

1 GREGORY G. KATSAS
Assistant Attorney General

2 ELIZABETH J. SHAPIRO
3 Assistant Director, Federal Programs Branch

4 ADAM D. KIRSCHNER (IL Bar No. 6286601)
Trial Attorney, U.S. Department of Justice
5 Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W., Room 7126
6 Washington, D.C. 20530
Telephone: (202) 353-9265
7 Facsimile: (202) 616-8470
Email: Adam.Kirschner@usdoj.gov
8 *Attorneys for Defendants*

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

13
14 _____) No. 08-1023 JSW
ELECTRONIC FRONTIER FOUNDATION,)
15 Plaintiff,) **STIPULATION TO EXTEND**
16 v.) **TIME TO FILE MOTION FOR**
OFFICE OF THE DIRECTOR OF NATIONAL) **SUMMARY JUDGMENT AND**
18 INTELLIGENCE and UNITED STATES) **[PROPOSED] ORDER**
DEPARTMENT OF JUSTICE)
19 Defendants,)
20 _____)

21 THE PARTIES HEREBY STIPULATE, pursuant to Local Rules 6-1(b) and 7-12, that
22 the filing deadline for defendants to file their motion for summary judgment shall be reset from
23 August 1, 2008 to November 7, 2008, and that the accompanying briefing schedule be also reset.
24 In support of this stipulation the parties state the following:

- 25 1. On June 20, 2008, this Court ordered the following briefing schedule: opening
26

27 Stipulation to Extend Time to File Motion for Summary Judgment and ~~Proposed~~ Order, C 08-1023 (JSW)
28

1 brief on August 1, 2008; opposition and cross-motion on August 15, 2008;
2 opposition to cross and reply on August 29, 2008; and reply on September 12,
3 2008. The Court further set the hearing for the motions for October 3, 2008 at
4 9:00 a.m. See Dkt. No. 55.

5 2. Subsequent to setting this briefing schedule, this Court found that Electronic
6 Frontier Foundation v. Office of the Director of National Intelligence and United
7 States Department of Justice, C 08-2997 (JSW) was related to the above
8 captioned case. See Dkt. No. 59.

9 3. Extending the summary judgment deadline to November 7, 2008, will enable
10 defendants to file one consolidated summary judgment motion pursuant to
11 Federal Rule of Civil Procedure 42(a)(1) for the two related cases.

12 4. With the extension of the summary judgment deadline, defendants will be able to
13 complete, barring unforeseen circumstances, the processing of Plaintiff's FOIA
14 requests that are the subject of C 08-2997 (JSW) by September 26, 2008, and
15 make interim responses by August 14, 2008 and September 4, 2008. Should
16 unforeseen circumstances make it impracticable for defendants to comply with
17 this schedule, the plaintiff shall consider in good faith proposals to stipulate to
18 any necessary extensions. Plaintiff's agreement will not be unreasonably
19 withheld. In the event that any extension to this production schedule becomes
20 necessary, the parties agree to stipulate to a court ordered production schedule.

21 5. By entering this stipulation, plaintiff does not waive, and hereby reserves the right
22 to argue that the agreed upon production schedule for C 08-2997 (JSW)
23 constitutes a complainant having substantially prevailed for purposes of 5 U.S.C.
24 § 552(a)(4)(E).

25 6. Defendants assert that without extending the deadline for defendants' summary
26

27 Stipulation to Extend Time to File Motion for Summary Judgment and ~~Proposed~~ Order, C 08-1023 (JSW)

1 judgment motion in the above captioned case, they would not be able to meet this
2 schedule agreed upon by the parties.

- 3 7. The parties thereby stipulate between themselves and propose to the Court that
4 defendants file a consolidated summary judgment motion pursuant to Federal
5 Rule of Civil Procedure 42(a)(1) by November 7, 2008; plaintiff files its
6 opposition brief and cross-motion for summary judgment, if any, by November
7 21, 2008; defendants file their opposition brief, if any, and reply by December 9,
8 2008; plaintiff files its reply, if any, by December 16, 2008; and the Court notice
9 the hearing on the cross-motions for summary judgment for January 9, 2008, or
10 for another date at the Court's convenience.
- 11 8. This schedule will facilitate the resolution of both actions and promote judicial
12 efficiency.
- 13 9. The parties have not previously moved to extend the schedule set by the Court in
14 its June 20, 2008 Minute Order, Dkt. No. 55.

15
16 Dated: July 15, 2008

Respectfully submitted,

17 GREGORY G. KATSAS
Assistant Attorney General

18 ELIZABETH J. SHAPIRO
Assistant Director, Federal Programs Branch

19
20 /s/ Adam D. Kirschner
ADAM D. KIRSCHNER (IL Bar No. 6286601)
21 Trial Attorney, U.S. Department of Justice
22 Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W., Room 7126
23 Washington, D.C. 20530
Telephone: (202) 353-9265
24 Facsimile: (202) 616-8470
E-mail: Adam.Kirschner@usdoj.gov

25 *Attorneys for Defendants*

26
27 Stipulation to Extend Time to File Motion for Summary Judgment and ~~Proposed~~ Order, C 08-1023 (JSW)

David L. Sobel (*pro hac vice*)
ELECTRONIC FRONTIER FOUNDATION
1875 Connecticut Ave. NW
Suite 650
Washington, DC 20009
Telephone: (202) 797-9009 x104
Facsimile: (202) 707-9066

/s/
Kurt Opsahl, Esq.
Marcia Hofmann, Esq.
ELECTRONIC FRONTIER FOUNDATION
454 Shotwell Street
San Francisco, CA 94110
Telephone: (415) 436-9333
Facsimile: (415) 436-9993

Attorneys for Plaintiff
ELECTRONIC FRONTIER FOUNDATION

GENERAL ORDER NO. 45(X) CERTIFICATION

I attest that I have obtained Kurt Opsahl's concurrence in the filing of this document.

/s/ Adam D. Kirschner
Adam D. Kirschner

PURSUANT TO STIPULATION, IT IS ORDERED that the deadline for defendants' consolidated motion for summary judgment for C 08-1023 (JSW) and C 08-2997 (JSW) be set for November 7, 2008; the deadline for plaintiff to file its opposition brief and cross-motion for summary judgment, if any, be set for November 21, 2008; the deadline for defendants to file their opposition brief, if any, and reply be set for December 9, 2008; the deadline for plaintiff to file its reply, if any, be set for December 16, 2008. It is FURTHER ORDERED that the Hearing on Cross-Motions for Summary Judgment is set for January 9, 2008 at 9:00 a.m.

DATED: July 17, 2008


Honorable Jeffrey S. White
United States District Judge

Stipulation to Extend Time to File Motion for Summary Judgment and ~~Proposed~~ Order, C 08-1023 (JSW)