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| 11                    | UNITED STATES I  |  |
| 12                    | FOR THE NORTHERN DIS   | STRICT OF CALIFORNIA                                       |
| 13                    |  |  |
| 4                     | THE MARY FERRELL FOUNDATION, INC.; JOSIAH THOMPSON; and GARY   | No. 3:22-cv-06176-RS                                       |
| 15                    | AGUILAR,   | TABLE OF CONTENTS AND TABLE OF                             |
| 6                     | Plaintiffs,  | AUTHORITIES RE PLAINTIFFS' MEMORANDUM OF POINTS AND        |
| 7<br> 8               | v.   | AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS |
| <br> 9                | JOSEPH R. BIDEN, in his official capacity as   |  |
| 20                    | President of the United States; and the  | Date: January 18, 2024                                     |
| 21                    | NATIONAL ARCHIVES AND RECORDS ADMINISTRATION,  | Time: 1:30 pm Dept: Hon. Richard Seeborg                   |
| 22                    | Defendants.  |  |
| 23                    |  |  |
| 24                    |  | I  |
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Table of Contents and Table of Authorities re Plaintiffs' MPA in Opposition to Dismiss Third Amended Complaint Case No. 3:22-cv-06176-RS

| 1            | TABLE OF CONTENTS Pa  | <u>ge</u>  |
|--------------|---|------------|
| 2            |   |            |
| 3 4          | I. A SUMMARY OF THE THEORIES UNADDRESSED IN DEFENDANT'S MOTION  | 2          |
| 5            | II. PLAINTIFFS SEEK COURT FINDINGS AND ORDERS REGARDING THEORIES MOSTLY UNADDRESSED IN DEFENDANT'S MOTION   |            |
| 6<br>7       | III. NARA PROVIDED IMPROPER STANDARDS TO THE PRESIDENT  | 4          |
| 8<br>9<br>10 | IV. NARA GOT THE BEST OF BOTH WORLDS – THE PRESIDENT POSTPONED RELEASE BASED ON SECTION 5(g)(2)(D), WHILE NARA PROVIDED ITS RECOMMENDATIONS TO THE PRESIDENT BASED ON SECTION 6 AND WATERED-DOWN, NON-STATUTORY STANDARDS | 5          |
| 11           | V. ANALYSIS OF THE LEGISLATIVE FRAMEWORK OF SECTIONS 5, 6 AND 9   | 7          |
| 12           | VI. ADDITIONAL DOCUMENTS MUST BE REVIEWED,  |            |
| 13<br>14     | TRANSMITTED AND DISCLOSED, IN ORDER TO COMPLETE THE COLLECTION  | 8          |
| 15<br>16     | A. NARA has a duty to certify that all assassination records have been made available to the public.  | <b>;</b>   |
| 17<br>18     | B. NARA has mandatory duties to review, obtain, and transmit all assassination records.   | 10         |
| 19           | VII. PLAINTIFFS' THREE CAUSES OF ACTION ARE PROPER  | 11         |
| 20<br>21     | A. Plaintiffs' First Cause of Action properly alleges that the Biden Memos expressly violate the JFK Act.   | l <b>1</b> |
| 22           | B. Plaintiffs' Second Cause of Action properly states that the Defendant  |            |
| 23           | has a Section 6 duty to release the names and identities of individuals and a Section 12 duty to complete outstanding records searches and continue to  | •          |
| 24           | collect records until "all assassination records have been obtained".   | 2          |
| 25  <br>26   | 1. NARA's mandatory duties are spelled out in the Second Cause of Action.   | 2          |
| 27           | 2. NARA's continuing duty to obtain "assassination records" pursuant to the JFK Records Act.  | 4          |
| 28           | 3. Sections 5, 6 and 9 provide a "siloed structure" 1   | 4          |

| 1  | a. The court issued no final opinion on the continued   |    |
|----|---|----|
| 2  | vitality of periodic review.  | 14 |
| 3  | b. The Transparency Plans fail to mention the "legally required" periodic reviews by NARA and the |    |
| 4  | agencies, which constitutes "failure to act" under  |    |
| 5  | 551(13).  | 16 |
| 6  | 4. Agency action is the failure to act on an agency rule  | 17 |
| 7  | 5. NARA has a mandatory duty to conduct periodic review under                                     |    |
| 8  | <b>Section 9(d)(2).</b>   | 17 |
| 9  | 6. Event-based or circumstance-based review is not periodic.                                      | 18 |
| 10 | 7. Differing interpretations with no explanation are arbitrary                                    |    |
| 11 | and capricious.   | 18 |
| 12 | 8. As confederates and associates of NARA, nonparties such as                                     |    |
| 13 | CIA and DOD can be ordered by this court to revise their<br>Transparency Plans                    | 20 |
| 14 | C. On the Third Cause of Action, Plaintiffs have a long list of Destroyed,                        |    |
| 15 | Missing, and Removed Records pursuant to the Federal Records Act                                  | 21 |
| 16 | 1. Defendant's argument   | 21 |
| 17 | 2. Investigators can rarely determine if the documents absent                                     |    |
| 18 | from the files is "missing, destroyed, or removed"  | 21 |
| 19 | 3. Previous versions of the complaint seek "missing" and  |    |
| 20 | "destroyed" documents.  | 21 |
| 21 | 4. Defendant's claim that "removal" is not the same as "missing"                                  |    |
| 22 | is unreasonable.  | 22 |
| 23 | 5. The Joannides and Marcello documents have been "removed"                                       | 22 |
| 24 | in a special way.   | 22 |
| 25 | 6. The Plaintiffs should be allowed to conduct discovery to prove their claim.                    | 23 |
| 26 |   |    |
| 27 | CONCLUSION  | 26 |
| 28 |   |    |

| 1        | TABLE OF AUTHORITIES   | Page     |
|----------|--|----------|
| 2        | CASES  |          |
| 3        | ACLU v. Dep't of Def., 351 F. Supp. 265 (S.D.N.Y. 2005)  | 25       |
| 4        | ACLU of Florida v. ICE, 2023 WL 6461053  | 21, 26   |
| 5        | Alemite Mfg. Co. v. Staff, 42 F.2d 832 (2nd Cir. 1930)   | 21       |
| 6<br>7   | American Friends Service Committee v. Webster, 720 F. 29 (D.C. Cir. 1983)                                      | 23       |
| 8        | Armstrong v. Bush, 924 F.2d 282 (DCA 1991)   | 23       |
| 9        | Bothwell v. CIA, 2014 LEXIS 144151 (N.D.C  |          |
| 10       | Cause of Action Inst. v. Pompeo, 319 F.Supp. 3d 230 (D.D.C. 2018)  | 21       |
| 11       | Chase National Bank v. City of Norwalk, 291 U.S. 431 (1934)  | 20       |
| 12       | Children's Hosp. & Health Center v. Belshe, 188 F.3d 1090 (9th Cir. 1999)                                      | 2, 10    |
| 13<br>14 | Citizens for Responsibility & Ethics in Wash. v. Exec. Office of the President, 587 F.Supp.2d 48 (D.D.C. 2008) | 23, 25   |
| 15       | Hells Canyon Pres. Council v. U.S. Forest Service, 593 F.3d 923 (9th Cir. 2010)                                | 2        |
| 16       | Lujan v. Defs. of Wildlife, 504 US 555 (1992)  | 21       |
| 17       | M.S. v. Brown, 902 F.3d 1076 (9th Cir. 2018)   | 21       |
| 18<br>19 | Norton v. Southern Utah Wilderness All., 542 U.S. 55 (2004)  | 2, 17    |
| 20       | Plaskett v. Wormuth, 18 F.4 <sup>th</sup> 1072 (9 <sup>th</sup> Cir. 2021)                                     | 9        |
| 21       | Valencia-Lucena v. US Coast Guard, FOIA/PA Records, 180 F.3d 321 (DCA, 19                                      | 99) 26   |
| 22       | Wildearth Guardians v. Chao, 454, F.Supp.3d 944 (D. Mont. 2020)  | 17       |
| 23       |  |          |
| 24<br>25 | STATUTES   |          |
| 26       | President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. Section 2107, note           | passim   |
| 27       | §2(a)  | 19       |
| 28       | \\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\   | 3, 8, 10 |
|          | iv   |          |

Table of Contents and Table of Authorities re Plaintiffs' MPA in Opposition to Dismiss Third Amended Complaint Case No. 3:22-cv-06176-RS

| 1                               | §2(a)(3)       | 13                       |  |
|---------------------------------|----------------|--------------------------|--|
| 2                               |                |                          |  |
| 3                               | §3(10)         | 12, 16, 19               |  |
| 4                               | §4             | 10                       |  |
| 5                               | §5             | 3-4, 6-7, 10, 15, 19-20  |  |
| 6                               | §5(c)(2)(F)    | 4, 8, 10, 14             |  |
| 7<br>8                          | §5(c)(2)(H)    | 4, 8, 10, 14             |  |
| 9                               | §5(g(1)        | 7, 9, 15                 |  |
| 10                              | §5(g)(2)(A)    | 14-15                    |  |
| 11                              | §5(g)(2)(D)    | 3-7, 11, 14-16, 20       |  |
| 12<br>13                        | §6             | 3, 5-8, 11-13, 15-17, 19 |  |
| 14                              | §6(3)          | 4, 20                    |  |
| 15                              | §6(4)          | 18                       |  |
| 16                              | §7             | 4, 9                     |  |
| 17                              | §7(i)          | 10                       |  |
| 18<br>19                        | §7(j)(1)(C)(2) | 4, 8, 10, 14             |  |
| 20                              | §8             | 9                        |  |
| 21                              | §9             | 3                        |  |
| 22                              | §9(c)(1)       | 11                       |  |
| 23                              | §9(c)(3)(B)    | 7                        |  |
| <ul><li>24</li><li>25</li></ul> | §9(d)          | 6, 15-17                 |  |
| 26                              | §9(d)(1)       | 16                       |  |
| 27                              | §9(d)(2)       | 3, 6-7, 9, 15, 18        |  |
| 28                              | §11(a)         | 3                        |  |
|                                 |                | V                        |  |

## Case 3:22-cv-06176-RS Document 88 Filed 11/27/23 Page 6 of 6

| 1        | §12                        | 12-13                      |
|----------|----------------------------|----------------------------|
| 2        | 812                        | 12-13                      |
| 3        | §12(a)                     | 9                          |
| 4        | §12(b)                     | 2-5, 8-10, 13-14           |
| 5        | 5 U.S.C. 551(13)           | 2, 15, 17                  |
| 6        | 5 U.S.C. 706(1)            | 2, 15, 17                  |
| 7<br>8   | 5 U.S.C. 706(2)(A)         | 19                         |
| 9        | Regulations                |                            |
| 11       | 36 C.F.R. 1290.1           | 10                         |
| 12       | 65 FR 39550                | 10                         |
| 13       |                            |                            |
| 14       | Presidential Memoranda     |                            |
| 15       | 2022 Biden Memo, Section 6 | 5, 12, 20                  |
| 16       | 2023 Biden Memo            | 6                          |
| 17       | Previous Ruling            |                            |
| 18<br>19 | Order of 7/14/23, ECF 68   | 2-3, 6-8, 11-12, 14-16, 22 |
| 20       |                            |                            |
| 21       |                            |                            |
| 22       |                            |                            |
| 23       |                            |                            |
| 24       |                            |                            |
| 25       |                            |                            |
| 26       |                            |                            |
| 27       |                            |                            |
| 28       |                            |                            |
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