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

11 LONG HAUL, INC. AND EAST BAY)
 12 PRISONER SUPPORT,)
 13 Plaintiffs,)
 14 v.)
 15 UNITED STATES OF AMERICA;)
 VICTORIA HARRISON; KAREN)
 16 ALBERTS; WILLIAM KASISKE; WADE)
 MACADAM; TIMOTHY J. ZUNIGA;)
 17 MIKE HART; LISA SHAFFER; AND)
 DOES 1-25.)
 18 Defendants.)
 19)
 20)

No. C 09-0168 JSW

ANSWER OF LISA SHAFFER

DEMAND FOR TRIAL BY JURY

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1 Defendant Lisa Shaffer hereby answers the plaintiffs' First Amended Complaint
2 ("complaint") filed May 29, 2009. The numbered paragraphs in this answer correspond to the
3 numbered paragraphs in the complaint.

4 **RESPONSES TO NUMBERED PARAGRAPHS**

- 5 1. Paragraph 1 of the complaint is a description of a party, to which no response is required. To
6 the extent a response is required, the paragraph is denied.
- 7 2. Paragraph 2 of the complaint is a description of a party, to which no response is required. To
8 the extent a response is required, the paragraph is denied.
- 9 3. In response to Paragraph 3 of the complaint, this answering defendant admits that on August
10 27, 2008, there was a search of the Long Haul premises. The remainder of the paragraph is
11 denied.
- 12 4. In response to Paragraph 4 of the complaint, this answering defendant is without knowledge
13 or information sufficient to form a belief as to the truth of the allegations in this paragraph
14 concerning what information was presented to the magistrate in connection with the search
15 warrant because this answering defendant was not present when the application for the
16 warrant was made. To the extent a further response is required, the paragraph is denied.
- 17 5. In response to Paragraph 5 of the complaint, this answering defendant admits that in
18 connection with the entry to the premises, this answering defendant has knowledge that the
19 back door to the premises was opened by unhooking a chain. Regarding the remainder of the
20 paragraph, this answering defendant is without knowledge or information sufficient to form a
21 belief as to the truth of the allegations.
- 22 6. In response to Paragraph 6 of the complaint, this answering defendant denies the allegations
23 in this paragraph that this answering defendant copied data on computers and storage media,
24 searched those materials and continues to search those materials.
- 25 7. In response to Paragraph 7 of the complaint, this answering defendant denies that plaintiffs
26 are entitled to the relief they allege in this paragraph.
- 27 8. In response to Paragraph 8 of the complaint, this paragraph is a description of the legal bases
28 for plaintiffs' causes of action and plaintiffs' pleading of jurisdiction, to which no response is

1 required. To the extent a response is required, this answering defendant admits plaintiffs
2 have alleged claims under the provisions of law described in the paragraph and this
3 answering defendant denies that plaintiffs are entitled to the relief they allege in this
4 paragraph.

5 9. In response to Paragraph 9 of the complaint, this paragraph also contains plaintiffs' pleading
6 of jurisdiction, which require no response.

7 10. In response to Paragraph 10 of the complaint, this paragraph contains plaintiffs' pleading of
8 venue, to which no response is required.

9 11. In response to Paragraph 11 of the complaint, this answering defendant admits that Long
10 Haul is located at the address given in the paragraph. The remainder of the paragraph is
11 denied.

12 12. In response to Paragraph 12 of the complaint, this answering defendant admits that East Bay
13 Prisoner Support occupies space within the premises of Long Haul. This answering
14 defendant is without knowledge or information sufficient to form a belief as to the truth of
15 the remaining allegations in this paragraph. To the extent a further response is required, the
16 paragraph is denied.

17 13. In response to Paragraph 13 of the complaint, this defendant admits that the United States of
18 America is a defendant.

19 14. In response to Paragraph 14 of the complaint, this answering defendant is without knowledge
20 or information sufficient to form a belief as to the truth of the allegations in this paragraph.
21 To the extent a further response is required, the paragraph is denied.

22 15. In response to Paragraph 15 of the complaint, this answering defendant is without knowledge
23 or information sufficient to form a belief as to the truth of the allegations in this paragraph.
24 To the extent a further response is required, the paragraph is denied.

25 16. In response to Paragraph 16 of the complaint, this answering defendant is without knowledge
26 or information sufficient to form a belief as to the truth of the allegations in this paragraph.
27 To the extent a further response is required, the paragraph is denied.

28 17. In response to Paragraph 17 of the complaint, this answering defendant is without knowledge

1 or information sufficient to form a belief as to the truth of the allegations in this paragraph.

2 To the extent a further response is required, the paragraph is denied.

3 18. In response to Paragraph 18 of the complaint, this answering defendant is without knowledge
4 or information sufficient to form a belief as to the truth of the allegations in this paragraph.

5 To the extent a further response is required, the paragraph is denied.

6 19. In response to Paragraph 19 of the complaint, this answering defendant is without knowledge
7 or information sufficient to form a belief as to the truth of the allegations in this paragraph.

8 To the extent a further response is required, the paragraph is denied.

9 20. In response to Paragraph 20 of the complaint, this answering defendant admits that she is a
10 special agent of the Federal Bureau of Investigation as alleged in the first sentence of this
11 paragraph. This answering defendant admits that she investigates threats to university faculty
12 and other employees as alleged in the second sentence of this paragraph. This answering
13 defendant admits that she participated in the criminal proceedings referenced in the third
14 sentence of this paragraph. This answering defendant denies that she participated in
15 obtaining the search warrant in this case, as alleged in the fourth sentence of this paragraph.
16 This answering defendant admits that she participated in executing the search warrant in this
17 case, as generally alleged in the fourth sentence of this paragraph. The fifth and sixth
18 sentences of this paragraph are conclusory allegations of law, to which no response is
19 required, but this answering defendant admits that on the date of the search alleged in the
20 complaint, she was acting as an FBI agent. Except as expressly admitted herein, the
21 allegations of this paragraph are denied.

22 21. In response to paragraph 21 of the complaint, this answering defendant admits that defendant
23 Mike Hart participated in the execution of the search warrant on the date and at the place
24 described in the complaint. As for the remainder of the paragraph, this answering defendant
25 is without knowledge or information sufficient to form a belief as to the truth of the
26 allegations in this paragraph. To the extent a further response is required, the paragraph is
27 denied.

28 22. This answering defendant admits that in Paragraph 22 of the complaint plaintiffs purport to

1 sue Doe defendants. Except as expressly admitted herein, the allegations of this paragraph
2 are denied.

3 23. In response to Paragraph 23 of the complaint, this answering defendant denies the allegations
4 in this paragraph.

5 24. In response to Paragraph 24 of the complaint, other than the street address of Long Haul,
6 which is admitted, this answering defendant is without knowledge or information sufficient
7 to form a belief as to the truth of the allegations in this paragraph.

8 25. In response to Paragraph 25 of the complaint, this answering defendant admits that Long
9 Haul sells books and provides computers to the public for free use. Except as admitted
10 herein, this answering defendant denies the allegations in this paragraph.

11 26. In response to Paragraph 26 of the complaint, this answering defendant is without knowledge
12 or information sufficient to form a belief as to the truth of the allegations in this paragraph.

13 27. In response to Paragraph 27 of the complaint, this answering defendant is without knowledge
14 or information sufficient to form a belief as to the truth of the allegations in this paragraph.

15 28. In response to Paragraph 28 of the complaint, this answering defendant is without knowledge
16 or information sufficient to form a belief as to the truth of the allegations in this paragraph.

17 29. In response to Paragraph 29 of the complaint, this answering defendant denies that
18 Slingshot's office is on the second floor of the Long Haul premises and marked with a sign
19 reading "Slingshot." As to the remainder of this paragraph, this answering defendant is
20 without knowledge or information sufficient to form a belief as to the truth of the allegations.

21 30. In response to Paragraph 30 of the complaint, this answering defendant admits that Long
22 Haul offers an internet with computers providing online access to the public and that the
23 internet room is located on the second floor of the premises. As to the remainder of this
24 paragraph, this answering defendant is without knowledge or information sufficient to form a
25 belief as to the truth of the allegations.

26 31. In response to Paragraph 31 of the complaint, this answering defendant is without knowledge
27 or information sufficient to form a belief as to the truth of the allegations in this paragraph.

28 32. In response to Paragraph 32 of the complaint, this answering defendant is without knowledge

1 or information sufficient to form a belief as to the truth of the allegations in this paragraph.

2 33. In response to Paragraph 33 of the complaint, this answering defendant is without knowledge
3 or information sufficient to form a belief as to the truth of the allegations in this paragraph.

4 34. In response to Paragraph 34 of the complaint, this answering defendant is without knowledge
5 or information sufficient to form a belief as to the truth of the allegations in this paragraph.

6 35. This answering defendant admits to the facts in paragraph 35 of the complaint.

7 36. In response to Paragraph 36 of the complaint, this answering defendant denies the allegations
8 in this paragraph.

9 37. In response to Paragraph 37 of the complaint, this answering defendant admits that the
10 Statement of Probable Cause and warrant did not make any reference to EBPS. Except as
11 admitted herein, the allegations of this paragraph are denied.

12 38. In response to Paragraph 38 of the complaint, this answering defendant is without knowledge
13 or information sufficient to form a belief as to the truth of the allegations in this paragraph.

14 39. In response to Paragraph 39 of the complaint, this answering defendant admits that on August
15 27, 2008, at least four officers from the UCPD (Defendants Kasiske, MacAdam, Alberts and
16 Bauer) and at least two officers acting on behalf of the FBI (this answering defendant and
17 Defendant Hart) arrived at Long Haul. This answering defendant admits no one was inside.
18 This answering defendant admits that some members of the group executing the warrant
19 gained access to the premises by unchaining the back door. Except as expressly admitted
20 herein, the allegations in this paragraph are denied.

21 40. In response to Paragraph 40 of the complaint, this answering defendant admits that she did
22 not show the warrant to anyone during the execution of the warrant. As to the remaining
23 allegations, this answering defendant is without knowledge or information sufficient to form
24 a belief as to the truth of the allegations.

25 41. In response to Paragraph 41 of the complaint, this answering defendant admits that members
26 of the investigative team spent approximately two hours searching the premises, that the team
27 did not permit anyone to enter the building during the search, that members of the team
28 looked through the logs of individuals who borrowed books and/or purchased books. Except

1 as expressly admitted, this answering defendant is without knowledge or information
2 sufficient to form a belief as to the truth of the allegations

3 42. In response to Paragraph 42 of the complaint, this answering defendant admits that the team
4 executing the warrant removed all computers they located during the search, including
5 computers located in public spaces and in locked offices. The remainder of the allegations in
6 this paragraph are denied.

7 43. This answering defendant is without knowledge or information sufficient to form a belief as
8 to the truth of the allegations in Paragraph 43 of the complaint.

9 44. This answering defendant is without knowledge or information sufficient to form a belief as
10 to the truth of the allegations in Paragraph 44 of the complaint.

11 45. This answering defendant denies the allegations in Paragraph 45 of the complaint.

12 46. This answering defendant is without knowledge or information sufficient to form a belief as
13 to the truth of the allegations in Paragraph 46 of the complaint.

14 47. This answering defendant is without knowledge or information sufficient to form a belief as
15 to the truth of the allegations in Paragraph 47 of the complaint.

16 48. This answering defendant is without knowledge or information sufficient to form a belief as
17 to the truth of the allegations in Paragraph 48 of the complaint.

18 49. In response to Paragraph 49 of the complaint, this answering defendant denies the allegations
19 in the paragraph.

20 50. In response to Paragraph 50 of the complaint, this answering defendant is without knowledge
21 or information sufficient to form a belief as to the truth of the allegations in this paragraph.

22 51. In response to Paragraph 51 of the complaint, this answering defendant denies the allegations
23 in this paragraph.

24 52. In response to Paragraph 52 of the complaint, this answering defendant is without knowledge
25 or information sufficient to form a belief as to the truth of the allegations in this paragraph.

26 53. In response to Paragraph 53 of the complaint, this answering defendant is without knowledge
27 or information sufficient to form a belief as to the truth of the allegations in the first sentence
28 of this paragraph. This answering defendant denies the allegations in the remainder of this

- 1 paragraph.
- 2 54. In response to Paragraph 54 of the complaint, this answering defendant is without knowledge
3 or information sufficient to form a belief as to the truth of the allegations in this paragraph.
- 4 55. In response to Paragraph 55 of the complaint, this answering defendant admits that pursuant
5 to a stipulation dated May 19, 2009, all parties agreed that defendants would refrain from
6 searching any of the data seized or copied from Slingshot and EBPS without advance notice
7 to the plaintiffs. This answering defendant denies the remainder of the allegations in this
8 paragraph.
- 9 56. In response to Paragraph 56 of the complaint, this answering defendant denies the allegations
10 in this paragraph.
- 11 57. In response to Paragraph 57 of the complaint, this answering defendant denies the allegations
12 in this paragraph.
- 13 58. In response to Paragraph 58 of the complaint, this answering defendant denies the allegations
14 in this paragraph.
- 15 59. This answering defendant's responses to paragraphs 1-58 are incorporated by reference. This
16 paragraph is no longer operative following the Court's order granting defendants' motion to
17 dismiss in part. To the extent a response is required, this answering defendant denies the
18 allegations in this paragraph.
- 19 60. In response to Paragraph 60 of the complaint, this paragraph is no longer operative following
20 the Court's order granting defendants' motion to dismiss in part. To the extent a response is
21 required, this answering defendant denies the allegations in this paragraph.
- 22 61. This answering defendant's responses to paragraphs 1-60 are incorporated by reference.
- 23 62. In response to Paragraph 62 of the complaint, this answering defendant denies the allegations
24 in this paragraph.
- 25 63. This answering defendant's responses to paragraphs 1-62 are incorporated by reference. This
26 paragraph is not alleged against this answering defendant. Therefore, no response is required.
27 To the extent a response is required, this answering defendant denies the allegations in this
28 paragraph.

1 64. In response to Paragraph 64 of the complaint, this paragraph is not alleged against this
2 answering defendant. Therefore, no response is required. To the extent a response is
3 required, this answering defendant denies the allegations in this paragraph.

4 65. This answering defendant's responses to paragraphs 1-64 are incorporated by reference. To
5 the extent a response is required, this answering defendant denies the allegations in this
6 paragraph.

7 66. In response to Paragraph 66 of the complaint, this answering defendant denies the allegations
8 in this paragraph.

9 67. This answering defendant denies the allegations in Paragraph 67.

10 With respect to the six paragraphs in plaintiffs' prayer for relief, defendant denies that
11 plaintiffs are entitled to any of the relief prayed for therein and deny that plaintiffs are entitled to
12 judgment against defendant.

13 All allegations not specifically admitted, denied or modified, are hereby denied.

14 **AFFIRMATIVE DEFENSES**

15 **FIRST AFFIRMATIVE DEFENSE**

16 The complaint fails to state a claim upon which relief can be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 The complaint fails to state a violation of any of the provisions of the United States
19 Constitution cited by plaintiffs.

20 **THIRD AFFIRMATIVE DEFENSE**

21 This defendant has qualified immunity from suit for plaintiffs' causes of action arising under
22 the United States Constitution.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 Any injury to plaintiffs, and any loss or other damage to plaintiffs, was not proximately
25 caused by any negligent or otherwise wrongful act or omission of this answering defendant.

26 **FIFTH AFFIRMATIVE DEFENSE**

27 Defendant was at all times material hereto acting with both subjective and objective good
28 faith, such that any claim for relief that Plaintiffs may have is barred by law.

1 **SIXTH AFFIRMATIVE DEFENSE**

2 Defendant's conduct was at all times material hereto privileged and/or justified under
3 applicable law.

4 **SEVENTH AFFIRMATIVE DEFENSE**

5 To the extent plaintiffs may have failed to mitigate their damages, any recovery or other
6 award must be reduced accordingly.

7 **EIGHTH AFFIRMATIVE DEFENSE**

8 For each claim or cause of action, any damages or injuries alleged were proximately caused
9 in whole or in part by the negligence, fault, carelessness, or willful acts or omissions of plaintiffs,
10 or of parties whom this answering defendant neither controlled nor had the right to control, and
11 not by any acts, omissions or other conduct of this answering defendant. Therefore, any damages
12 sustained by plaintiffs are barred against defendants or must be reduced under principles of
13 comparative fault or equitable indemnity.

14 **NINTH AFFIRMATIVE DEFENSE**

15 Plaintiffs have failed to state a claim for declaratory relief.

16 **TENTH AFFIRMATIVE DEFENSE**

17 Plaintiffs have failed to state a claim for injunctive relief.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 Probable cause existed to justify the search and seizure of items listed in the search warrant at
20 issue in this case.

21 **TWELFTH AFFIRMATIVE DEFENSE**

22 This answering defendant had a reasonable good faith belief in the lawfulness of her conduct,
23 under 42 U.S.C. § 2000AA-6(B).

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25 This defendant reserves the right to amend her Answer with additional defense of which she
26 may become aware as this matter progresses and to raise any other matter constituting an
27 avoidance or affirmative defense.

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WHEREFORE, Defendant prays that:

1. The complaint be dismissed;
2. Plaintiffs take nothing by this action;
3. The Court enter judgment in favor of Defendant on all claims; and
4. The Court grant such other and further relief as it deems proper.

DATED: January 15, 2010

JOSEPH P. RUSSONIELLO
United States Attorney

/s/
JONATHAN U. LEE
Assistant United States Attorney
Attorneys for Defendant Shaffer

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Defendant Shaffer hereby demands a trial by jury in this matter.

DATED: January 15, 2010

JOSEPH P. RUSSONIELLO
United States Attorney

/s/
JONATHAN U. LEE
Assistant United States Attorney
Attorneys for Defendant Shaffer