

1 Jennifer Stisa Granick (State Bar No. 168423)
2 Matt Zimmerman (State Bar No. 212423)
3 ELECTRONIC FRONTIER FOUNDATION
4 454 Shotwell Street
5 San Francisco, California 94110
6 Telephone: (415) 436-9333
7 Facsimile: (415) 436-9993
8 Email: jennifer@eff.org
9 mattz@eff.org

10 Ann Brick (State Bar No. 65296)
11 Michael T. Risher (State Bar No. 191627)
12 AMERICAN CIVIL LIBERTIES FOUNDATION
13 OF NORTHERN CALIFORNIA
14 39 Drumm Street
15 San Francisco, California 94111
16 Telephone: (415) 621-2493
17 Facsimile: (415) 255-8437
18 Email: abrick@aclunc.org
19 mrisher@aclunc.org

20 Attorneys for Plaintiffs LONG HAUL, INC. and
21 EAST BAY PRISONER SUPPORT

22 UNITED STATES DISTRICT COURT

23 FOR THE NORTHERN DISTRICT OF CALIFORNIA

24 LONG HAUL, INC. and EAST BAY
25 PRISONER SUPPORT,

26 Plaintiffs,

27 v.

28 REGENTS OF THE UNIVERSITY OF
CALIFORNIA; VICTORIA HARRISON;
KAREN ALBERTS; WILLIAM KASISKE;
WADE MACADAM; TIMOTHY J. ZUNIGA;
BRUCE BAUER; COUNTY OF ALAMEDA;
GREGORY J. AHERN; MIKE HART;
FEDERAL BUREAU OF INVESTIGATION;
LISA SHAFFER; AND DOES 1-25,

Defendants.

Case No.:

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF AND FOR
DAMAGES**

DEMAND FOR JURY TRIAL

PRELIMINARY STATEMENT

1
2 1. Long Haul, Inc. (“Long Haul”), also known as the Long Haul Infoshop, is an all-
3 volunteer collective that provides a lending library, a bookstore, Internet-connected computers, and
4 a community space to members of the public from its two-story storefront, located at 3124
5 Shattuck Avenue in Berkeley, California. Long Haul also publishes Slingshot, a quarterly
6 newspaper, out of an office on its second floor.

7 2. The East Bay Prisoner Support group (“EBPS”) occupies an office on the first floor
8 of Long Haul but is otherwise unaffiliated with Long Haul. EBPS publishes a newsletter of
9 prisoners’ writings to the general public, and distributes literature to prisoners. EBPS provides
10 support for prisoners, including LBGT, and female prisoners, on a national and international level,
11 including prisoners in California and Texas.

12 3. On August 27, 2008, six or more law enforcement officers from the University of
13 California at Berkeley Police Department, the Alameda County Sheriff’s Department, and the
14 Federal Bureau of Investigation (“raid team”), all of whom are Defendants herein, raided Long
15 Haul. Despite the dictates of the Fourth Amendment that “no warrant shall issue without . . .
16 particularly describing the place to be searched, and the persons or things to be seized,” raid team
17 members sought, obtained and acted upon a facially invalid warrant that purported to authorize
18 officers to enter the building where Plaintiffs are located and conduct a general seizure and search
19 of “all electronic data” for “evidence.”

20 4. The illegality of this general warrant was especially obvious and egregious for two
21 reasons. First, the officers had no reason to suspect Plaintiffs of any wrongdoing and presented no
22 evidence to the issuing magistrate alleging Plaintiffs were involved in any illegal acts. The
23 Statement of Probable Cause presented to the magistrate only alleged improper use, by an
24 unknown member of the public, of a public-access computer located at Long Haul. Second, the
25 officers left important information out of the Statement of Probable Cause. They did not inform the
26 magistrate that both Long Haul and EBPS are distributors of information to the public and that,
27 accordingly, federal and state law protects its computers from seizure except under special
28

1 conditions not present here. Nor did they inform the magistrate that EBPS was unaffiliated with
2 Long Haul but maintained office space in the building.

3 5. At a time when Long Haul was closed, the raid team forced entry through the back
4 door of Long Haul. The raid team looked through the list of people who had borrowed books from
5 the library, looked at book sale records, seized all of the public access computers from a space on
6 the second floor of Long Haul, broke the locks on the Slingshot office, took the computers and
7 digital storage media used for the publication of that newspaper, unscrewed the lock on the door to
8 the EBPS office, and took the computer used by that organization for the publication of prisoner-
9 rights information.

10 6. On information and belief, Defendants and/or their agents have copied the data on
11 the computers and storage media that they seized, and have searched, are searching, and continue
12 to search them. They have generalized, unfettered, purely discretionary access to Long Haul's and
13 EBPS's computerized data, including private information, the private information of Long Haul
14 members and patrons, and information intended for publication.

15 7. By this complaint, Long Haul and EBPS seek the following relief: (1) to regain
16 control over their information; (2) to preserve the confidentiality of their private information, the
17 private information of their members and patrons, and the information collected or created for
18 public dissemination; (3) to prevent any retaliation, monitoring, or surveillance enabled by the
19 seizure of this information; and (4) to obtain compensation for the invasion of these interests that
20 has already occurred.

21 **JURISDICTION**

22 8. This case arises under the United States Constitution, under Title 42 of the United
23 States Code, §§ 1983 (civil rights action) and 2000aa (Privacy Protection Act), under Title 28 of
24 the United States Code §§ 2201 and 2202 (declaratory relief), and under *Bivens v. Six Unknown*
25 *Named Agents*, 403 U.S. 388 (1971).

26 9. This Court has jurisdiction under 28 U.S.C. §§ 1331 (federal question), 1343 (civil
27 rights), and 2201 (declaratory relief).

28

1 10. This Court has supplemental jurisdiction over the state law claims alleged in this
2 complaint pursuant to 28 U.S.C. § 1367.

3
4 **INTRADISTRICT ASSIGNMENT AND VENUE**

5 11. The unlawful acts alleged herein occurred in the County of Alameda, California,
6 which is within this judicial district. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and
7 (e) and assignment to either the San Francisco or Oakland Division is proper pursuant to Local
8 Rule 3-2(d).

9 **PARTIES**

10 12. Plaintiff Long Haul, Inc., DBA Long Haul (“Long Haul”) is a non-profit
11 corporation under § 501(c)(3) of the Internal Revenue Code. Long Haul has operated a library,
12 bookshop and community space in Alameda County, California for 15 years. It is located at 3124
13 Shattuck Avenue in the City of Berkeley.

14 13. Plaintiff East Bay Prisoner Support (“EBPS”) is an unincorporated prisoner-rights
15 group that provides information to the public about Bay Area prison conditions, prison abolition,
16 and prison support work, as well as information on national and international prisoner support
17 activities. EBPS occupies an office on the first floor of Long Haul.

18 14. Defendant Regents of the University of California (“Regents”) is a public
19 corporation and agency of the State of California with the power to sue and be sued. Defendant
20 Regents officially employs all University of California personnel, including the officers of the
21 University of California at Berkeley Police Department (“UCPD”). UCPD’s primary duty is the
22 enforcement of law within the campus of the University of California at Berkeley and an area
23 within one mile of the exterior boundaries of that campus. Defendant Regents is sued in its official
24 capacity only.

25 15. Defendant Victoria Harrison is Associate Vice Chancellor/Chief of Police of the
26 UCPD. Defendant Harrison is responsible for the operations of the UCPD. At all relevant times,
27
28

1 Defendant Harrison acted under color of law and in the course and scope of her employment with
2 the UCPD. She is sued in her individual and official capacities.

3 16. Defendant Sergeant Karen Alberts is a Sergeant of Investigations at UCPD. She
4 participated in the execution of the warrant as more fully described herein. On information and
5 belief, Defendant Alberts is responsible for supervising and controlling the other UCPD officers
6 involved in this search and seizure. At all relevant times, Defendant Alberts acted under the color
7 of law and in the course and scope of her employment with the UCPD. She is sued in her
8 individual and official capacities.

9 17. Defendant Detective William Kasiske is a UCPD police officer. Detective Kasiske
10 applied for and obtained the August 26, 2008, search warrant at issue in this case. Defendant
11 Kasiske also participated in the execution of the warrant as more fully described herein. At all
12 relevant times, Defendant Kasiske acted under the color of law and in the course and scope of his
13 employment with UCPD. He is sued in his individual and official capacities.

14 18. Defendant Detective Wade MacAdam is a UCPD police officer. He participated in
15 the execution of the warrant as more fully described herein. At all relevant times, Defendant
16 MacAdam acted under the color of law and in the course and scope of his employment with the
17 UCPD. He is sued in his individual and official capacities.

18 19. Defendant Corporal Timothy J. Zuniga is a UCPD police officer. He participated in
19 the execution of the warrant as more fully described herein. At all relevant times, Defendant
20 Zuniga acted under the color of law and in the course and scope of his employment with the
21 UCPD. He is sued in his individual and official capacities.

22 20. Defendant Officer Bruce Bauer is a UCPD police officer. He participated in the
23 execution of the warrant as more fully described herein. At all relevant times, Defendant Bauer
24 acted under the color of law and in the course and scope of his employment with UCPD. He is sued
25 in his individual and official capacities.

26 21. Defendant County of Alameda (“Alameda County”) is a political subdivision of the
27 State of California that can sue and be sued in its own name. Upon information and belief,
28

1 Defendant Alameda County includes, operates, governs, and is responsible for the Alameda
2 County Sheriff's Department pursuant to the laws of the State of California and Alameda County.

3 22. Defendant Sheriff Gregory J. Ahern is Sheriff-Coroner of the Alameda County
4 Sheriff's Department. The Sheriff acts as an Officer of the Courts and is charged with the
5 responsibility of keeping the peace and apprehending persons charged with crimes in the
6 unincorporated areas of Alameda County. He is responsible for the policies, practices, and customs
7 of the Alameda County Sheriff's Department. Defendant Ahern also is responsible for the hiring,
8 screening, training, retention, supervision, discipline, counseling and control of the deputy sheriffs
9 under his supervision and command. At all relevant times, Defendant Ahern was acting under color
10 of law and in the course and scope of his employment with Alameda County. He is sued in his
11 individual and official capacities.

12 23. Defendant Mike Hart is a Lieutenant with the Alameda County Sheriff's
13 Department. He participated in the execution of the warrant as more fully described herein. At all
14 relevant times, Defendant Hart acted under the color of law and in the course and scope of his
15 employment with Alameda County. He is sued in his individual and official capacities.

16 24. Defendant Federal Bureau of Investigation ("FBI") is the investigative arm of the
17 United States Department of Justice and a federal agency empowered by Title 28, Section 533, of
18 the U.S. Code to enforce federal laws.

19 25. Defendant Special Agent Lisa Shaffer is a special agent of the FBI. She participated
20 in the execution of the warrant as more fully described herein. At all relevant times, Defendant
21 Shaffer acted under the color of law and in the course and scope of her employment with the FBI.
22 She is sued in her individual and official capacities.

23 26. Plaintiffs are ignorant of the true names and capacities of Defendant DOES 1-25
24 inclusive and therefore sue these Defendants by such fictitious names. Plaintiffs are informed and
25 believe and thereon allege that each Defendant so named is responsible in some manner for the
26 injuries and damages sustained by Plaintiffs as set forth herein. Plaintiffs will amend their
27 complaint to state the names and capacities of DOES 1-25 when they have been ascertained.

28

1 27. Plaintiffs are informed and believe and thereon allege that each of the Defendants
2 caused, and is liable for, the unconstitutional and unlawful conduct and resulting injuries alleged in
3 this complaint, by, among other things, personally participating in said conduct and/or acting
4 jointly with others who did so and/or by authorizing, acquiescing or setting in motion policies,
5 plans or actions that led to the unlawful conduct taken by employees under his or her direction and
6 control. Plaintiffs are informed and believe and thereon allege that Defendants' actions were
7 pursuant to a policy, custom, or usage of the UCPD, the Alameda County Sheriff's Department, the
8 FBI or other related agencies. Each of these Defendants was acting in concert with every other
9 Defendant or was the agent and employee of every other Defendant, acting within the course and
10 scope of their agency or employment with every other Defendant.

11 28. On or about January 12, 2009, Plaintiffs filed an administrative claim with
12 Defendant Alameda County pursuant to California Government Code § 910 *et seq.*

13
14 **FACTUAL ALLEGATIONS RELATED TO ALL COUNTS**

15 29. Long Haul was founded as an unincorporated association in 1979 by Alan Haber,
16 one of the founding members of the 1960's new-left group Students for a Democratic Society. It
17 leased the premises at 3124 Shattuck Ave in Berkeley. Long Haul was named after the long
18 hallway that runs through its space; the name is also a reference to Long Haul's vision of the
19 process towards achieving individual political freedom. Long Haul was incorporated as a public
20 benefit corporation in 1993 and obtained a determination from the IRS that it was tax exempt in
21 1994.

22 30. Long Haul educates the public about matters relevant to peace, justice and history
23 through its lending library and community center. Long Haul also sells 'zines and used books about
24 subjects relevant to peace, justice and history and provides the public with free computer use,
25 Internet access, and resources for creating magazines.

26 31. Long Haul serves as a meeting space and resource hub for local activist groups and
27 members of the community. The space hosts pilates classes, acupuncture consultations, knitting
28

1 circles, radical movie nights, anarchist study groups, and other events.

2 32. Long Haul publishes Slingshot, a quarterly newspaper. Slingshot is an all-volunteer
3 project of Long Haul. Slingshot has been in continuous publication since 1988. In 1993, Slingshot,
4 which had previously been located on the University of California Berkeley campus, took up
5 residence at, and became part, of Long Haul. The newspaper is distributed by mail subscription and
6 is available at 200 independent bookstores and small businesses around the United States. It is also
7 available at Long Haul and from other locations around Berkeley, California. There are many past
8 and current copies of Slingshot available in a newsrack at the front entrance of Long Haul.

9 33. Slingshot's office is on the second floor of Long Haul and marked with a sign that
10 clearly reads "Slingshot." The primary items within the small office are bookcases and file cabinets
11 with back issues of Slingshot as well as items used in the publication of Slingshot. Before August
12 27, 2008, there were two computers in the Slingshot office. Those computers were not accessible to
13 the general public. The Slingshot office is locked when none of the Slingshot workers are present.
14 On and before August 27, 2008, those computers were off-limits to members of the public and to
15 anyone who did not work on the Slingshot newspaper.

16 34. Long Haul offers the public an Internet room with computers providing online
17 access, especially for those otherwise unable to afford it. The Internet room is located on the
18 second floor of Long Haul, up a staircase separate from the staircase leading to the Slingshot
19 office. Before August 27, 2008, the Internet room was unlocked and contained approximately four
20 operative Internet-connected computers, two hard drives, and eight non-operative computers that
21 were not connected to monitors.

22 35. Long Haul does not create, collect or keep records that identify individuals who visit
23 Long Haul, including individuals who use the public access computers. Any member of the public
24 can use the space when it is open, much like a public library.

25 36. East Bay Prisoner Support's office is on the first floor of Long Haul and is marked
26 with a sign indicating that that space is the EBPS office. On and before August 27, 2008, the EBPS
27 office was kept locked and was not accessible to members of Long Haul or to the public.

28

1 41. Specifically, the Statement of Probable Cause established no reason to suspect
2 Plaintiffs of any wrongdoing and presented no evidence to the issuing magistrate alleging Plaintiffs
3 were involved in any illegal acts. Rather, the Statement of Probable Cause only alleged improper
4 use by an unknown member of the public of a public-access computer located at Long Haul.
5 Despite this, Defendant Kasiske requested and obtained a warrant applying to all the rooms at Long
6 Haul, even those inaccessible to the general public, and all electronic processing and storage
7 devices, even those not used by or accessible to the general public. Neither the Statement of
8 Probable Cause nor the warrant made any reference to EBPS, nor did the warrant authorize a
9 search of EBPS offices or other areas that were not under the control of Long Haul.

10 42. Defendant Kasiske's acts and omissions caused the warrant to improperly issue.
11 Defendant Kasiske omitted material information from the Statement of Probable Cause. He failed
12 to inform the magistrate that Long Haul contains four locked offices, including the Slingshot and
13 EBPS offices, which are not accessible to the public. He failed to inform the magistrate that EBPS
14 occupies office space at Long Haul and is not affiliated with Long Haul. He failed to inform the
15 magistrate that Long Haul publishes a newspaper or that EBPS disseminates information to the
16 public, and thus that the Slingshot and EBPS computers are not subject to seizure except under
17 special conditions not present here. As a result, the warrant that issued authorized a general search
18 of places for which there was no probable cause, and seizure of items that could not legally be
19 seized.

20 43. On Wednesday morning, August 27, 2008, at least four officers from the UCPD
21 (Defendants Kasiske, MacAdam, Alberts, and Bauer), at least one officer from the Alameda
22 County Sheriff's Department (Defendant Hart), and at least one officer from the Federal Bureau of
23 Investigation (Defendant Shaffer) (collectively "raid team") arrived at Long Haul. No one was
24 inside. The raid team contacted the landlord who refused to allow them entry. They then entered
25 through the front door of the Homeless Action Center next door, went through that office to the
26 back of Long Haul and forced their entry into Long Haul through its secured back door.

1 44. An attorney with an office nearby and Long Haul members arrived at the scene
2 while officers were conducting the raid. Despite the request of Long Haul members, the raid team
3 refused to show them any warrant.

4 45. The raid team spent over two hours searching the premises without allowing Long
5 Haul members entry to the building. Long Haul members were able to view the actions of the raid
6 team through the plate glass window at the front of Long Haul. Plaintiffs are informed and believe,
7 and on that basis allege, that, while inside, the raid team went through every room, both public and
8 locked – cutting, crowbarring, or unscrewing the locks. The raid team cut locks off of cabinets
9 behind the front desk and looked through the log of individuals that borrowed books from the
10 library and through the log of book sales, both of which were stored there.

11 46. The raid team removed every computer from the building. They removed all the
12 computers from Long Haul’s un-monitored public space where people come to use the machines
13 just as they would at a public library. They also removed all the computers from closed, locked
14 offices. The computers taken from the locked offices were used for the day-to-day operation of
15 Plaintiffs, including for the publication of information and for other education efforts.

16 47. Specifically, during the raid, the raid team broke open the locked door of the
17 Slingshot office and seized Slingshot computers.

18 48. The Slingshot computers contained materials upon which information is recorded
19 (documentary materials), including materials that were prepared or produced in anticipation of
20 communicating the materials to the public, that were possessed for the purpose of communicating
21 these materials to the public, and which contained mental impressions, conclusions, opinions, or
22 theories of the person(s) who prepared or produced them (work product materials). The
23 documentary and work product materials were possessed in connection with a purpose to
24 disseminate to the public a newspaper or other similar form of public communication.

25 49. Defendants knew or should reasonably have known that materials on the Slingshot
26 computers were possessed in connection with a purpose to disseminate to the public a newspaper,
27 book, broadcast, or other similar form of public communication.

28

1 50. Plaintiffs are informed and believe, and on that basis allege, that the raid team
2 searched the Slingshot filing cabinets, including files, folders and documents stored therein. The
3 raid team left photographs that had been archived in the filing cabinet piled on the desk in the
4 Slingshot office, with a humorous *circa* 1994 photo of some nude individuals in face masks on the
5 top of the pile, presumably to send the message to Long Haul members that the contents of the
6 filing cabinet had been searched.

7 51. During the raid, the raid team damaged the door jam to the EBPS office and also
8 unscrewed the lock fastened on door of the EBPS office. The raid team entered the EBPS office
9 and seized the EBPS computer.

10 52. The EBPS computer contained documentary and work-product materials possessed
11 in connection with a purpose to disseminate to the public a newspaper or other similar form of
12 public communication, including information intended for prisoners, and information from
13 prisoners intended for the general public.

14 53. Defendants knew or should reasonably have known that materials on the EBPS
15 computers were possessed in connection with a purpose to disseminate to the public a newspaper,
16 book, broadcast, or other similar form of public communication, including, specifically,
17 newsletters, ‘zines and pamphlets.

18 54. The raid team seized also seized miscellaneous CDs, computer disks and a USB
19 drive.

20 55. The raid team left the EBPS office in disarray. EBPS had physically organized its
21 voluminous mail in separate, categorized piles. The raid team left all the mail in one jumbled pile.

22 56. After the search was completed, the raid team left a copy of the warrant and an
23 inventory of items seized.

24 57. Upon information and belief, Doe Defendant agents of UCPD, Alameda County
25 Sheriff’s Department, and/or the Federal Bureau of Investigation (“search agents”), who may or
26 may not include members of the raid team, have copied or caused to be copied the data from the
27 computers and storage media seized from Long Haul, the Slingshot office, and the EBPS office.

28

1 The devices have been returned to Plaintiffs following the raid, but copies of the data have been
2 illegally retained.

3 58. On information and belief, some or all of the Defendants have unnecessarily seized
4 and retained private information and/or have searched, are searching, and will continue to search
5 the data copied from the devices.

6 59. As the warrant does not specifically describe what Defendant search agents are
7 authorized to search for, any searching and any data retention was, is, and continues to be,
8 unconstrained and illegal.

9 60. Plaintiffs' ability and the ability of Plaintiffs' members to communicate with other
10 organizations and individuals have been disrupted by the actions of Defendants. Plaintiff Long
11 Haul's ability to publish Slingshot was disrupted by the seizure of Slingshot computers and storage
12 media. Plaintiff EBPS's ability to provide information to the public about prisoner rights and
13 prisoner support efforts was disrupted by the seizure of EBPS's computer and storage media.
14 Plaintiff Long Haul's ability to lend books, sell books, host meetings and have meetings of Long
15 Haul members and other associates was disrupted by the search of the library lending log, the sales
16 log, the seizure of the property and the ongoing reasonable belief that Long Haul space is subject to
17 or will be subject to further police surveillance.

18 61. Plaintiffs are suffering and will continue to suffer irreparable injury by the illegal
19 retention, search, and use of their private information and no legal remedy adequately addresses all
20 the injuries to Plaintiffs as a result of Defendants acts set forth above.

21 **COUNT I**

22 **VIOLATION OF THE FIRST AMENDMENT**
23 **OF THE UNITED STATES CONSTITUTION**

24 62. Plaintiffs reallege and incorporate here the allegations in Paragraphs 1-61 above, as
25 though fully set forth.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT V

**CALIFORNIA CONSTITUTION, ART. I, §2 (FREE SPEECH)
(AGAINST NON-FEDERAL DEFENDANTS)**

70. Plaintiffs reallege and incorporate here the allegations in Paragraphs 1-69 above, as though fully set forth.

71. Defendants' above-described policies, practices and conduct have violated and will violate Plaintiffs' right to freely speak, write and publish under Article I, § 2 of the California Constitution.

COUNT VI

CALIFORNIA CONSTITUTION, ART. I, §13 (UNREASONABLE SEARCH AND SEIZURE) (AGAINST NON-FEDERAL DEFENDANTS)

72. Plaintiffs reallege and incorporate here the allegations in Paragraphs 1-71 above, as though fully set forth.

73. Defendants' above-described policies, practices and conduct have violated and continue to violate Plaintiffs' right to be free from unreasonable searches and seizures under Article I, § 13 of the California Constitution.

COUNT VII

**CAL. PEN. CODE § 1524(g)/ CAL. GOV'T CODE § 815.6
(AGAINST NON-FEDERAL DEFENDANTS)**

74. Plaintiffs reallege and incorporate here the allegations in Paragraphs 1-73 above, as though fully set forth.

75. California Penal Code § 1524(g) imposes a mandatory duty to ensure that no warrant shall issue for materials described in California Evidence Code § 1070, including but not limited to any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

76. Defendants, by the above-described policies, practices and conduct, did not exercise reasonable diligence and thereby failed to discharge that duty. Defendants' failure proximately caused the particular kind of injury to Plaintiffs that Penal Code § 1524(g) sought to avoid, i.e. a

1 warrant issued for the seizure of information protected by Evidence Code § 1070, in violation of
2 California Government Code § 815.6.

3 **COUNT VIII**

4 **BANE ACT, CAL. CIV. CODE § 52.1**
5 **(AGAINST NON-FEDERAL DEFENDANTS)**

6 77. Plaintiffs reallege and incorporate here the allegations in Paragraphs 1-76 above, as
7 though fully set forth.

8 78. Defendants' above-described policies, practices and conduct constitute interference,
9 by threats, intimidation, and coercion, with Plaintiffs' exercise and enjoyment of rights secured by
10 the Constitution and laws of the United States and California, in violation of California Civil Code
11 § 52.1.

12 **COUNT IX**

13 **TRESPASS TO CHATTELS**
14 **(AGAINST NON-FEDERAL DEFENDANTS)**

15 79. Plaintiffs reallege and incorporate here the allegations in Paragraphs 1-78 above, as
16 though fully set forth.

17 80. Defendants' above-described policies, practices and conduct intentionally deprived
18 Plaintiffs of the use of their chattel, and/or intermeddled with chattel in Plaintiffs' possession.

19 81. As a direct and proximate result of Defendants' actions, Plaintiffs have suffered
20 actual harm.

21 **COUNT X**

22 **DECLARATORY RELIEF UNDER 28 U.S.C. §§ 2201, 2202**

23 82. Plaintiffs reallege and incorporate here the allegations in Paragraphs 1-81 above, as
24 though fully set forth.

25 83. There exists an actual, present and justiciable controversy between Plaintiffs and
26 Defendants concerning their rights and duties with respect to Defendants' conduct described
27 herein. Plaintiffs contend that Defendants violated Plaintiffs' rights under the constitutions and
28 laws of the United States and the state of California. On information and belief, Defendants deny

1 that their conduct violated Plaintiffs' rights under the constitutions and laws of the United States
2 and the state of California. Plaintiffs fear that they are now and will again be subjected to such
3 unlawful and unconstitutional actions, and seek a judicial declaration that Defendants' conduct
4 deprived Plaintiffs of their rights under the constitutions and laws of the United States and the state
5 of California.

6 84. This controversy is ripe for judicial decision, and declaratory relief is necessary and
7 appropriate so that the parties may know the legal obligations that govern their present and future
8 conduct.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs seek relief from this Court as follows:

- 11 1. Issue preliminary and permanent injunctions against Defendants, prohibiting them
12 and their officers, agents, successors, employees representatives and any and all
13 persons acting in concert with them from searching, examining, transmitting,
14 manipulating, transferring to others, or otherwise making use of data seized from
15 Plaintiffs or information derived from such data and requiring that they delete,
16 destroy, and/or expunge any data seized from Plaintiffs or information derived from
17 such data and requiring that they identify any third parties to whom they transferred
18 any such data or information;
- 19 2. Issue a judicial declaration that Defendants' actions as alleged in this Complaint
20 violate the First and Fourth Amendments of the United States Constitution, 42
21 U.S.C. § 2000AA, Article I, §§ 1, 2 and 13 of the California Constitution; California
22 Civil Code § 52.1, California Penal Code § 1538(g)/Government Code 815.6 and
23 California common law.
- 24 3. Award Plaintiffs nominal, compensatory, special, and statutory damages, in an
25 amount according to proof, and treble damages to the extent permitted by law;
- 26 4. Award pre-judgment and post judgment interest to the extent permitted by law;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. Award Plaintiffs their costs and expenses, including reasonable attorneys' fees under 42 U.S.C. § 1988, 28 U.S.C. § 2412, and California Code of Civil Procedure § 1021.5; and
6. Award such other and further relief as is just and proper.

DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), and Northern District Local Rule 3-6(a), Plaintiffs hereby demand a jury trial for all issues triable by jury.

DATED: January 14, 2009

By _____

Jennifer Stisa Granick (State Bar No. 168423)
Matt Zimmerman (CA State Bar No. 212423)
ELECTRONIC FRONTIER FOUNDATION

Ann Brick (State Bar No. 65296)
Michael T. Risher (State Bar No. 191627)
AMERICAN CIVIL LIBERTIES FOUNDATION
OF NORTHERN CALIFORNIA

Attorneys for Plaintiffs