

1 MELINDA HAAG (CSBN 132612)
United States Attorney
2 JOANN M. SWANSON (CSBN 88143)
Chief, Civil Division
3 NEILL T. TSENG (CSBN 220348)
Assistant United States Attorney

4 450 Golden Gate Avenue, Box 36055
5 San Francisco, California 94102
Telephone: (415) 436-7155
6 FAX: (415) 436-6927
neill.tseng@usdoj.gov

7 Attorneys for Defendant
8 U.S. CUSTOMS AND BORDER PROTECTION

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

13 EDWARD HASBROUCK,) No. C 10-03793 RS
14 Plaintiffs,)
15 v.) **DEFENDANT'S RESPONSES TO**
16 U.S. CUSTOMS AND BORDER PROTECTION) **PLAINTIFF'S REQUEST FOR**
17 Defendant.) **ADMISSIONS**

18
19 PROPOUNDING PARTY: EDWARD HASBROUCK, Plaintiff

20 RESPONDING PARTY: U.S. CUSTOMS AND BORDER PROTECTION, Defendant

21 SET NUMBER: ONE

22 TO PLAINTIFF EDWARD HASBROUCK AND HIS COUNSEL OF RECORD:

23 Pursuant to Fed. R. Civ. P. 36, defendant U.S. Customs and Border Protection ("defendant"
24 or "CBP") provides the following responses and objection(s) to plaintiff's Request for Admissions.
25 Defendant objects to the extent plaintiff "requests and demands" that the responses "be sworn to
26 and filed promptly in the office of the District Clerk." Request for Admissions at 1:24-26. The
27 text of Fed. R. Civ. P. 36 contains no requirement that the responses be sworn to or filed. In fact,
28 filing of the responses at this stage is prohibited by Fed. R. Civ. P. 5(d)(1). Subject to and

1 notwithstanding the foregoing objection(s), defendant responds as follows:

2 **REQUEST FOR ADMISSION #1:** Admit that defendant has disclosed to plaintiff zero (0) pages
3 of records in response to PLAINTIFF'S OCTOBER 2009 FOI/PA REQUEST [defined by plaintiff
4 as meaning the requests for records made by plaintiff Edward Hasbrouck pursuant to 5 U.S.C. §
5 552 and/or § 552a, by letter dated October 15, 2009, and appealed by letter dated December 10,
6 2009, requesting copies of all records created by the defendant or any other agency in the course of
7 processing PLAINTIFF'S JUNE 2007 PRIVACY ACT REQUEST].

8 **Answer to Request for Admission #1:** Admit with clarification that plaintiff's request dated
9 December 10, 2009 states: "On October 15, 2009, [plaintiff] made a request via Express Mail
10 pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a,
11 for documents and records related to the processing of [plaintiff's] Privacy Act request, CBP File
12 Number 2007F4114, and [plaintiff's] appeal of [CBP's] response to that request." See CBP's
13 Preliminary Disclosures at US00101. Defendant notes that it responded to plaintiff's original
14 Privacy Act request and provided plaintiff with 16 pages of PNR data pursuant to the Privacy Act.
15 Defendant notes further that plaintiff was informed in defendant's response to the FOIA appeal at
16 issue in this Request for Admission that, while deciding the appeal defendant searched for file
17 number 2007F4114. File 2007F4114 only contains plaintiff's incoming request and defendant's
18 response thereto. Defendant also contacted the Privacy Act Policies and Procedures Branch.
19 Defendant was informed upon inquiry that the Privacy Act appeal remained pending with the
20 Privacy Act Policy and Procedures Branch. See CBP's Preliminary Disclosures at US00013 -
21 US00014.

22 **REQUEST FOR ADMISSION #2:** Admit that defendant has disclosed to plaintiff zero (0) pages
23 of records in response to PLAINTIFF'S OCTOBER 2009 FOIA REQUEST [defined by plaintiff as
24 meaning the request for records made by plaintiff Edward Hasbrouck pursuant to 5 U.S.C. § 552,
25 by letter dated October 15, 2009, and appealed by letter dated December 10, 2009, requesting
26 documents and records describing the search systems and methods, indexing, query formats and
27 options, data fields and formatting, and the numbers or other identifying particulars by which data
28 can be retrieved from specified CBP systems of records].

1 **Answer to Request for Admission #2:** Admit that CBP provided no records in response to the
2 request and furthering answering, defendant states that plaintiff was informed that such records are
3 not subject to release. See CBP's Preliminary Disclosures at US00011. In response to the request,
4 defendant located fifty-two (52) pages from the TECS User Guide and one hundred nineteen (119)
5 pages from the ATS User's Guide that were responsive to plaintiff's request. The excerpts from
6 the TECS and ATS user guides are being withheld in their entirety pursuant to FOIA Exemption
7 (b)(7)(E).

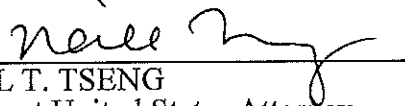
8 **REQUEST FOR ADMISSION #3:** Admit that defendant has disclosed to plaintiff zero (0) pages
9 of ACCOUNTING OF DISCLOSURES [defined by plaintiff as meaning the record of the date,
10 nature, and purpose of each disclosure of a record to any person or to another agency under 5
11 U.S.C. § 552a (b) and the name and address of the person or agency to whom the disclosure is
12 made, as set forth in 5 U.S.C. §552a(c)] as requested in PLAINTIFF'S PRIVACY ACT
13 REQUESTS.

14 **Answer to Request for Admission #3:** Admit that CBP provided no records representing an
15 Accounting of Disclosures, as set forth in 5 U.S.C. § 552a(c), noting that plaintiff did not make
16 such a request in plaintiff's June 2007 Privacy Act Request nor in plaintiff's September 2007
17 Privacy Act Appeal. Defendant further notes that the System of Records Notice (SORN)
18 [published on August 6, 2007 at 72 FR 43650] for the Automated Targeting System (ATS), in
19 accordance with which it provided plaintiff with access to plaintiff's Passenger Name Records,
20 expressly exempts ATS from providing access to the Accounting for Disclosure by the terms of
21 said notice and in conformance with the Final Rule, published on February 3, 2010 at 75 FR 5487,
22 and promulgated at 6 CFR part 5 Appendix C.

23 Respectfully submitted,

24 MELINDA HAAG
25 United States Attorney

26 Dated: May 9, 2011

27 
28 NEILL T. TSENG
Assistant United States Attorney
Attorneys for Defendant

1 MELINDA HAAG (CSBN 132612)
United States Attorney
2 JOANN M. SWANSON (CSBN 88143)
Chief, Civil Division
3 NEILL T. TSENG (CSBN 220348)
Assistant United States Attorney

4 450 Golden Gate Avenue, Box 36055
5 San Francisco, California 94102
Telephone: (415) 436-7155
6 FAX: (415) 436-6927
neill.tseng@usdoj.gov

7 Attorneys for Defendant
8 U.S. CUSTOMS AND BORDER PROTECTION

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

13 EDWARD HASBROUCK,

14 Plaintiffs,

15 v.

16 U.S. CUSTOMS AND BORDER
17 PROTECTION,

18 Defendant.

) No. C 10-03793 RS

) **PROOF OF SERVICE**

19
20
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**

2 The undersigned hereby certifies that she is an employee of the Office of the United States
3 Attorney for the Northern District of California and is a person of such age and discretion to be
4 competent to serve papers. The undersigned further certifies that she is causing a copy of the
5 following:

- 6 • **DEFENDANT’S RESPONSES TO PLAINTIFF’S REQUEST FOR ADMISSIONS**

7
8 **Edward Hasbrouck v. U.S. Customs and Border Protection**
9 **10-3793 RS**

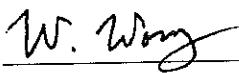
10 to be served this date upon the party in this action by placing a true copy thereof in a sealed
11 envelope, and served as follows:

- 12 **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in
13 the designated area for outgoing U.S. mail in accordance with this office's practice.
14 **CERTIFIED MAIL (#)** by placing such envelope(s) with postage thereon fully prepaid
15 in the designated area for outgoing U.S. mail in accordance with this office's practice.
16 **PERSONAL SERVICE (BY MESSENGER)**
17 **FEDERAL EXPRESS via Priority Overnight**
18 **FACSIMILE (FAX)** Telephone No.: See Below

19 to the party(ies) addressed as follows:

20 David A. Greene, Esq.
21 First Amendment Project
22 1736 Franklin St., 9th Floor
23 Oakland, CA 94612

24 I declare under penalty of perjury under the laws of the United States that the foregoing is
25 true and correct. Executed on May 9, 2011 at San Francisco, California.

26 
27 _____
28 WINCY A. WONG
Legal Assistant