



discussion with plaintiff's then-counsel regarding Request No. 5 was summarized in defendants' Response to Plaintiff's Motion to Compel and Motion for a Protective Order:

3. As to Request No. 5, defendants agreed to search for responsive documents. Defendants will attempt to advise by Friday, July 11 as to the existence, amount and location of any responsive documents, and agree to a production schedule.

The agreement made with plaintiff's counsel was to search for documents, a necessary first step to further discussion regarding relevance, burdensomeness, privileges and other objections, as well as timing of production. Until defendants had the opportunity to determine the universe of responsive documents, defendants' counsel could not assess privileges and objections. Nothing in this agreement waived defendants' right to assert objections to producing any responsive documents.

Defendants will produce the majority of documents responsive to Request No. 5 in accordance with the Court's Order. However, some of the documents have been identified as potentially containing third-party and/or government intellectual property that may be protected from disclosure or subject to other objections. Accordingly, we request that the Court clarify the Order to make clear that defendants agreed to *respond* to Request No. 5, not to produce documents without regard to objections.

II. An Extension of Time is Required to Review Documents

As noted above, defendants will produce the majority of documents on or before August 11, 2014. The documents identified but not being produced at this time, listed on Exhibit 1, potentially contain information that is "trade secret or other confidential research, development, or commercial information." Fed. R. Civ. P. 26(c)(1)(G). These documents must be reviewed by agency personnel to determine, among other things, whether the documents contain proprietary or other confidential third-party information, and/or whether the information is protected under

the Federal Technology Transfer Act, 15 U.S.C. § 3710a(b)(7)(A) and (B) or other applicable law.

The documents in question belong to the Armed Forces DNA Identification Laboratory. The sole legal counsel for the Laboratory is on military Temporary Duty assignment until August 25, 2014, and has limited email access or ability to conduct such review. Plaintiff has agreed to limit his request somewhat; however, defendants expect that the review will take at least two weeks following counsel's return. Accordingly, defendants request (and plaintiff does not oppose) an extension of time until September 12, 2014 to produce or file objections to the production of the documents on Exhibit 1. A proposed Order is attached.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 7th day of August, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

John Eakin  
Plaintiff *pro se*

/s/ Susan Strawn  
SUSAN STRAWN  
Assistant United States Attorney