

# **EXHIBIT A**

**From:** Chris Tompkins  
**Sent:** Friday, January 13, 2017 2:50 PM  
**To:** Warden, Andrew (CIV)  
**Cc:** Paszamant, Brian; Chris Tompkins  
**Subject:** Assertion of privilege

Andrew,

Thank you for speaking with me today when I called in response to your request that we speak again before Defendants move with respect to privilege assertions. I will recap our conversation in this email. Please let me know if you believe I have misstated any aspect of it.

First, we appreciate the fact that you are reviewing the list of documents either entirely withheld or for which you agreed to review to determine whether you can provide us additional information about any of the redactions. Any information you can provide us after that review should be helpful. As we discussed with respect to your questioning whether you should continue that review in light of our intention to file a motion, the result of such a review may permit us to determine that some documents are not significant, so that they can be excluded from a motion before consideration by the Court. Although we did not discuss it on the call, I note that the documents are, by definition, within the cohort of documents which the Court has determined are relevant and must be produced.

You asked what we would seek in a motion, and I responded that we would seek to require the US either to actually assert the state secret and other privileges, at which point those assertions can be addressed, or to provide unredacted copies of the documents. You suggested that we should first try to narrow the group of documents at issue, to which I offered 2 responses. Our motion will address a higher, or less granular, level of analysis. Defendants want the US to assert – or not assert – the privileges. We are not in a position to narrow the documents at issue; for most of the documents, we do not have any basis for determining that a particular document is not significant, and can be excluded from consideration. As we discussed, we are willing to consider any additional information or guidance that you can provide which would permit us to make that determination as to any document or documents. And, we do not have time to proceed on that basis. I have checked the scheduling

order, and it requires that any motion be filed **and heard** before the February 17 discovery deadline.

You suggested that the Court should not be required to review “every document”, but of course the Court will not be required to review *any document* unless the privilege is actually asserted. AS mentioned above, if you provide us additional information about any redactions, we may be able to narrow the documents the Court might eventually be required to review.

You asked how much time we would allow the US to act, and I responded that would be up to the Court, not us.

We also discussed the fact that any motion would address Mr. Cotsana. Mr. Cotsana has testimony directly relevant to our defenses – he can say what Defendants did and did not do, and describe how the EIT program worked. You assert that any substantive testimony by him – or other witnesses - is precluded as classified. We will ask the Court to address this assertion as well. I note that my understanding is that your agreement with Brian Paszaman to interlineate the Cotsana topic outline anticipated that such a motion would be filed.

Finally, we discussed that we will seek expedited briefing and determination, but that we would not ask you to commit on that issue until you have the opportunity to see our motion.

Again, thank you for the call, and please let me know if I have omitted or misstated any of our conversation.

**Christopher W. Tompkins**

**Shareholder**

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