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19 ELECTRONIC FRONTIER FOUNDATION

20  
21 **UNITED STATES DISTRICT COURT**  
22  
23 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
24  
25 **SAN FRANCISCO DIVISION**

26 ELECTRONIC FRONTIER )  
27 FOUNDATION, )  
28 )  
29 Plaintiff, )  
30 )  
31 v. )  
32 )  
33 OFFICE OF THE DIRECTOR OF )  
34 NATIONAL INTELLIGENCE )  
35 )  
36 and )  
37 )  
38 DEPARTMENT OF JUSTICE, )  
39 )  
40 Defendants. )  
41 )

NO. C 08-1023 JSW  
**ADMINISTRATIVE MOTION TO  
CONSIDER WHETHER CASES  
SHOULD BE RELATED**

42 TO THE COURT, DEFENDANT AND ITS COUNSEL OF RECORD:

43 Pursuant to Civil Local Rule 3-12, Plaintiff Electronic Frontier Foundation (“EFF”)  
44 respectfully submits this administrative motion to request that the Court consider whether two  
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1 cases filed in this District should be related. The actions at issue are *Electronic Frontier*  
2 *Foundation v. Office of the Director of National Intelligence et al.*, No. 08-1023, filed February  
3 20, 2008, currently pending before Judge White, and *Electronic Frontier Foundation v. Office*  
4 *of the Director of National Intelligence et al.*, No. 08-2997, filed June 17, 2008, currently  
5 pending before Magistrate Judge Chen. This administrative motion is made on the grounds that  
6  
7 1.) both lawsuits involve substantially the same parties and events, and 2.) assigning both cases  
8 to the same judge will decrease the likelihood of unduly burdensome duplication of labor or  
9 conflicting results. Local Rule 3-12(b).

10 Pursuant to Local Rule 3-12(d)(2), EFF states that both actions name the Office of the  
11 Director of National Intelligence (“ODNI”) and the Department of Justice (“DOJ”) as  
12 defendants. Both cases were filed pursuant to the Freedom of Information Act, 5, U.S.C. § 552,  
13 and are based upon FOIA requests submitted to ODNI and DOJ seeking records related to a  
14 lobbying campaign to persuade Congress to amend the Foreign Intelligence Surveillance Act  
15 (“FISA”), particularly to let telecommunications companies off the hook for their role in a  
16 massive and illegal government surveillance program. Both lawsuits have been filed against  
17 the backdrop of a contentious, ongoing congressional debate about whether FISA should be  
18 amended to grant telecommunications carriers retroactive legal immunity for their participation  
19 in the government’s unlawful surveillance efforts.  
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21  
22 In each case, EFF asked that its FOIA requests be processed expeditiously because they  
23 each concern a matter about which there is “[a]n urgency to inform the public about an actual or  
24 alleged federal government activity,” and are “made by a person primarily engaged in  
25 disseminating information.” Each agency purported to grant EFF’s requests for such treatment.  
26 Nonetheless, in violation of the FOIA and the defendants’ own regulations, the defendants failed  
27 to process EFF’s requests even within the statutory time frame (20 business days) for a standard  
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1 request that is *not* entitled to expedited treatment. As such, the cases involve the same legal  
2 issues and causes of action: violation of the FOIA for failure to process EFF's FOIA requests  
3 within the time frame provided by law.

4  
5 Plaintiff respectfully asks the Court to determine that these cases are related pursuant to  
6 Local Rule 3-12 to make it more convenient for the parties and their counsel to litigate these  
7 actions, eliminate the risk of duplicative or inconsistent orders and judgments, and otherwise  
8 serve the interests of judicial economy.

9  
10 DATED: June 18, 2008

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18 /s/ Kurt Opsahl

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33 DEPARTMENT OF JUSTICE, )  
34 )  
35 Defendants. )

NO. C 08-1023 JSW  
**DECLARATION OF MARCIA  
HOFMANN IN SUPPORT OF  
ADMINISTRATIVE MOTION TO  
CONSIDER WHETHER CASES  
SHOULD BE RELATED**

1 I am an attorney of record for Plaintiff Electronic Frontier Foundation (“EFF”) in  
this matter and a member in good standing of the California State Bar, and am admitted to practice  
before this Court. I have personal knowledge of the matters stated in this declaration. If called upon  
to do so, I am competent to testify to all matters set forth herein.

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2. This declaration is submitted in support of EFF’s Administrative Motion to Consider Whether Cases Should Be Related.

3. On June 18, 2008, I had a phone conversation with Andrew I. Warden, counsel for defendants Office of the Director of National Intelligence (“ODNI”) and Department of Justice (“DOJ”) in the above-captioned case. I informed Mr. Warden that EFF had filed the complaint in *Electronic Frontier Foundation v. Office of the Director of National Intelligence et al.*, No. 08-2997, the previous day.

4. During this phone conversation, I informed Mr. Warden of EFF’s intention to file an administrative motion in the above-captioned action to consider whether the two cases should be related. Mr. Warden did not agree to stipulate that the cases are related, and stated that the government intends to oppose the motion.

5. I certify that today I emailed Mr. Warden a courtesy copy of the complaint in the new action, as well as served a copy of EFF’s Administrative Motion to Consider Whether Cases Should Be Related and the accompanying declaration and proposed order on the defendants via the Court’s Electronic Case Filing System.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief. Executed June 18, 2008 in San Francisco, California.

/s/ Marcia Hofmann  
Marcia Hofmann

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23 Defendants. )  
24 \_\_\_\_\_

NO. C 08-1023 JSW  
**[PROPOSED] ORDER GRANTING  
ADMINISTRATIVE MOTION TO  
CONSIDER WHETHER CASES  
SHOULD BE RELATED**

25 Having given full consideration to Plaintiff's Administrative Motion to Consider Whether  
26 Cases Should be Related, Defendant's response thereto, and good cause appearing, it is **HEREBY**  
27 **ORDERED** that *Electronic Frontier Foundation v. Office of the Director of National Intelligence*  
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*et al.*, No. 08-1023 (filed February 20, 2008) and *Electronic Frontier Foundation v. Office of the Director of National Intelligence et al.*, No. 08-2997 (filed June 17, 2008) are related pursuant to Local Rule 3-12.

\* \* \*

**ORDER**

IT IS SO ORDERED.

DATED: \_\_\_\_\_