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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

David W. R. Brown *et al.*,

Plaintiff,

v.

Case Number: 8:03-cv-2501-T-23EAJ

United States Department of Commerce *et al.*,

Defendants.

/
AMENDED OBJECTION TO
FEDERAL DEFENDANTS'
(OTHER THAN DEPT. OF THE TREASURY)
MOTION TO DISMISS

A note to the Court: After further informal discovery, Plaintiff found that he misspoke in Paragraph 71. That is the only change from the original Objection.

If the Court has already dismissed the Defendants' Motion to Dismiss based on Plaintiff's objection to their Motion to Exceed Page Limit, this Objection is moot.

A (123) indicates paragraph 123 of the Amended Complaint. A (AG@89) indicates page 89 of the Attorney General's "FOIA Guide & Privacy Act Overview."

Preface

1. In his lengthy Motion, the U.S. Attorney injected a good deal of sarcasm aimed at the named Plaintiff, like: the litigation is a "frivolous and vexatious action", "Plaintiff has failed miserably...", "...this allegation woefully fails...", "This count transcends even the alarming standard of frivolousness achieved by the amended complaint as a whole.", "Plaintiff's allegations...are even further afield.", "It is beyond cavil that...", etc.

2. The plaintiff was sore tempted to respond in kind. But after reading Local Rule 2.03(h) "Attorneys and litigants should conduct themselves with **civility**..." decided

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against it. The Plaintiff prays that the court will not penalize him for not be ornery.

3. Galaxy Scientific Corp. is the other defendant in this action and is a subcontractor of the Patent Office. Plaintiff believes that they will shortly be filing a Motion to be dropped as a defendant claiming that they contributed no creativity (such as characterizing a number of the Federal Register comments as not being "reasonably germane") to the Approval Request process and that all of their actions were directed by the Patent Office, or something to that effect. If the court allows their departure, then all of the Plaintiff's following assertions also apply to the Patent Office/Galaxy relationship.

4. The Supreme Court (*Haines v. Kerner*, 404 U.S. Attorney 519 (1972)) and various lower courts held that Courts are to show leniency towards *pro se* litigants noting that their pleadings must be held to "less stringent standards than formal pleadings drafted by lawyers." Plaintiff prays for that very leniency in this document and will gratefully accept as much help as the Court will give in any matters concerning this litigation.

Objections to the U.S. Attorney's Preface

5. The U.S. Attorney's motion has no paragraph or line numbers.

6. The U.S. Attorney's list of parties simply lists "David W. R. Brown" as the Plaintiff. This is a class action, so it should have read: "David W. R. Brown *et al.*"

7. Under the "Memorandum of Law", the U.S. Attorney starts off with "Plaintiff was the holder of a United States patent. In 1997..." If it makes any difference, that probably should be the "named" Plaintiff since this is a class action.

8. The U.S. Attorney states "Plaintiff did not seek reconsideration and ignored the agency's suggestion that he make a better showing." The Plaintiff did respond but admits he did not submit to the defendant's humiliating terms for "reconsideration."

9. The U.S. Attorney's mild description that the 'agency suggested that he make a **better** showing' was actually an illegal "requirement for additional information."

10. The U.S. Attorney goes on to state in a conclusory manner "Instead, plaintiff embarked on an aggressive campaign under the Freedom of Information Act." It is improper for the U.S. Attorney to make this observation. According to his boss, the Attorney General (AG@39): "FOIA requests can be made for any reason whatsoever; because the purpose for which records are sought has no bearing upon the merits of the request, FOIA requesters do not have to explain or justify their request."

11. Next, the U.S. Attorney states that "plaintiff does not even genuinely challenge agency responses to his FOIA requests." ***This is not true!*** Indeed the Plaintiff does challenge defendants' FOIA responses. Particularly in Complaints 2, 4, 6, 15 and 16!

12. The U.S. Attorney then pronounces the Plaintiff's actions as "frivolous and vexatious." In truth, the Plaintiff has been open, above board and played by the rules. If anything, it has been the Defendants that have been "frivolous and vexatious," like forging a document, not responding to FOIA requests, lying to the Plaintiff during the CMR preparations and even rejecting the use of the Magistrate Judge to speed the litigation and relief.

13. For some reason, the U.S. Attorney has the impression that this lawsuit is about "petition reconsideration." ***This is not true!*** If he had read the "Relief" sought by the Plaintiff, he would know that the Plaintiff has no desire for a reconsideration of Plaintiff's petitions, because that would have moved this litigation to the D.C. venue and raised a number of additional legal issues concerning whether the maintenance fee system is "arbitrary, irresponsible and in need of reform."

14. It's simpler and expeditious just to stick to the Freedom of Information Act, the Paperwork Reduction Act, the Privacy Act, the Internal Revenue Code, etc. which simply and explicitly (1) spell out the responsibilities of federal employees, (2) spell out subsequent relief when they disobey those laws and (3) do not enjoy sovereign immunity.

15. The U.S. Attorney states: "Thus, Plaintiff cannot hope to obtain monetary relief under the Administrative Procedure Act (APA) for the USPTO's denial of his maintenance fee petition." The Plaintiff is not familiar with the APA and doesn't know if the U.S. Attorney is right or wrong. Either way, the "monetary relief" that is sought is also available under the laws that the Defendants did violate. One example would be the Civil Remedies of the Privacy Act at 5 USC 552a(g)(4). So, despite the U.S. Attorney's statement, sources for "monetary relief" do indeed exist for the matters of this lawsuit.

Count-by-Count Objections

16. **Count 1 (the forgery):** Concerning the forgery evidence, the U.S. Attorney states that "the complaint must contain 'some indicia of reliability.' ... The amended complaint contains no such indicia." Given that (1) Slutter had been late with FOIA responses prior to the forgery, (2) that Patent Office FOIA responses almost always mail either the same day or one day later than the date on the letter, (3) the postage meter stamp was several days later, and (4) the envelope had a non-standard address and a goofy label, Plaintiff would submit that there is indeed "indicia of reliability."

17. The U.S. Attorney wrote that all of the forgery events could be attributed to "one of a myriad of other possible reasons".

18. That's what the discovery phase of any trial is all about! After Plaintiff's Request for Documents, Admissions, Interrogatories and a seven-hour Deposition of Nancy

Slutter, the Court can decide on the basis of the evidence if the forgery took place as alleged or if it can be attributed to "one of a myriad of other possible reasons".

19. If the U.S. Attorney persists in attributing the sequence of events to other reasons, the Plaintiff will serve him with an Interrogatory and move that he be sworn in at the trial as a witness with knowledge of the events.

20. The U.S. Attorney wrote "First, the United States (or agencies thereof) cannot, as a matter of law, violate 18 USC 1001, 1018 and 1341." *This is not true!* Sections 18 USC 1001 and 18 USC 1018 read: "... **whoever** [lies or forges] shall be fined ... or imprisoned..." Section 18 USC 1341 reads "**Whoever** [extorts money] by the Postal Service ... shall be fined ... or imprisoned..."

21. The U.S. Attorney then discusses the meaning of the word "whoever" as used in 18 USC 1001, 1018 & 1341. The U.S. Attorney cites United States v. Singleton as proof that "whoever" does not encompass the United States. A copy of that decision is included with this filing for the convenience of the court. The case revolved around the use of the word "whoever" as used in 18 USC 201(c)(2), the "anti-gratuity" statute. Judge Porfilio, writing for the majority concluded (at ¶20, page 7):

"It is noteworthy, then, that defendant's premise relies upon the shibboleth "the government is not above the law." While we agree with that notion, we simply believe this particular statute [18 USC 201(c)(2)] does not exist for government."

22. The dissenting opinions are even more vocal (page 9, top) that government employees must be held liable for criminal conduct no matter what.

23. **At no time has Plaintiff alleged that the defendants violated 18 USC 201(c)(2)!**

24. The Plaintiff does not necessarily introduce this information with the intent that

this court should conduct a "criminal trial" of Slutter's forgery on our behalf. Justice is obligated to conduct a full criminal investigation of those matters (at which time the named Plaintiff would be pleased to testify). However, since her actions did impact the Plaintiff and since the circumstances and evidence surrounding Slutter's wrongdoing are not immune, they must be presented for the court to consider and judge these acts along with all the other acts to establish an overall pervasiveness of wrongdoing.

25. Next the U.S. Attorney claims "sovereign immunity". Where criminality is involved, *United States v. Singleton* would be enough to show that her forgery does not enjoy sovereign immunity.

26. And in terms of a civil procedure, in her role as the FOIA Officer, she backdated a FOIA document in which that date is a key feature in a number of FOIA provisions that impacted the Plaintiff. And likewise, the FOIA does not enjoy sovereign immunity.

27. The U.S. Attorney faults the Plaintiff for not filing an appeal after the forged letter was received. Because of the delay caused by the forgery itself, there just wasn't enough time to appeal. So his assertion is moot.

28. Based on a combination of the criminal code violations and FOIA violations, the Plaintiff prays that the court will allow discovery to go forward so that it can then consider the circumstances and evidence.

29. In view of all of the foregoing, the Plaintiff's prays that Complaint 1 is sustained intact and the Defendant's Motion to Dismiss is denied.

30. **Count 2 (withholding FOIA documents):** The U.S. Attorney used nearly three pages of his lengthy motion to suggest that the disciplinary records for a federal employee who has committed criminal acts are somehow personal and can be withheld. *This is not*

true!

31. The U.S. Attorney inadvertently included one of Plaintiff's FOIA requests as his Exhibit 3. The Court should note that pages 7 to 10 of that exhibit include one citation after another about how disciplinary records for wrongdoers are to be released. Over and over, the courts have found that the privacy rights of such individuals are "minimal."

32. The U.S. Attorney asserts that the public interest in Slutter's forgery caper is "remote." *This is not true!* For example, the Plaintiff received a phone call from a lawyer in Virginia who had visited the Plaintiff's website. For some reason, she was intensely interested in knowing the date after the forgery that Slutter was reassigned from being the FOIA Officer back into the lawyer pool. (I was able to give her two dates between which Slutter was the FOIA Officer and when Slutter was no longer the FOIA Officer.) Another example was an email received from a lawyer in the D.C. area wondering if the Plaintiff planned to pursue having Slutter disbarred from the Virginia bar because of the forgery. (The answer was yes. I do have the forms from Richmond but haven't had the time to complete and return the paperwork.)

33. Because Slutter's forgery attempt was so inept, the Plaintiff made a "detective game" out of it and posted it on his website. The website's homepage has gotten thousands of hits, including over a hundred from the Patent Office. The most popular page that people then click to is the game about Slutter's forgery.

34. So interest in the forgery is not "remote."

35. The U.S. Attorney suggests that Plaintiff has the responsibility to compel the release of FOIA records. *This is not true!* The Freedom of Information Act is an "information disclosure statute" and works the other way around. "The burden is on the

agency to sustain its action." 5 USC 552(a)(4)(B). "The FOIA itself places the burden on the agency to sustain the lawfulness of specific withholdings in litigation." *Natural Rs. Def. Council v. NRC*, 216 F.3d 1180, 1190(D.C. Cir. 2000). "Since the Government is the party refusing to produce the documents, it bears the burden of showing that the documents are not subject to disclosure." *Brady-Lunny v. Massey*, 185 F. Supp. 2d 928, 931 (C.D. Ill. 2002).

36. The U.S. Attorney goes on about not releasing the records because the Plaintiff will be able to identify the individuals. However, "The burden is on the agency to prove the document cannot be segregated for partial release." *Church of Scientology v. IRS*, 816 F. Supp. 1138, 1162 (W.D. Tex. 1993).

37. In view of all of the foregoing, the Plaintiff's prays that Complaint 2 is sustained intact and the Defendant's Motion to Dismiss is denied.

38. **Count 3 (failure to return over 100 phone calls):** On page 13, around the middle, the U.S. Attorney asserts "Plaintiff has not alleged that the FOIA officer gave preferential treatment to anyone or acted other than with the utmost impartiality in failing to return his telephone calls and has not alleged an injury in fact." Common sense dictates how strange his assertion is. To suggest that the FOIA Officer didn't return any phone calls to anyone over a three-month period, thus proving that he acted with utmost impartiality, is highly questionable. Discovery of Patent Office phone records of incoming and outgoing calls for the FOIA Officer for that three month period should clear-up whether he returned any phone calls.

39. Now and then on the three hours of tape recording of the FOIA Officer's answering machine, his machine would announce that "Mike Briskin is on another call..."

So it's not like he wasn't there or not using his telephone. How would the Court feel if it left over 100 phone messages for a civil servant to respond and the civil servant never bothered to return even one call?

40. The Plaintiff had a "script sheet" which he kept by the phone so that each time he called the FOIA Officer he would be consistent. It had several questions on it, including some dealing with "due process", which the Plaintiff would have asked if the FOIA Officer would have ever answered or returned any of the calls. (This document will be made available as Document 305 of the Plaintiff's discovery package.)

41. Again, as in the case of the forgery, the Plaintiff is not necessarily asking the court to fully prosecute the FOIA Officer and provide a specific relief for his inaction.

42. However, since the Plaintiff was denied information and due process, as he pursued material for this litigation, in pursuit of justice the evidence must be presented to the court to consider and judge these acts of wrongdoing along with all the other acts to establish an overall pervasiveness of wrongdoing.

43. Once we enter the discovery phase of this litigation, the Plaintiff will move that the three hours of audio recordings be admitted as evidence with the intention that a couple of minutes will be played for the Court at the trial.

44. In view of all of the foregoing, the Plaintiff's prays that Complaint 3 is sustained intact and the Defendant's Motion to Dismiss is denied.

45. **Count 4 (three years and still no FOIA response):** The U.S. Attorney writes "Again, Plaintiff does not assert that the USPTO is withholding documents whose release is required under the FOIA." How would the Plaintiff know if "the USPTO is withholding documents," when no valid response has yet been received?

46. The U.S. Attorney wrote that the "Plaintiff was plainly notified by letter dated April 25, 2001 that the Agency had [determined the appeal and sent a signed response]." However, even the U.S. Attorney's own exhibits lack documented proof that an appeal determination was made in December or that a signed response was ever sent to Plaintiff.

47. The Courts attention is directed to the 2nd page of Exhibit 13 which accompanied the U.S. Attorney's Motion to Dismiss. It is devoid of everything that would make it legitimate: letterhead, date and signature. Then please take a look at all of the other FOIA requests in U.S. Attorney's exhibits. Note how the Patent Office keeps a copy of every outgoing FOIA response. For the U.S. Attorney to suggest that the 2nd page of Exhibit 15 is of any value is as silly as if on payday he gave his employees a blank sheet of paper and a green magic-marker and told them that is was money.

48. The Plaintiff was prompted to inquire because he never received a response. And when he asked about it, the Patent Office had no copy of a response. These events do not lend themselves to coincidence.

49. Near the bottom of page 14, the U.S. Attorney derides the Plaintiff for not filing a federal lawsuit back then. If the Plaintiff had brought litigation every time the Defendants were late with FOIA responses, the U.S. Attorney would have had to hire a couple of extra people just to handle the extra work load.

50. Since over three years have passed and seeing as how the lawsuit has been filed, a response now would be of no value. However, the Plaintiff prays that the Court will consider and judge these acts of wrongdoing along with all the other acts to establish an overall pervasiveness of wrongdoing. Since the Plaintiff was the victim of these acts, in pursuit of justice, discovery must be allowed and the evidence presented to the court for

its consideration and judgement.

51. In view of all of the foregoing, the Plaintiff's prays that Complaint 4 is sustained intact and the Defendant's Motion to Dismiss is denied.

52. **Count 5 (citing out of date citations):** The concerns here are precisely the same as in Slutter's forgery. Thinking back to Count 1 and United States v. Singleton, Slutter violated the criminal code and is not immune. Similarly, Briskin violated the criminal code and is not immune. The Plaintiff does not necessarily introduce this information with the intent that this court should conduct a "criminal trial" of Briskin's false statements on our behalf. Justice is obligated to conduct a full criminal investigation of those matters (at which time the named Plaintiff would be pleased to testify). The Plaintiff prays the court will allow discovery and consider the evidence and judge these acts along with all the other acts to establish an overall pervasiveness of wrongdoing.

53. In a previous filing, the Plaintiff noted that by shrinking the initial Complaint down to comply with the 20-page Local Rule, "the Plaintiff felt that he diluted the Complaints and made them vulnerable to attack." And he prayed that if the Court decides not to strike the Defendant's Motions to Exceed Page Length and the Defendants' Motion to Dismiss, that the Court would "resurrect the Plaintiff's original Complaint (Docket Item 1), which was also lengthy and also had many exhibits (just like the Defendants' motion) and consolidate it with the Amended Complaint as the 'official Complaint' for this lawsuit."

54. The U.S. Attorney ends his Count 5 remarks with:

"This count transcends even the alarming standard of frivolousness achieved by the **amended complaint** as a whole."

55. Although not intended as such, the U.S. Attorney actually makes a very eloquent and powerful argument on behalf of the Plaintiff for the Court to "resurrect the Plaintiff's original Complaint ...", particularly if the U.S. Attorney's Motion to Dismiss is not dismissed in its entirety.

56. In view of all of the foregoing, the Plaintiff prays that Complaint 5 is sustained intact and the Defendant's Motion to Dismiss is denied.

57. **Count 6 (classifying documents as privileged):** This one takes the cake! The U.S. Attorney uses two pages of his lengthy motion to explain why he shouldn't have to provide the court with some "privileged documents" based on exhaustion of administrative remedies.

58. The Plaintiff sees two ways to go. On the one hand the court can dismiss this count in which case the Plaintiff will file another FOIA request which will be denied, then appealed, then denied, then a lawsuit will be filed asking that it be joined with this one and then chances are it would be joined. A waste of time for everybody! **OR** The court could simply sustain this Complaint and we'll all be at the same spot anyway.

59. In view of the simplicity of this Complaint, the Plaintiff prays that Complaint 6 is sustained intact and the Defendant's Motion to Dismiss is denied.

60. **Counts 7, 8, 9 and 10 (invalid form):** The U.S. Attorney glossed over these four complaints using just one page of his lengthy Motion. It is not surprising that the U.S. Attorney tries to persuade the Court into dismissing them, because these four complaints and the later privacy concerns, go to the very heart of this lawsuit.

61. In the Amended Complaint (59,60), it is documented that the Paperwork Reduction Act absolutely requires that Federal Register comments are to be considered.

62. In the Amended Complaint (67-69), it is documented that all forms that collect information must have "practical utility" which is a defined phrase.

63. In the Amended Complaint (77-79), it is documented that all forms that collect information must have an accurate "time burden" which is a defined phrase.

64. In the Amended Complaint (87-89), it is documented that the all forms that collect information must have a proper "showing statement" which is a defined term.

65. The Plaintiff alleges that Form PTO/SB/65 does not have any of these required items. The U.S. Attorney suggests that even though the form may violate the law, there is no remedy. *This is not true!* In fact, the U.S. Attorney even recites the law that provides for it: "no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter if the collection of information does not display a valid control number assigned by the Director **in accordance with this subchapter ...**". The whole Paperwork Reduction Act is one subchapter, i.e. **Subchapter I** of Chapter 35 of Title 44. Therefore, one could paraphrase the law to read "... in accordance with the Paperwork Reduction Act."

66. The Paperwork Reduction Act requires certain items, like the consideration of Federal Register comments, practical utility, an accurate time burden and a proper showing statement. Therefore, since the form does not comply with all of the provisions of the Paperwork Reduction Act, it does not have a valid control number. Thus, litigation and relief are appropriate.

67. And common sense dictates that this is the only interpretation that can be applied. Quite simply, why would Congress pass a law with provisions that can't be enforced?.

68. In view of all of the foregoing, the Plaintiff's prays that Complaints 7, 8, 9 and

10 are sustained intact and the Defendants' Motions to Dismiss are denied.

69. **Count 11 ("additional information requirements"):** The U.S. Attorney states that the Plaintiff's Complaint does not allege that the denial letters amounted to a "collection of information". Actually, paragraphs 97 and 99 of the Amended Complaint allege that:

"Section 44 USC 3506(c)(1)(B)(iii)(V) of the PRA requires that all collections of information must be pre-approved by the OMB. The *additional information requirements* stated in PTO/SB/65 Decisions have not been approved by the OMB."

70. I'd say that's about as close as one can get!

71. The U.S. Attorney should have "left well enough alone." Instead, he goes ahead with comments that put one of his clients, the Patent Office, at considerable risk. He carefully quotes the law that a collection must be identical questions posed to ten or more people. He's right! *However, the "required additional requirements" are the same for ten or more people. USPTO provided this information in Exhibit 29 of Docket Item 1. Formal discovery will show that individual members of the Plaintiff class were asked for identical additional requirements, which does make it a "collection of information."*

72. So, reading between the lines, the U.S. Attorney is actually stating that since it is not a collection of information, the Patent Office is running a totally rogue information collection scheme outside the confines of the Paperwork Reduction Act! Since the Patent Office isn't chartered to do that, it would be like running a bordello out of the U.S. Attorney's office, which I assume is also illegal.

73. The Plaintiff's prays that the Court will sustain Complaint 11 just so we can see the U.S. Attorney sweat a little bit as he chooses between "no valid control number" and

the Patent Office running a "rogue operation" outside of the law.

74. **Count 12 (no privacy statement):** The U.S. Attorney has attempted to float a red herring for the court by insinuating that only the OMB actions are considered in Complaint 12. The Court is directed to paragraphs 108 and 109 of the Amended Complaint in which the Patent Office, Galaxy and OMB are all indicted for the failure of Form PTO/SB/65 to have the required Privacy Act statement.

75. The responsible party(s) cannot be determined until the discovery phase of this litigation is completed and the Court has examined the evidence.

76. Again, a remedy is in order because Congress would not pass a law with provisions that can't be enforced.

77. In view of all of the foregoing, the Plaintiff's prays that Complaint 12 is sustained intact and the Defendant's Motion to Dismiss is denied.

78. **Count 13 (release of personal information):** The U.S. Attorney states "Plaintiff has not, however, alleged that the USPTO retains or releases such information relating to him." Actually, the U.S. Attorney was kind enough to include the named Plaintiff's personal financial information that the Patent Office released as page 4 of Exhibit 10. I will grant that it is milder than some of that released for other class members which included: income tax forms, bank account and social security information, hospital bills, psychiatric reports, etc. But it is all private information which the Patent Office has no business retaining or releasing.

79. Keeping in mind that this is a class action, the Plaintiff, from Nov. 8 to 15, 2002 copied around 1,500 pages at the Patent Office of personal information from the files of the class members. It boggles the mind that the Patent Office would ask for such a wide-

range of personal information and then turn around and make it all public. At trial time, the Plaintiff will gladly go through this evidence for as long as the court can endure.

Exhibit 33 of Docket Item 1 is a small sample of the information that is freely available!

80. The U.S. Attorney speculates that the named Plaintiff's "statement does not appear to be the type of information contemplated by paragraph 114 of the Complaint." Since the named Plaintiff wrote paragraph 114, this is pure conjecture on the U.S. Attorney's part. The Plaintiff listed only the top ten most outrageous examples of the Plaintiff's personal information released by the Patent Office. The named Plaintiff's personal financial status is at the end of paragraph 114 where it says "etc."

81. The U.S. Attorney addresses the question of the statute of limitations for the Privacy Act. For the named Plaintiff, "awareness day" was November 8, 2002 (less than two years ago) when he was actually able to request and examine thousands of pages of his and other peoples' private information at the Patent Office. Up to that point, it was hearsay that anyone could walk into the Patent Office and actually examine other citizen's income tax forms, bank account and social security information, hospital bills, psychiatric reports, etc. In fact, on November 14, 2002 Plaintiff wrote a letter (which will be Document 262) to Director Rogan inviting him over to Crystal Plaza 3 so that he too could actually become aware of the private information that the Patent Office was making available to anyone who wanted to look at and copy it. (He never showed up. Pity!)

82. The U.S. Attorney erroneously interprets clauses of the Privacy Act. For example, with regard to 5 USC 552a(e)(6), his boss, the Attorney General, wrote (AG@866): "This provision requires a reasonable effort by the agency to review records prior to their dissemination." which is at odds with what the U.S. Attorney wrote. One

example his boss gives is that this "provision was violated where agency failed to review personnel file to determine **relevance** and timeliness of dated material concerning political activities before disseminating it to Library of Congress." Given a choice between the two and given the U.S. Attorney's behavior during the Case Management Report prep, Plaintiff recommends that the Court go with the Attorney General's interpretation.

83. The U.S. Attorney tries to gloss over this by suggesting that these are the actual documents submitted by the petitioner and therefore it's OK for the whole world to peruse them, even over the internet. Given (1) that the Petition form requesting these documents doesn't even have a Privacy Act statement, (2) that the "additional information" required by the petition decisions is a rogue information collection scheme, as the U.S. Attorney so eloquently argued in his Count 11, and (3) that many of the Plaintiff class thought these private documents would be held in confidence, the Patent Office does indeed have a responsibility to review the documents before release.

84. The U.S. Attorney continues by confusing agency regs with the Privacy Act.

85. He ends his arguments with another rehash of a citation that "the Privacy Act, however, may not be employed as a skeleton key for reopening consideration of unfavorable federal agency decisions." Again, the U.S. Attorney obviously did not read the "Relief" sought, otherwise, he would know that for purposes of this litigation, the Plaintiff is not seeking a review of the members of the Plaintiff classes' petitions.

86. In view of all of the foregoing, the Plaintiff's prays that Complaint 13 is sustained intact and the Defendant's Motion to Dismiss is denied.

87. **Count 14 (statements by David Rostker):** The only allegation the U.S. Attorney attempted to dismiss in count 14 is (140) whether or not the Desk Officer's

conversations with Patent Office personnel violated the privacy rights of the Plaintiff.

88. Discovery has to occur first. After Plaintiff's Request for Documents, Admissions, Interrogatories and a seven-hour Deposition of David Rostker, the Court will have a foundation of evidence to decide if the Plaintiff's privacy was invaded.

89. Please note that the defendants do not seek dismissal of the allegations based on the fact that (1) the OMB did not improve the form to bring it into compliance with the law, (2) that OMB didn't perform their compliance responsibilities or (3) that USPTO/Galaxy/OMB illegally factored Plaintiff's possible litigation into the approval process for the form.

90. In view of all of the foregoing, the Plaintiff's prays that Complaint 14 is sustained intact and the Defendant's Motion to Dismiss is denied.

91. **Count 15 (IG didn't bother to investigate):** Although the Plaintiff raised a number of allegations in Complaint 15 about the failure of the Inspector General to investigate wrongdoing, the U.S. Attorney addressed only the one about the forgery - and that simply by referring back to Count 1.

92. The Plaintiff alleged (146) that one of two employees lied to him to coverup the IG's failure to initiate paperwork for an investigation of a colleague. The U.S. Attorney made no mention of this allegation, but if he had, Plaintiff's objection would have mentioned the criminal implications of lying and *United States v. Singleton*.

93. In view of all of the above, the Plaintiff's prays that Complaint 15 is sustained intact and the Defendant's Motion to Dismiss is denied.

94. **Count 16 (delayed FOIA responses from Commerce):** For this Complaint, the U.S. Attorney simply refers the Court back to Counts 1, 2, 4 and 6. Plaintiff fails to

perceive the nexus. These are just run-of-the-mill FOIA violations.

95. In view of that, the Plaintiff's prays that Complaint 16 is sustained intact and the Defendant's Motion to Dismiss is denied.

96. **Count 17 (cooking the books):** The U.S. Attorney suggests that "it is beyond cavil" that the *cooking of the books* by Commerce (with the consent of Justice and the GAO) harmed Plaintiff.

97. Of course it did! If the Commerce employees had known that they were going to get caught *cooking the books*, they would not have delayed their responses to the Plaintiff, thus inflicting (160) "... denial of justice and denial of due process.

98. Please note that the U.S. Attorney does not seek to dismiss the allegation of negligence against the GAO.

99. In view of all of the above, the Plaintiff's prays that Complaint 17 is sustained intact and the Defendant's Motion to Dismiss is denied.

100. **Count 18 ("check caper" extortion):** The U.S. Attorney suggests that the Defendants' losing a check and then trying to extort money to pay for their incompetence doesn't establish any causes of action. Back in early November 2003 (a month before this action was filed), Plaintiff requested a copy of the "records related to the debt" which is part of the "due process part" of the Treasury Offset Program and the Treasury Debt Management Service. That was over three months ago and Plaintiff still has not received those documents. For the U.S. Attorney to suggest that extortion and then the denial of due process, along with the other allegations, doesn't entitle the Plaintiff to some relief is not credible.

101. This matter of the "check caper," including the Constitutional question of whether

the defendants can extort money from the citizenry to pay for their own incompetence, including references to United States v. Singleton, is discussed more fully in an Objection to Dismiss directed at the Treasury Department, which will be filed shortly.

102. In view of all of this, the Plaintiff prays that Complaint 18 is sustained intact and the Defendant's Motion to Dismiss is denied.

Prayers To The Court

103. The U.S. Attorney attempted in many of his assertions to attack the Plaintiff's allegations as not having a cause of action. WHEREFORE, in view of the arguments set forth above, Plaintiff prays that the court will allow the causes of actions as stated in the Amended Complaint in the sentences prior to paragraphs 22, 31, 39, 44, 52, 56, 59, 67, 76, 87, 96, 106, 114, 131, 144, 151, 156 and 161 to stand.

104. The U.S. Attorney attempted in many of his arguments to separate individuals' violations from agencies' violations. WHEREFORE, as previously prayed and now prayed again, the Plaintiff prays that all matters of this litigation be joined together for judicial economy - Rule 42(a) FRCP. If the court agrees, then such arguments by the Defendants in their Motions are moot.

105. WHEREFORE, if the court has not already struck down the Defendants' Motions to Dismiss in its entirety based on Plaintiff's earlier filing, the Plaintiff prays that the court will strike each and every assertion in the Defendant's Motions to Dismiss based on all of the above.



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