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10 ATTORNEYS FOR PLAINTIFFS MARGUERITE HIKEN AND THE MILITARY LAW TASK
FORCE

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12 **UNITED STATES DISTRICT COURT FOR THE**
NORTHERN DISTRICT OF CALIFORNIA
13 **SAN FRANCISCO DIVISION**

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15 MARGUERITE HIKEN and
16 THE MILITARY LAW TASK FORCE,

17 Plaintiffs,

18 v.

19 DEPARTMENT OF DEFENSE
20 and UNITED STATES
CENTRAL COMMAND,

21
22 Defendants.

Case No.

**COMPLAINT FOR
INJUNCTIVE RELIEF**

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25 **I. PRELIMINARY STATEMENT**

26 1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”),
27 seeking an Order for the disclosure and release of agency records improperly withheld from
28

1 lies in this district under 5 U.S.C. § 552(a)(4)(B). The Plaintiffs reside in San Francisco, California,
2 which is in the Northern District of California.

3 4 **III. PARTIES**

5 6. Plaintiff Military Law Task Force (“MLTF”) is a subcommittee of the National
6 Lawyers Guild that works on military law issues, including assisting soldiers, training and
7 mentoring counselors who assist soldiers, and tracking changes in military law and policy. The
8 MLTF also publishes a newsletter, “On Watch,” which includes articles and training materials for
9 attorneys and non-attorney advocates, policy discussions, and analysis of changes in military law,
10 regulations and practice. The MLTF seeks to publish an article on the war in Iraq using documents
11 it requested from the DOD. Despite receiving a proper FOIA request, the DOD has not provided
12 the documents within the statutory time frame provided in the Freedom of Information Act.

13 7. Plaintiff Marguerite Hiken serves as co-chair of the MLTF. Ms. Hiken seeks to
14 prepare an article for publication in “On Watch” concerning U.S. military action in Iraq based on
15 the requested documents.

16 8. Plaintiffs’ article will serve the public interest by addressing the allegations of
17 potential human rights abuses committed during the siege of Fallujah, including the use of
18 chemical weapons i.e., white phosphorous, and the wide-scale and indiscriminate killing of the
19 citizens of Fallujah, resulting in a massive death toll. Additionally, the article will address the
20 attack on the vehicle used in the rescue of journalist Sgrena and whether she was a target of the
21 U.S. military due to the contents of her reporting. Eighty-six journalists and media assistants have
22 been killed during the occupation, with some allegedly targeted by US military personnel.
23 *Slaughter in Iraq*, REPORTERS WITHOUT BORDERS 2, 7, March 2006,
24 http://www.rsf.org/IMG/pdf/Survey_RSFIraq_06.pdf.

25 9. Defendant DOD is a department of the Executive Branch of the United States
26 Government. The DOD is an agency within the meaning of 5 U.S.C. 552(f)(1). CENTCOM is a
27 component of the DOD.
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1 **IV. STATEMENT OF FACTS**

2 **A. The March 2005 Request**

3 10. By letter dated March 17, 2005, Plaintiffs submitted the Request seeking records
4 concerning:

- 5 (1) The ROE in effect for military personnel who, on March 4, 2005, fired upon, or
6 ordered the firing upon, a car carrying Italian journalist Giuliana Sgrena while she
7 was en route to the Baghdad airport;
- 8 (2) Any other documents bearing on an purported justification for the actions taken by
9 the military, or any personnel, in firing on Ms. Sgrena's car on March 4, 2005;
- 10 (3) Any and all ROE in effect for military personnel engaged in Fallujah, Iraq, from
11 March through December 2004; and,
- 12 (4) Any and all documents (guidelines, directives, trainings, rules, orders, etc.) which
13 relate to, touch upon, or concern the judgments of U.S. military personnel in Iraq in
14 distinguishing between civilians and combatants, including without limitation, such
15 decision-making in Fallujah and along the road to the Baghdad airport in Iraq.

16 11. Plaintiffs seek the requested documents to write an article that will be disseminated
17 to the general public through the widely distributed newsletter "On Watch," which is available for
18 free in electronic format.

19 12. Plaintiffs requested a limitation of processing fees pursuant to 5 U.S.C. §
20 552(a)(4)(A)(ii)(II) based on Plaintiffs' status as representatives of the news media.

21 13. Plaintiffs also requested a waiver of processing fees pursuant to 5 U.S.C. §
22 552(a)(4)(A)(iii) on the grounds that disclosure of the requested information is in the public interest
23 in that it is likely to contribute significantly to public understanding of the operations and the
24 activities of the DOD and is not primarily for commercial interest.

25 14. Plaintiffs filed the Request in the wake of an incident in which members of the U.S.
26 military fired upon a car carrying journalist Giuliana Sgrena, killing Nicola Calipari, the Italian
27 agent riding in the car with her who died protecting her from U.S. gunfire. This incident has given
28 rise to allegations of wrongdoing by the soldiers who fired on the car and by the U.S. military. It

1 has also prompted inquiry into the ROE under which the soldiers were acting and how the military
2 distinguishes between civilians and combatants on the roads in Iraq.

3 15. In light of the high death toll in the April 2004 siege on Fallujah, the Sgrena
4 incident generated additional questions about the ROE under which the soldiers were acting in
5 Fallujah. The high civilian death toll in Fallujah prompted further questions about how the military
6 distinguished between civilians and combatants during the siege.

7 16. Many articles have been written in the print and electronic media highlighting the
8 controversial actions of the U.S. military in the above incidents. *E.g.*, Jeremy Scahill, *Iraq*
9 *Checkpoint Killings Unchecked*, COMMON DREAMS, March 23, 2005,
10 <http://www.commondreams.org/views05/0323-35.htm> (“Shootings like this happen almost
11 everyday in Iraq. The Sgrena case happens to be receiving media attention because of who was
12 killed”); R. Jeffrey Smith and Ann Scott Tyson, *Shootings by U.S. at Iraq Checkpoints Questioned*,
13 WASHINGTON POST, March 7, 2005, at p. A01 (“U.S. soldiers have fired on the occupants of many
14 cars approaching their positions over the past year and a half, only to discover that the people they
15 killed were not suicide bombers or attackers but Iraqi civilians. They did so while operating under
16 rules of engagement that the military has classified and under a legal doctrine that grants U.S.
17 troops immunity from civil liability for misjudgment”); *Iraq shooting: Differing accounts*, BBC
18 NEWS, May 3, 2005, <http://news.bbc.co.uk/2/hi/europe/4325253.stm> (“The US, the Italian
19 government and Ms. Sgrena have differing accounts of what happened, while prosecutors in Rome
20 are still conducting their own investigation”); Dan Murphy, *Siege of Fallujah polarizing Iraqis*,
21 THE CHRISTIAN SCIENCE MONITOR, April 15, 2004, [http://www.csmonitor.com/2004/0415/p01s02-](http://www.csmonitor.com/2004/0415/p01s02-woiq.html)
22 [woiq.html](http://www.csmonitor.com/2004/0415/p01s02-woiq.html) (“The Marines and coalition officials say they doubt many civilians have been killed in
23 Fallujah and promise that their rules of engagement limit civilian casualties”); and *Fallujah death*
24 *toll for week more than 600*, USATODAY.COM, April 11, 2004 (“More than 600 Iraqis have been
25 killed in Fallujah since Marines began a siege against Sunni insurgents in the city a week ago, most
26 of them women, children and the elderly, the head of the city’s hospital said Sunday”). Despite
27 such media coverage, the questions raised by the military’s actions have gone unanswered because
28 of the DOD’s failure to release the requested documents.

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Third Cause of Action:

Violation of the FOIA for Failure to
Make a Reasonable Effort to Search for Records

31. Defendants' failure to make a reasonable effort to search for records responsive to the March 2005 Request violates the FOIA, 5 U.S.C. § 552(a)(3)(C), and the corresponding agency regulations.

Fourth Cause of Action:

Violation of the FOIA for Failure to
Limit Processing Fees

32. Defendants' failure to grant Plaintiffs' request for limitation of processing fees violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II), and the corresponding agency regulations.

Fifth Cause of Action:

Violation of the FOIA for Failure to
Waive Processing Fees

33. Defendants' failure to grant Plaintiffs' request for a waiver of processing fees violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and the corresponding agency regulations.

VI. REQUESTED RELIEF

WHEREFORE, Plaintiffs pray that this court:

1. Order Defendants to immediately conduct a thorough search for the requested documents;
2. Order Defendants to expeditiously process all requested documents;

1 3. Order Defendants, upon completion of such processing, to disclose the requested
2 records in their entirety and make copies available to Plaintiffs;

3 4. Enjoin Defendants from charging Plaintiffs fees for the processing of their Request;

4 5. Order expedited proceedings in this action;

5 6. Award Plaintiffs their costs and reasonable attorneys' fees incurred in this action;

6 and,

7 7. Grant such other relief as the Court may deem just and proper.

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Respectfully submitted,

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BY: _____

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COLLEEN FLYNN

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CHRIS FORD

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W. GORDON KAUPP

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Attorneys for Plaintiffs

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