: Defendant admits OIP substantively responded to Plaintiff's request by letter
6 dated July 10, 2015, which is after Plaintiff filed its Complaint on July 9, 2015.

7 Paragraph 19: This paragraph sets forth a legal conclusion to which no response is required. To
8 the extent a response is required, Defendant denies the allegations set forth in this paragraph.

9 Paragraph 20: This paragraph sets forth a legal conclusion to which no response is required. To
10 the extent a response is required, Defendant denies the allegation set forth in this paragraph.

11 CAUSES OF ACTION

12 Paragraphs 21 through 24: These paragraphs concern Plaintiff's legal theory. No response is
13 required to these paragraphs. To the extent a response is required, Defendant denies the allegations set
14 forth in these paragraphs.

15 REQUESTED RELIEF

16 This section sets forth Plaintiff's prayer for relief to which no response is required. To the extent
17 a response is required, Defendant denies that Plaintiff is entitled to the relief requested.

18 AFFIRMATIVE DEFENSES

19 FIRST AFFIRMATIVE DEFENSE

20 The complaint fails to state a claim on which relief can be granted.

21 SECOND AFFIRMATIVE DEFENSE

22 Plaintiff failed to exhaust its administrative remedies before bringing this action.

23 THIRD AFFIRMATIVE DEFENSE

24 The Court lacks subject matter jurisdiction over Plaintiff's request for relief to the extent that it
25 exceeds the relief authorized by statute under FOIA, 5 U.S.C. Section 552

26 FOURTH AFFIRMATIVE DEFENSE

27 Defendant properly withheld certain information because it is protected from disclosure under

1 FOIA pursuant to:

2 5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency records protected by
3 privilege;

4 5 U.S.C. § 552(b)(6), which concerns records the release of which would constitute a clearly
5 unwarranted invasion of the personal privacy of third parties;

6 5 U.S.C. § 552(b)(7)(A), which concerns records or information compiled for law enforcement
7 purposes the release of which could reasonably be expected to interfere with enforcement proceedings;

8 5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement
9 purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the
10 personal privacy of third parties;

11 5 U.S.C. § 552(b)(7)(D), which concerns records or information compiled for law enforcement
12 purposes the release of which could reasonably be expected to disclose the identity of a confidential
13 source and information furnished by such a source;

14 5 U.S.C. § 552(b)(7)(E), which concerns records or information compiled for law enforcement
15 purposes the release of which would disclose techniques, procedures, and guidelines for law
16 enforcement investigations or prosecutions; and

17 5 U.S.C. § 552(b)(7)(F), which concerns records or information compiled for law enforcement
18 purposes the release of which could reasonably be expected to endanger the life or physical safety of an
19 individual.

20 WHEREFORE, Defendant prays that Plaintiff's claims for relief be denied, that judgment be
21 entered in favor of Defendant, that Defendant be awarded costs of suit incurred in defense of this action,
22 and for such other and further relief as the Court deems proper.

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DATED: August 11, 2015

Respectfully submitted,

MELINDA HAAG
United States Attorney

/S/
JAMES A. SCHARF
Assistant United States Attorney
Attorney for Defendant