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 9 and U.S. Department of Transportation

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 11 **UNITED STATES DISTRICT COURT**
 12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 VOICE OF SAN DIEGO,

14 Plaintiff,

15 vs,

16 FEDERAL COMMUNICATIONS
 17 COMMISSION; FEDERAL AVIATION
 ADMINISTRATION; and U.S.
 18 DEPARTMENT OF TRANSPORTATION,

19 Defendants.

Case No.: 20cv0990 JLS NLS

**STATUS REPORT AND
 EX PARTE REQUEST TO
 MODIFY PRODUCTION
 DEADLINE FOR PORTION OF
 FAA FOIA RESPONSE**

Hon. Nita L. Stormes

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 23 **I. Procedural Background**

24 On September 2, 2020, this Court held an Early Neutral Evaluation (ENE)
 25 Conference with the parties, during which defendants Federal Communications
 26 Commission (FCC) and Federal Aviation Administration (FAA) were ordered to produce
 27 by October 16, 2020, “all releasable portions of documents that are responsive to Plaintiff’s
 28

1 Freedom of Information Act (FOIA) requests, along with a Vaughn Index.” ECF No. 11.
2 “Production [was to] be made on a rolling basis before and up to October 16.” Id.

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4 **II. Federal Communications Commission’s FOIA Response**

5 The FCC had completed its production prior to the ENE, and produced a *Vaughn*
6 Index on October 15, 2020.

7
8 **III. Federal Aviation Administration’s FOIA Response**

9 The FAA’s FOIA response is more complicated in that a complete response required
10 the search for records to span several separate components within the FAA, including its
11 Air Traffic Organization (ATO), Air Certification Branch (AIR), and UAS Integration
12 Office (AUS). The results of these searches then required review for responsiveness and
13 releasability by each component, followed by coordination of the results among all relevant
14 components, elevation to each component’s executive level for additional review, and
15 subsequent coordination of those results. *See* Declarations of Dean Torgerson (Torgerson
16 Decl.) at ¶¶7-8, Rick Perez (Perez Decl.) at ¶¶6-7, and Roberto Ingrao (Ingrao Decl.) at
17 ¶¶6-7, attached as Exhibits A, B, and C, respectively. Subject matter experts within each
18 component conducted searches and were consulted throughout the review process as
19 necessary. *See* Torgerson Decl. at ¶¶8, 15-16, 19; Perez Decl. at ¶¶7, 13, 42-43; Ingrao
20 Decl. at ¶¶7, 15-16, 21.

21 Records that did not require external consultation then underwent the required
22 review to ensure that the production and any necessary redactions complied with FOIA and
23 relevant regulations, before the appropriate executive component issued the final
24 determination letter with the releasable production. This internal review process was
25 completed as quickly as reasonably possible, and each component produced its records as
26 soon as they were determined to be releasable. AIR produced records on October 15, 2020.
27 *See* Perez Decl. at ¶27. ATO and AUS produced records on October 16, 2020. *See*

1 Torgerson Decl. at ¶¶34, 46 and Ingrao Decl. at ¶37, respectively. Each component also
2 produced a *Vaughn* Index on October 16, 2020.

3 However, the majority of the FAA's responsive records also required stakeholder
4 and/or submitter review. *See* U.S.C. § 552(a)(6)(B)(iii)(III) and 49 C.F.R § 7.28 for
5 stakeholder review; Executive Order 12600 and 49 C.F.R. § 7.29 for submitter review. *See*
6 *also* Torgerson Decl. at ¶¶20-22, 24, 26; Perez Decl. at ¶¶15-17, 20; Ingrao Decl. at ¶¶19-
7 20, 23. These records were indexed and sent to the National Aeronautics and Space
8 Administration (NASA) or to General Atomics or, as necessary, to both NASA and General
9 Atomics. *See* Torgerson Decl. at ¶¶27-28; Perez Decl. at ¶¶21-23; Ingrao Decl. at ¶¶23-24.

10 NASA has indicated that it must consult with the Department of Defense (DOD)
11 regarding some of the records before responding to the FAA. *See* Torgerson Decl. at ¶39;
12 Ingrao Decl. at ¶31. As of this filing, the FAA has yet to receive NASA's response and is,
13 therefore, unable to complete its consultation and review to release those records. *See*
14 Torgerson Decl. at ¶32; Perez Decl. at ¶22.

15 Though General Atomics responded to the FAA, they did so later than initially
16 requested by the FAA, and requested far more redactions and withholdings than the FAA
17 review process identified. This requires the FAA to render a determination whether it
18 agrees with General Atomics' proposed redactions and full withholdings, and, to the extent
19 the FAA does not concur, engage in a process of submitter override. *See* Executive Order
20 12600; Torgerson Decl. at ¶31; Perez Decl. at ¶¶34-36; Ingrao Decl. at ¶¶34-35. General
21 Atomics also identified several records that, based upon its contractual relationship with
22 NASA, must also be sent to that agency. *See* Torgerson Decl. at ¶40; Perez Decl. at ¶29;
23 Ingrao Decl. at ¶29. Furthermore, similar to NASA's required consultation with DOD, a
24 substantial number of the redactions requested by General Atomics require the FAA to
25 consult with the U.S. Air Force and the Department of Defense to determine whether the
26 information is protected by FOIA exemption 3 under 10 U.S.C. § 130(a) and/or the Arms
27 Export Control Act, 22 U.S.C. § 2751, *et seq.* *See* Torgerson Decl. at ¶33; Perez Decl. at
28 ¶31; Ingrao Decl. at ¶30.

1 **IV. Conclusion**

2 As indicated at the ENE, and in the attached declarations, the FAA has worked
3 consistently and diligently to respond to Plaintiff’s FOIA request as quickly and as
4 thoroughly as possible. As of this filing, the records that are in the exclusive control of the
5 FAA and have been determined to be releasable have been produced. Pursuant to federal
6 statute, executive order, and regulations, however, the FAA must rely on entities it does
7 not control to fully respond to the FOIA request. Because the ultimate production date for
8 these records is not within the control of the FAA, the agency respectfully requests that this
9 Court recognize that it has complied to the extent possible with the October 16, 2020
10 deadline. With respect to the remaining records, the FAA proposes providing status reports
11 every 30 days until the response is complete, along with status conferences at the Court’s
12 discretion.

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14 Date: October 16, 2020¹

Respectfully submitted,

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16 United States Attorney

17 By /s/ Leslie M. Gardner
18 LESLIE M. GARDNER
19 Assistant United States Attorney
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24 ¹ Counsel respectfully apologizes to this court for not filing this status report and *ex*
25 *parte* request sooner. Counsel and the FAA were hopeful, in hindsight perhaps
26 unrealistically so, that more of the records requiring external consultation could be
27 processed and produced, and accordingly continued to focus all available FAA staff
28 resources to that end, rather than redirecting efforts to drafting the attached declarations.
Counsel also reached out to plaintiff’s counsel to seek concurrence in a joint motion to
extend the production deadline, but was declined.