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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 H. RAY LAHR,) Case No. 03-08023 AHM (RZx)
14)
15 Plaintiff,) **PLAINTIFF'S STATEMENT OF**
16) **GENUINE ISSUES IN OPPOSITION**
17 v.) **TO CIA MOTION FOR PARTIAL**
18) **SUMMARY JUDGMENT**
19 NATIONAL TRANSPORTATION)
20 SAFETY BOARD, *et al.*)
21)
22 Defendants.)
23)
24)
25)

21 Date: July 10, 2006
22 Time: 10:00. a.m.
23 Place: Courtroom 14, 312 N. Spring
24 Street, Los Angeles, CA 90012
25 Judge: Honorable A. Howard Matz

26 Plaintiff submits this statement of genuine issues, under L.R. 56-2, setting
27 forth issues of material fact necessary to be litigated. Facts 1-24 below correspond
28 to the facts and supporting evidence presented in the statement of uncontroverted

1 facts filed by the CIA. These facts are followed by additional material facts and
2 supporting evidence also showing genuine issues.

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4 MOVING PARTY'S ALLEGED
5 UNCONTROVERTED FACTS

RESPONSE

6 1. The National Security Agency
7 (NSA) has relied on § 6(a) of the
8 NSA Act of 1959, 50 U.S.C. § 402
9 note, and Exemption 3 to the
10 Freedom of Information Act
11 (FOIA), 5 U.S.C. § 552(b)(3), to
12 withhold the computer program that
13 the Central Intelligence Agency
14 (CIA) used to prepare its simulation
15 of the explosion of TWA Flight
16 800.

17 [See Giles Dec1. ¶¶ 7,12-14.]

18
19 2. The withheld program is an NSA
20 record.

21 [See 3d Buroker Decl. ¶ 7]

22
23 3. The NSA uses the program to
24 “analyze [] the performance
25 characteristics of foreign weapons
26 systems that are aerodynamic or
27 ballistic.”

28 [See Giles Decl. ¶ 11.]

1. Plaintiff admits that this is
undisputed.

2. Plaintiff admits that this is
undisputed.

3. Plaintiff admits that this is
undisputed.

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2 4. The CIA has relied on 50 U.S.C. §
3 403g and Exemption 3 to withhold
4 an intelligence method from two
5 records; CIA “organizational data”
6 from one record; and the names of
7 CIA personnel from six records.
8 [3d Buroker Decl. ¶ 9 (citing 1st
9 Buroker Decl. ¶¶ 26-32) & p. 50.]
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11 5. The association, if any, between
12 the name “Randolph M. Tauss” and
13 any record in this case from which
14 the name has been withheld by the
15 CIA has not been officially
16 disclosed.
17 [See 2d Buroker Decl. ¶ 9.]
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4. Plaintiff denies that that this is
uncontested. Defendant must
identify the records to which it refers
before plaintiff can admit that this is
undisputed.

5. Plaintiff denies that that this is
uncontested. The Washington
Times article (see docket # 63 1
Lahr Aff. Bates 31) identifies
Randolph M. Tauss as having
received "an intelligence medal for
his work on the crash." That
December 2003 article further states
that "[t]he CIA recently declassified
a once-secret report on the
eyewitnesses to the crash." Clearly,
this report is responsive, has been
officially acknowledged, and the
information withheld, the name
Randolph M. Tauss, "match[es] the
information previously disclosed."

1 6. The NSA has relied on Exemption
2 2, 5 U.S.C. § 552(b)(2), to
3 withhold the same computer
4 program that it has withheld
5 pursuant to Exemption 3 and §
6 6(a).

7 [Giles Decl. ¶¶ 10-11.]
8

9 7. The CIA has relied on Exemption
10 4, 5 U.S.C. § 552(b)(4), to
11 withhold, from two records,
12 “information relat[ing] to the flight
13 characteristics and performance of
14 a Boeing 747, for example, lift
15 coefficient, drag coefficient, and
16 pitching moment coefficient data.”

17 [3d Buroker Decl. ¶ 10.]
18

19 8. The Boeing Company (Boeing)
20 considers this information to be
21 proprietary and so, therefore, does
22 the CIA.

23 [See id.]
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6. Plaintiff admits that the NSA relied
on Exemptions 2 and 3, but denies
that that these Exemptions were
properly invoked.

7. Plaintiff admits that the CIA relied
on Exemption (b)(4), but denies
that that this Exemption was
properly invoked.

8. Plaintiff denies that Boeing
considers this information to be
proprietary. See Docket # 27: A
Hoffstadt Aff. Bates 39 ¶ 2:
"Breuhaus cites as proprietary data
the lift coefficient, pitching moment,
and drag coefficient of the 747-100
aircraft in two configurations...
However, this information is also
contained in Figures 1, 2, and 3,

1 respectively, in the NTSB *Main*
2 *Wreckage Flight Path Study*, Exhibit
3 22C, Docket Number SA-5 16, by
4 Dennis Crider."; A Hoffstadt Aff.
5 Bates 39 ¶ 3: "Breuhaus cites as
6 Boeing proprietary data the aircraft
7 gross weight, center of gravity, and
8 pitch and roll inertias of the 747- 100
9 in two configurations... However,
10 this data is listed plainly on Page 2 of
11 Exhibit 22C;" X Lahr Aff. Bates
12 285 ¶ 118: "the Boeing Model 747-
13 100's gross weight, center of gravity,
14 and pitch and roll inertias... before
15 and after nose separation... are
16 exactly what was published in the
17 NTSB accident report. Thus there is
18 no longer any proprietary argument
19 for secrecy regarding those
20 numbers." A Hoffstadt Aff. Bates
21 36 ¶ 13: "the CFD tool VSAERO
22 and the Boeing 747 geometry are
23 publicly available"; A Hoffstadt Aff.
24 Bates 39 ¶ 5: "Dennis Crider, in his
25 declaration, refers to the
26 'aerodynamics, propulsion,
27 geometry, controls mass properties
28 and so on of the aircraft' as Boeing

1 proprietary data. With the same
2 evidence stated above, the
3 aerodynamics, geometry, and mass
4 properties of the aircraft have been
5 made available to the public with
6 Boeing's knowledge and consent."; X Lahr Aff. Bates 285 ¶ 119: "The
7 lift coefficient, pitching moment
8 coefficient, and drag coefficient can
9 be found with reasonable accuracy in
10 Airplane Flight Dynamics and
11 Automatic Flight Controls by Jan
12 Roskam, a former Boeing engineer,
13 so there is no need for secrecy about
14 those numbers." X Lahr Aff. Bates
15 272 ¶ 43: "[the withheld data is]
16 available from at least four sources...
17 1. Operator Handbooks. 2. B-747
18 Flight Training Simulator. 3. B-747
19 Flight Data Recorders. 4.
20 Authoritative treatise."

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23 9. According to Boeing, the withheld
24 information has not entered the
25 public domain already and would
26 have a significant competitive
27 impact on Boeing if released.
28 [See 2d Breuhaus Decl. ¶¶ 7-10,

9. Plaintiff denies that that this is
uncontested. See Docket # 49, 2
Hoffstadt Aff. Bates 40 ¶ 45: "In
summary, the release of data in the
Records will most likely have zero
to negligible impact on the market

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value, competitive advantage, or sole source position of Boeing and its subsidiaries in relation to the 747 Classic SDP, simulators and related services. The remaining barriers and investments for a competitor to offer similar products and services are incredibly high, the market for these products and services has long past its peak demand, the future demand is in predictable permanent decline known to eventually be nonexistent, and Boeing would nonetheless remain the established authority and preferred source for these products and services due to its position as the developer and manufacturer of the aircraft in question."

21 10. The National Transportation Safety
22 Board (NTSB) has relied on
23 Exemption 5, 5 U.S.C. § 552(b)(5),
24 and the deliberative process
25 privilege to withhold, from two
26 records, certain "preliminary radar
27 data" and certain "handwritten
28 notes concerning that data."

10. Plaintiff admits that the NTSB
relied on Exemption (b)(5), but
disputes that that this Exemption
was properly invoked, and disputes
that radar data is deliberative .

1 [1st Supp. Moye Decl. ¶¶ 6(a), (d)]
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3 11. The data that the NTSB has
4 withheld “provided a starting point
5 for the [NTSB’s] simulations of the
6 [TWA Flight 800] flight path.”

7 Id.
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25 12. “The author(s) culled these data *Id.*
26 from an enormous collection of
27 radar returns to contribute to the
28 flight path derived from the

11. Plaintiff disputes that the data that
the NTSB has withheld “provided a
starting point for the [NTSB’s]
simulations of the [TWA Flight
800] flight path,” as this simulation
was not performed in good faith,
but rather the starting point was the
zoom-climb conclusion, as
explained by the CIA. See Docket
27: X Lahr Aff. Ex. 1, April 30,
1999, *Transcript of the CIA*
Briefing to the Witness Group,
Bates 304-05: CIA Analyst #1:
"The conclusion that the
eyewitnesses were only seeing the
burning aircraft was made at 10:00
p.m. at night on the 30th of
December 1996... there was a
realization... that you can explain
what the eyewitnesses are seeing
with only the burning aircraft."

12. Plaintiff denies that this is
undisputed. See Schulze Aff. Bates
95 ¶ 11: "The secrecy and
redactions surrounding the FL 800

1 simulations.” Id.

radar data, particularly the radar data from the Riverhead Site, located less than 15 miles from the exploding aircraft, fails to hide the fact that not a single radar data set was found to support the CIA zoom-climb postulation. All available radar evidence is consistent with the argument made by many people that the zoom-climb never occurred. The NTSB and CIA distorted, scrambled, and withheld this data from the public.”

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15 13. “The very act of distilling the *Id.*
16 significant facts from the
17 insignificant facts constituted an
18 exercise of judgment by agency
19 personnel.”

13. Plaintiff denies that this is undisputed. The use of radar data was not in good faith used by the government to derive the flight path of the aircraft. Id.

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21 14. The NTSB has also relied on
22 Exemption 5 and the deliberative
23 process privilege to withhold, from
24 two records, certain graphs
25 depicting “various versions of the
26 radar data provided by the Federal
27 Aviation Administration (FAA) for
28 TWA flight 800” and certain

14. Plaintiff admits that the NTSB relied on Exemption (b)(5), but disputes that that this Exemption was properly invoked, disputes that radar data is deliberative, and disputes that the government used the radar data to derive, in good faith, the flight path of the aircraft.

1 graphs depicting “various Id.
2 outcomes of the Main Wreckage
3 Simulation for TWA flight 800,
4 depicting differing parameters on
5 the x and y axes.”
6 [1st Supp. Moye Decl. ¶¶ 6(b),
7 (c).]

8 15. The graphs that have been withheld 15. Plaintiff denies that this is
9 “reflect the personal opinion of the undisputed. The graphs that have
10 writer rather than the policy of the been withheld do not reflect the
11 agency.” personal opinion of the writer –
12 [Id. ¶ 6(c) & p. 74.] radar data is not a personal opinion.

13
14 16. “Without the protection provided by 16. Plaintiff agrees that there is a valid
15 [Exemption 5], full and frank basis for the deliberative process
16 discussion of options and opinions privilege.
17 so vital to the decision-makers
18 would be impossible.”
19 [Id. ¶ 6(b).]

20
21 17. The CIA has relied on Exemption 5 17. Plaintiff denies that this is
22 and the deliberative process undisputed because the CIA fails to
23 privilege to withhold “a draft letter identify the record to which it
24 written by a CIA analyst for the refers.
25 consideration and signature of his
26 office management.”
27 [3d Buroker Decl. ¶ 11.]
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1 18. Drafted in March 1998, “this
2 document contains subjective
3 evaluation and individual judgments
4 regarding preliminary analysis of
5 newly acquired data.” *Id*
6 [Id.]
7

8 19. The CIA has relied on Exemption
9 7(C), 5 U.S.C. § 552(b)(7)(C), to
10 withhold, from three records, the
11 names of certain FBI special agents
12 and the names of certain
13 eyewitnesses to the explosion of
14 TWA Flight 800.
15 [3d Buroker Decl. ¶ 9.]
16

17 20. The CIA has relied on Exemption 6,
18 5 U.S.C. § 552(b)(6), to withhold
19 the same names that it has withheld
20 pursuant to Exemption 7(C).
21 [3d Buroker Decl. ¶ 9.]
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24 21. The CIA has withheld six records in
25 part and the NTSB has withheld
26 four records in part.
27 [See 3d Buroker Decl. ¶¶ 9-10; 1st
28 Supp. Moye Decl. ¶¶ 6(a)-(d).]

18. Plaintiff denies that this is
undisputed because the CIA fails to
identify the record to which it
refers.

19. Plaintiff admits that the NTSB
relied on Exemption (b)(7)(C), but
disputes that that this Exemption
was properly invoked. The CIA
fails to identify the records to which
it refers.

20. Plaintiff admits that the NTSB
relied on Exemption 6, but
disputes that that this Exemption
was properly invoked. The CIA
fails to identify the records to which
it refers.

21. Plaintiff denies that this is
undisputed. The CIA has withheld
dozens of records in part, and failed
to identify (and withheld) at least 22
records (see Exhibit B to plaintiff's

1 opposition filed herewith). The
2 NTSB has withheld over a dozen
3 records in part (NTSB Record Nos.
4 1-5, 10-13, 19, 21, 23, 34, 35, & 36).

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6 22. The CIA and NTSB have taken
7 pains to withhold from the
8 aforementioned records only those
9 portions that come within the scope
10 of the statutory exemptions.
11 [See 3d Buroker Decl., pp. 22-
12 35,37-48; 1st Supp. Moye Decl., pp.
13 65-73, 75-103, 105-14, 118-79.]

22. Plaintiff admits that the NTSB
and CIA have applied FOIA
exemptions, but disputes that that
these withholdings are properly
invoked, and disputes that these
agencies are acting in good faith.

14
15 23. The CIA has determined that “no
16 non-exemption material can
17 reasonably be segregated” from the
18 draft letter withheld pursuant to
19 Exemption 5 because of the “role
20 [of the letter] in the deliberative
21 processes” and because of its
22 “preliminary nature.”
23 [3d Buroker Decl, p. 50]

23. Assuming that the CIA is referring
to ¶ 11, page 5 of 3d Buroker Decl.,
plaintiff disputes that this post-
decisional record is subject to the
deliberative process privilege.

24
25 24. The NSA has determined that no
26 non-exempt material “can be
27 reasonably segregated” from the
28 computer program withheld

24. Plaintiff admits that the NSA
relied on Exemptions 3 and 2, but
disputes that that these Exemptions
were properly invoked.

1 pursuant to Exemptions 3 and 2
2 because the program “concerns the
3 functions and activities of the
4 NSA.”

5 [Giles Decl. ¶ 14.]
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7 Plaintiff also contends that the following additional material facts and
8 supporting evidence also showing genuine issues. Citations are to Docket # 27,
9 unless otherwise noted.
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13 25. Boeing-supplied data can be
14 segregated from the simulations.
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25. Leffler Aff. Bates 404 ¶ 53: "Even if Boeing's data is found to be proprietary, it is segregable, and can be redacted from the simulation program's source code. The NTSB claims its simulation program "cannot operate" with Boeing's data redacted, and thus the data is not segregable from the code. This is irrelevant. An executable version of the source code is unnecessary for plaintiff to inspect the source code to determine simulation's dynamics." 3rd Schulze Aff. filed herewith, Bates 97 ¶ 17: "The NTSB recites, in my opinion, very weak and obtuse arguments based on software

programmable complexity."

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4 26. The government misrepresented the
5 evidence.

6 26. [K Sanders Aff. Bates 177 ¶ 15
7 (quoting Nov. 1996 FBI SAIC James
8 Kallstom interview with Jim Lehrer):
9 "We think it was a meteorite shower,
10 Jim." [K Sanders Aff. Bates 181-82 Ex
11 2 (Affidavit of NASA chemist C. W.
12 Basset): "The tests performed by me at
13 NASA-KSC on samples Dr. Birky said
14 were from... [the] cabin interior did not
15 address the issue of origin of any
16 reddish-orange residue..."] [X Lahr
17 Aff. Bates 380 Ex 14 (Transcript of
18 August 22-23, 2000, NTSB Sunshine
19 Hearing): "Jim Hall: However, even
20 though our employees are not law
21 enforcement personnel, they examined
22 every piece of wreckage for any
23 physical evidence that the crash of
24 Flight 800 had been caused by a bomb
25 or missile. Had we found such
26 evidence, we would have immediately
27 referred the matter back to the
28 appropriate law enforcement agencies
for their action. Let me state
unequivocally, the Safety Board has

1 found no evidence....] [**Id.** Bates 381:
2 "Bernard Loeb: No. In fact, as the
3 chairman put up earlier on the slide,
4 there were a great number of outside
5 organizations that participated in the
6 explosives end of it. A large number of
7 different organizations, within the
8 government and outside the
9 government, who looked at the metal all
10 came to the same conclusion that there
11 was no physical evidence of a bomb or a
12 missile warhead exploding."] [**Id.** Bates
13 385: "David Mayer: Well, the first
14 witness listed in the advertisement
15 (compare **R** Wire Aff) is the witness on
16 the bridge when he saw the accident.
17 This is the witness I described earlier in
18 my presentation, and I told you that his
19 account was consistent with the motion
20 of the airplane and the crippled flight."]
21 [**Id.**: "The second witness (compare **P**
22 Brumley Aff) in the ad was the witness
23 who was on US Air Flight 217 and I
24 explained to you that he couldn't have
25 seen a missile hit TWA Flight 800
26 because the timing just simple doesn't
27 work out."] [**Id.**: "The fourth witness
28 (compare **S** Angelides Aff) listed in the

1 advertisement said he saw, or in the
2 advertisement it says he saw the
3 accident from the deck of his house ...
4 seeing a glowing red object pick up
5 speed and streak out to sea ... then he
6 saw a series of flashes and a fireball
7 according to the ad. However, July 21,
8 1996 when the interview[ee] was
9 interviewed, his FBI document says he
10 saw a red flare descending and makes
11 no mention of some of the other details.
12 In fact, he's the first witness I used as an
13 example in my presentation."] [**Id.**:
14 "The fifth witness (compare O Meyer
15 Aff) who's mentioned in the
16 advertisement is the pilot of the
17 National Guard helicopter who,
18 obviously, I already described that
19 mistook/studied? the radar data and
20 calculated the time for his departure
21 from the accident site to the rescue field.
22 Be said he'd seen a fireball and the
23 breakup sequence of the airplane, not a
24 missile."]

25
26 27. The government withheld evidence
27 during the probe.

27. [C Hill Aff. Bates 47: FBI SAIC
James Kallstrom claimed criminal
investigation in "pending inactive

1 status" as reason to continue to withhold
2 eyewitness FBI 302s from NTSB
3 Witness group.] [C Hill Aff. Bates 46 ¶
4 1: (quoting Commander William S.
5 Donaldson): "[T]he NTSB assisted the
6 Justice Department in hiding a witness
7 who claims to have seen a missile strike
8 the aircraft on the forward wall of the
9 number two main tank."] [L Speer
10 Aff. Bates 184 ¶ 15: "And the FBI said
11 all right, all right, we'll send it to our
12 real lab in Washington and that was a
13 Sunday, Monday, after the accident,
14 four or five days later, and the part has
15 not been seen since, for five years
16 now."] [U Perry Aff. Bates 253 ¶ 50:
17 "He [FBI agent] said they decided that I
18 was too far away, that I couldn't have
19 seen what I had seen. I said, 'But then
20 how did I tell you, what, how did I
21 describe to you how the plane had
22 broken up before they had even pulled it
23 out of the water?'"] [X Lahr Aff. Bates
24 273 ¶¶ 52-54: "The party process was
25 violated again with respect to the
26 Witness Group. In the case of TWA-
27 800, twenty-two groups were formed
28 including a Witness Group. However,

1 the FBI immediately blocked the
2 Witness Group from its function of
3 interviewing witnesses, and it was
4 disbanded. Later the Witness Group
5 was reformed to study the FBI FD-
6 302s... Thus, the Witness Group never
7 did interview any of the hundreds of
8 ground eyewitnesses. The Witness
9 Group never even knew who they
10 were.... [I]t was more than two years
11 after the accident before the Witness
12 Group interviewed Captain David
13 McClaine. [Only civilian eyewitness
14 interviewed by NTSB.] Never before in
15 my experience with NTSB accident
16 investigations have I seen the NTSB
17 refuse to conduct Witness Group
18 interviews of key eyewitnesses,
19 especially when the eyewitness
20 testimony was pivotal...] [X Lahr Aff.
21 Bates 309 Ex 2 (Dec 3, 1997 letter from
22 FBI SAIC James Kallstrom to NTSB
23 Chairman Hall): "[W]e particularly
24 object to discussion of the residue
25 examination [at the public hearing."]]
26 [Y Young Aff. Bates 394 ¶ 2(f): "The
27 non-governmental parties did not have
28 access to the FBI Witness Summaries,

1 which formed a significant foundation
2 for the CIA simulation, until the middle
3 of 1998. This was well after both
4 simulations had been completed and
5 were in the public domain."]

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7 28. The government altered and
8 removed evidence from the
9 reconstruction hanger.

10 28. [Lodging – Expert Eyewitnesses –
11 Congressional testimony of NTSB
12 investigator Hank Hughes: relating FBI
13 agents surreptitiously in hanger at 3:00
14 a.m. on a Saturday] [X Lahr Aff. Bates
15 370 ¶ 1 Ex 10 (April, 2000,
16 *International Association of Machinists
17 and Aerospace Workers* submission to
18 NTSB final Report): "During the
19 investigation of TWA flight 800 cabin
20 wreckage began to disappear from the
21 cabin wreckage hanger. Indications
22 were that the disappearance was due to
23 the removal of wreckage by the FBI.
24 Field notes from the Cabin
25 Documentation Group (CDG) stated this
26 fact."]

27 29. The government banned eyewitness
28 testimony from its two public hearings.

29. [C Hill Aff. Bates 46: "The
hundreds of eyewitnesses who saw a
streak of light intersect with the aircraft
were banned, along with any

1 discussion" of their accounts.] [X
2 Lahr Aff. Bates 307 Ex 2 (Dec 3, 1997
3 letter from FBI SAIC James Kallstrom
4 to NTSB Chairman Hall): "[T]he FBI
5 objects to the use of the CIA video...
6 The FBI also objects... to include in the
7 public docket [any witness materials]...
8 and to calling any eyewitnesses to
9 testify at the public hearing."]

10
11 30. The government altered evidence.

12 30. [K Sanders Aff. Bates 178 ¶¶ 9-
13 10: ["Know piece bent down...
14 [b]ecause I have the photos of these
15 large pieces of the floor of the center
16 wing tank shortly after they were
17 brought into the hangar. They don't
18 have that bend in them.... [T]hey
19 couldn't live with that, because you
20 must have an external force coming into
21 the airplane blowing it upwards and in.
22 Now that's not mechanical, that's
23 something from outside. So they cut off
24 the upward bending metal, its huge...
25 mashed it down, so that instead of
26 having been blow upwards, it was
27 mashed down, because a mechanical
28 would have blown that same piece down
instead of up."] [1 Lahr Aff. Bates 30 ¶

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31. The government knew that the center wing fuel tank was empty.

5: (Congressional testimony of NTSB investigator Hank Hughes): "I actually found this man with a hammer pounding on a piece of evidence trying to flatten it out."]

31. [C Hill Aff. Bates 50 ¶ 4:
"Captain Mundo... used that sump pump to take out tiny residual jet fuel and any water that's present, as there always is... why they have the sump pumps. And then they took off, three hours later. Because instead of going as far as Athens, they weren't going to Paris... they didn't need it. Consequently, we know that tank was empty. Well, that means that it had a thimble-full of kerosene, or the equivalent, of vapor. This is a huge tank, much bigger than this room, literally. And there's no way that you can ignite a thimble-full of kerosene and blow off the left wing of the strongest airplane ever built."

1 32. The government knew that there
2 was no spark in the center wing fuel
3 tank.
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32. [D Donaldson Aff. Bates 70
(quoting Commander William S.
Donaldson): "[T]he wiring and motor
for this pump are outside the tank....
[W]here this pump was mounted [] they
found it clean and without any signs of
metal failure."] [X Lahr Aff. Bates
366 ¶¶ 1-3 Ex 10 (April, 2000,
*International Association of Machinists
and Aerospace Workers* submission to
NTSB final Report): "We conclude that
the existing wiring recovered from flight
800 wreckage does not exhibit any
evidence of improper maintenance or
any malfunction that lead to a spark or
other discrepancy. Examination
indicates that the wiring was airworthy
and safe for flight.... No evidence of
improper, poor, or incomplete
maintenance was found m the wreckage
of the accident aircraft."]

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23 33. The defendant knew that the center
24 wing fuel tank explosion theory is
25 impossible due to the low volatility of
26 the fuel.
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33. [H Harrison Aff. Bates , ¶ 1, 3-4, 7
& 9: [A]viation fuel having a flash
point greater than 100 degrees F would
be properly classified as a combustible
liquid and NOT a flammable liquid....
[A] combustible liquid is one that will

1 NOT give off flammable vapors in
2 sufficient quantity to allow combustion
3 and/or an explosion at ambient
4 temperatures. [A]s an airplane gains
5 altitude, the ambient temperature drops.
6 [T]oday cars have fuel pumps inside
7 their gas [flammable] tanks... [A] fuel
8 tank carrying a combustible liquid is, by
9 scientific definition, not capable an
10 internal fire or explosion because there
11 simply cannot be the presence of
12 flammable vapors therein."]
13

14 34. The government knew that the
15 center wing tank (CWT) explosion
16 followed by a zoom-climb is impossible
17 due to the fact that the CWT spar
18 supports the wings.
19
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34. [W Rivero Aff. Bates 264 ¶ 13:
"As the accompanying animation
illustrates, the initiating event in the
Center Wing Tank results in the
destruction of the Front Spar of the
Wing Box, collapsing the wings."]

21 35. Defendant's zoom-climb hypothesis
22 was knowingly impossible because
23 engine thrust was cut with the loss of
24 the nose.
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35. [V Pence Aff. Bates 259 ¶ 6: "In
the TWA 800 case, the moment the
explosion occurred, and the nose section
was severed, there would have been no
more engine thrust."]

1 36. Defendant's zoom-climb hypothesis
2 was knowingly impossible because the
3 wing(s) were initially separated from the
4 aircraft.

36. [B Hambley Aff. Bates 40: Upon
initiating event "the aircraft structure
supporting and supported by the
wings... was destroyed so severely"]
[C Hill Aff. Bates 43, ¶ 12: "[A]lready
lost one of its wings"] [E Stalcup Aff.
Bates 120 ¶ 9: "Debris field data
indicates that Flight 800's left wing was
damages early in the crash sequence...
wing structure... found in an area
consistent with it separating from the
aircraft within five seconds of the initial
explosion] [T McClaine Aff. Bates
236: "I didn't see it pitch up, no.
Everything ended right there at that
explosion... I saw the wings blow off."]
[U Perry Aff. Bates 248 ¶ 19: "And
then the left wing goes off in this
direction."] [Y Young Aff. Bates 393 ¶
2(a) & (b): "The loss of the nose section
caused an immediate and significant aft
shift of the aircraft's center of gravity.
The aircraft rapidly pitched upward to a
high angle causing the ensuing failure of
both the left and right wingtips. This
was due to excessive positive 'g'
forces..."]

1 37. The CIA knew that the zoom-climb
2 is aerodynamically impossible.

3 37. [C Hill Aff. Bates 51 ¶ 4:
4 (quoting Commander William S.
5 Donaldson): "Once it goes beyond
6 about 20 degrees nose up, it can't fly any
7 more because these wings are no longer
8 into the wind they can't produce lift...
9 It's called gravity. This 333 tons are
10 going to stall... when the time the
11 airplane quits flying, [it] is going
12 down."] [V Pence Aff. Bates 259 ¶ 8:
13 "A very abrupt pitch-up would have
14 resulted in an immediate high-speed
15 stall with loss of lift and subsequent loss
16 (not gain) of altitude."] [X Lahr Aff.
17 Bates 274-75 ¶¶ 59, 62: "An aircraft in
18 balanced flight is like a teeter totter. As
19 can be seen in the following diagram,
20 the horizontal stabilizer normally pushes
21 down with a force of a few thousand
22 pounds to keep the aircraft (or teeter-
23 totter) in balance.... If the CG [center
24 of gravity] gets out of those limits, the
25 horizontal stabilizer cannot exert enough
26 force to keep the aircraft in balance, and
27 then there is nothing a pilot can do to
28 keep the aircraft from crashing.... The
aircraft stalls at an angle of attack of
about 18 degrees... At that rate, TWA

would have been stalled in about one and half seconds after nose separation."]

38. The CIA knew that the aircraft did not slow and so the zoom-climb is impossible.

38. [D Donaldson Aff. Bates 62-3 ¶ 68, 72: "If the aircraft did a 'zoom climb,' you would expect to see a significant reduction in ground speed (horizontal velocity). This is especially true the more steeply the aircraft climbs. There is no evidence of a significant loss of horizontal speed during this time period. In fact, two of the three radars tracking the flight path show the aircraft speeding up."] [E Stalcup Aff. Bates 126 ¶ 3: "The law of conservation of energy says, that you use kinetic energy and that's the speed you have already and you convert that to altitude but there is a price, the price that you pay is that you slow down. It's like when you ride a bike up a hill, at the top of the hill you're going pretty slowly, you know, you use your energy up. Well the radar data shows the plane didn't slow down. If didn't slow down, it didn't climb. If it didn't climb, the witnesses didn't see the plans climb, they saw something else."]

1 39. The two eyewitnesses featured in
2 the CIA animation repudiate its
3 depiction.

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9 40. Eyewitnesses saw projectile(s)
10 traveling at supersonic speed.

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24 41. The airborne eyewitnesses reject the
25 CIA zoom-climb video-animation.

39. [P Brumley Aff. Bates 210 ¶ 1: "It
wasn't even close to being an accurate
representation of what I saw."] [R
Wire Aff. Bates 214 ¶ 4: "It [CIA
animation] didn't represent what I had
testified to the agent as to what I saw
out there."]

40. [C Hill Aff. Bates 51 ¶ 4: (quoting
Commander William S. Donaldson):
"When you see a streak go up, and go
up 13,800 feet, in seconds, 4 or 5, 6, 7
seconds, that's supersonic. Yeah, it's
supersonic. Only a fighter aircraft or a
missile can achieve those kinds of
speeds. And an investigator can pretty
quickly determine, as the FBI guys did,
that when you're 8 or 10 miles away and
you see something go that high that
quick, its just a matter of trigonometry.
I mean any high school kid can figure it
out. It's got to be a missile.]

41. [N Fuschetti Aff. Bates 191: "We
witnessed TWA 800... landing lights to
a ball of flames.... At no time did I see
any vertical travel of the aircraft..."]
[O Meyer Aff. Bates 192 ¶ 5(b):

1 "When that aircraft was hit, it
2 immediately began falling. It fell like a
3 stone. It came right out of the sky.
4 From the first explosion, to the second
5 explosion, to the third, possibly fourth
6 and the petrochemical explosion. It was
7 going down, from the first moment of
8 the first explosion, it was going down.
9 It never climbed."] [T McClaine Aff.
10 Bates 235: "The explosion just
11 happened right in front of me there and
12 it disappeared right there, with the two
13 wings coming out the bottom.... it just
14 disappeared right about the same level."
15 Id. Bates 236: "I didn't see it pitch up,
16 no." Id. Bates 236: "And everything
17 went down." Id. Bates 243 (ATC
18 tape): "it just went down – in the water"
19 Id. Bates 244 (ATC tape): "we are
20 directly over the sight with that airplane
21 or whatever it was just exploded and
22 went into the water"]

23
24 42. Not a single eyewitnesses saw what
25 the CIA video-animation depicts.

26
27 42. [S Angelides Aff. Bates 215 ¶ 5:
28 "That [CIA animation] bore no
resemblance whatsoever to what I
saw... Because if they ask me, it didn't
resemble it in any way."] [X Lahr Aff.

1 Bates 277 ¶ 66: "Neither the FBI nor the
2 CIA nor the NTSB has produced a
3 single eyewitness who saw TWA 800
4 zoom-climb upwards out of the initial
5 fireball."
6

7 43. Eyewitnesses placed a newspaper
8 advertisement "*We saw TWA Flight 800*
9 *Shot Down by Missiles And We Won't be*
10 *Silenced any Longer.*"
11

43. [X Lahr Aff. Bates 327 Ex 7 (Aug
2000 *Washington Times* advertisement):
Featuring accounts of eyewitnesses
Michael Wire, Dwight Brumley,
Richard Goss, Paul Angelides, Major
Frederick Meyer, William Gallagher.]
12
13

14 44. The CIA knowingly falsely reported
15 that only "21 eyewitnesses" saw stages
16 of the disaster before the fuselage began
17 its descent into the water.
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44. [1 Schulze Aff. Bates 46 ¶ 17
(transcript of CIA video-animation):
"The 21 eyewitnesses whose
observations began earlier described
what was almost certainly the aircraft
itself in various stages of crippled flight
after it exploded."] [D Donaldson Aff.
Bates 101 Ex 16 NTSB Exhibit 4A
Witness Group Factual Report (based on
458 of the FBI's 736 302s): "Of the 183
[eyewitnesses] who observed a streak of
light... 96 said that it originated from
the surface." (Note: NTSB withheld
this exhibit from its public docket.)
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1 45. TWA is among the parties to the
2 probe which rejected the CIA's zoom-
3 climb-animation conclusion.
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10 46. The aviation community ridiculed
11 the CIA's zoom-climb animation.
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21 47. The airline industry has undertaken
22 no remedial measures to the Center
23 Wing Tank of Boeing 747s since the
24 disaster.
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45. [Y Young Aff. Bates 393 ¶ 2: "As
the TWA Flight 800 Investigation Party
Coordinator and Chief Accident
Investigator, I can confirm that TWA
did not subscribe to the 'zoom climb'
scenarios of either the CIA or NTSB,
based on the following factual
reasons:"]

46. [C Hill Aff. Bates 46: Zoom-
climb is "a theory that is openly mocked
by senior military aviators, airline
captains and outside air crash
investigators."] [3 Schulze Aff. Bates
45 ¶ 15: "In a survey of 'Aviation Week
and Space Technology' readers, the
majority did not accept the CIA 1997
zoom-climb video as aerodynamically
believable."

47. [V Pence Aff. Bates 259 ¶ 11: "If
there was the slightest chance that this
could occur in another aircraft of the
same type, the prudent and responsible
action would have been to ground....
that portion of the fleet that was of the
same series as TWA 800, by means of
an Emergency Airworthiness Directive.

That didn't happen."]

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4 48. Defendant knew, along with
5 witnesses and investigators, that the
6 center wing tank explosion was not the
7 initiating event.
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48. [O Meyer Aff. Bates 192 ¶ 5(a):
"And what I saw explode in the sky was
definitely military ordnance. I have
enough experience with it to know what
it looks like. And I saw one, two, three,
four explosions before I saw the fireball.
So, the fuel in this aircraft eventually
exploded. But the explosion of the fuel
was the last event, not the initiating
event. The initiating event was a
high-velocity explosion, not fuel. It was
ordnance."] [X Lahr Aff. Bates 371 ¶ 1
Ex 10 (April, 2000, *International
Association of Machinists and
Aerospace Workers* submission to
NTSB final Report): "The center wing
tank did explode! We find that its
explosion was as the result of the
aircraft breakup. The initial event
caused a structural failure in the area of
Flight Station 854 to 860, lower left side
of the aircraft. A high-pressure event
breached the fuselage and the fuselage
unzipped due to the event. The
explosion was a result of this event!"]

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49. Explosive residue was recovered from the debris.

50. The government concealed the existence of the missile debris field.

49. [E Stalcup Aff. Bates 126 ¶ 6: PETN & RDX recovered from debris.]

50. [D Donaldson Aff. Bates 69 (quoting Commander William S. Donaldson): "As I predicted in 1997, and as Military missile experts privately told FBI Agents in 1996, the missile's extreme energy level would carry it clear and create its own separate debris field. This is precisely what the radar video captured. The missile established a debris field... approximately 1.6 NM southwest of the aircraft nose impact point and 2.8 NM southwest of main body ocean impact... The NTSB made no effort at recovery in this area. The FBI's records and maps, left aboard the contract boats handling the secret missile recovery effort, prove the FBI was specifically looking for a missile body as well as the stinger missile first stage pictured in their operations manual." [D Donaldson Aff. Bates 88 Ex 9: Map of debris fields & air traffic]

1 51. The government concealed true
2 debris recovery locations.

51. [L Speer Aff. Bates 186 ¶ 21:
"And one of the more important parts of
the debris field is the keel beam, and the
NTSB/FBI has changed the recovery
location tag of the keel beam.... trying
to make the recovery location of the
keel beam fit a scenario that they've
already decided has happened..."]

10 52. Investigators in the Flight 800
11 smuggled out missile evidence for
12 independent analysis.

52. [D Donaldson Aff. Bates 75-76 (Ex
D): two pages of debris field data
smuggled out in 1996 by TWA Captain
Terrell Stacey to investigative reporter
James Sanders] [J Holtsclaw Aff.
Bates 173, ¶¶ 2-4: "[In] 1996, I
provided to Captain Richard Russell the
Radar tape... recorded at the New York
Terminal Radar Approach Control... I
know this tape to be authentic because it
was given to me by one of the NTSB
accident investigation committee
members.... The tape shows a primary
target at the speed of approximately
1200 knots converging with TWA-800,
during the climb out phase of TWA-
800. It also shows a U.S. Navy P-3 pass
over TWA-800 seconds after the missile
has hit TWA-800.] [K Sanders Aff.

Bates 180 Ex 1: Photograph of
smuggled out seat padding showing
reddish residue from missile exhaust.]

53. The government as well as
independent investigators have
determined missile firing position.

53. [C Hill Aff. Bates 47 ¶] (quoting
Commander William S. Donaldson):
"Suffolk County Police Department
(Deputy inspector Douglas S.
Mafutewich), and special agent of the
FBI... Bongardt... us[ed] global
positioning satellite (GPS) portable
equipment coupled with a had-bearing
compass... able to more precisely
determine two distinct firing positions,
bath of which were in range of Flight
800 when it exploded had... missiles
been launched... [I] duplicated the
efforts... using the same type of GPS
equipment and hand-bearing compass
with a different mix of eyewitnesses...
same conclusion... surface positions at
sea..." [D Donaldson Aff. Bates 94
Ex 15: Triangulation of Witness
Bearing Lines]

1 54. The NTSB violated its statutory
2 mandate by ceding control of the probe
3 to the FBI.
4

54. [L Speer Aff. Bates 184 ¶ 12:
"They [NTSB] conducted the
investigation... They [FBI] took over
like a bull in a China shop... and so they
have screwed this investigation up so
bad that it probably will never be
straightened out. We have – well ever
since we were there we have felt that the
truth was not allowed to be sought out
and discovered."] [L Speer Aff. Bates
184 ¶ 13: "The NTSB should have been
primary agency in conducting the
investigation."] [O Meyer Aff. Bates
192 ¶ 5(d): "FBI forbade" NTSB
Witness group Chairman Norman
Weidermier from interviewing Major
Meyer.] [Q Gross Aff. Bates 211 ¶¶ 4-
5: "Well, I actually think it's [FBI
investigation] unprecedented because,
by a mandate of the Congress, there is
one body, the National Transportation
Safety Board, that is entirely charged
with the investigation of any
transportation accident."] [X Lahr Aff.
Bates 327 Ex 5 (April 30, 2000, *Air
Line Pilots Association* submission to
NTSB final report): "Certain typical
civil investigative practices, such as

1 witness interviews and photographic
2 documentation, were prohibited or
3 sharply curtailed and controlled." [X
4 Lahr Aff. Bates 365 Ex 10 ¶ 5 (April,
5 2000, *International Association of*
6 *Machinists and Aerospace Workers*
7 submission to NTSB final Report): "We
8 must comment on the Federal Bureau of
9 Investigation... We feel that our
10 expertise was unwelcome and not
11 wanted by the FBI.... The threats made
12 during the first two weeks of the
13 investigation were unwarranted and are
14 unforgettable!"]

15
16 55. In hypothesizing the zoom-climb,
17 the government violated the party
18 process, standard accident investigation
19 procedure.

20 55. [A Hoffstadt Aff. Bates 39 ¶ 36:
21 "TWA-800 represents a unique, notable,
22 and controversial event; any CFD
23 analysis of TWA-800 flight
24 performance is eminently appropriate
25 for public disclosure and peer review."]
26 [C Hill Aff. Bates 50 ¶ 3: "In all
27 aircraft probe investigations it is usual if
28 not universal for investigators to share
information and assessments for review
by other investigators. It is also
common for experts to review one
another's conclusions."] [E Stalcup

1 concerned that this [flight path] analysis
2 was essentially accomplished by only
3 one individual at the Board, with little
4 or no party input or participation. It is a
5 well known and accepted tenet of
6 engineering analysis that the output
7 (results) can only be as accurate as the
8 input data. As cited in the previous
9 section, the trajectory study utilized
10 several uncertain or erroneous
11 component recovery locations,
12 increasing the uncertainty of the study's
13 results. Had this study been-conducted
14 as a group activity, opportunities would
15 have existed for necessary cross-
16 checking and party 'consensus-building,'
17 and it is likely that a more thorough,
18 accurate and universally-accepted
19 product would have been generated."]
20 [Y Young Aff. Bates 394 ¶ 2(f): "None
21 of the non-governmental parties to the
22 Flight 800 investigation participated in
23 the simulation work done by the CIA or
24 NTSB, including any fact-finding that
25 was done to support the scenarios. The
26 non-governmental parties did not have
27 access to the FBI Witness Summaries,
28 which formed a significant foundation

1 for the CIA simulation, until the middle
2 of 1998. This was well after both
3 simulations had been completed and
4 were in the public domain."]

5
6 56. Military assets in military operating
7 zone W-105 conducted classified
8 maneuvers in the air, on the surface, and
9 under the surface, at the time of, and in
10 close proximity to, the disaster.

11 56. [**D** Donaldson Aff. Bates 85 Ex 7
12 (Irvine Affidavit): "Tom Stalcup,
13 displayed for the first time (1999) new
14 radar data that had been withheld by the
15 NTSB for three years. It showed 25
16 vessels large enough to be detected by
17 radar 30 miles away in the W-105
18 warning zone or heading for it at the
19 time of the crash. Neither the NTSB nor
20 the Navy has been willing to identify
21 these vessels. This suggests that they
22 were Navy vessels on a classified
23 maneuver..."] [**D** Donaldson Aff.
24 Bates 99 Ex 16 (NTSB Exhibit 4A
25 Witness Group Factual Report): "[T]he
26 P-3 crew from the aircraft, which was
27 flying over the area during the loss of
28 TWA 800... aircraft involved was a
standard anti-submarine configured...]
[**F** Neal Aff. Bates 150 ¶ 3: "A number
of scenarios have been suggested,
including the idea that friendly fire...
brought down TWA Flight 800 through

1 some bizarre miscalculation. We know
2 from several sources that there were
3 classified military operations taking
4 place that evening just south of the Long
5 Island coast on the surface, in the air,
6 and under water, at the same time that
7 TWA Flight 800 took off. It's possible
8 that the aircraft accidentally intruded
9 into a simulated intercept scenario that
10 could have involved target vehicles. In
11 a rare malfunction, an intercept missile,
12 or missiles could have locked onto the
13 civilian airliner, or intercepted its
14 course, and the 747 was hit, instead of
15 the original target."] J Holtsclaw Aff.
16 Bates 173, ¶¶ 2-4: "[Smuggled out
17 Radar tape "also shows a U.S. Navy P-3
18 pass over TWA-800 seconds after the
19 missile has hit TWA-800.] U Perry
20 Aff. Bates 246 ¶¶ 9, 11: relating had
21 seen earlier that day "a military ship...
22 so close [to shore] you can see the
23 numbers on it" with a round ball on the
24 front like a radar dome.] X Lahr Aff.
25 Bates 371 ¶ 1 Ex 12 (March 10, 1997
26 *Press Enterprise* Newspaper): Military
27 graphic]
28

1 57. The government concealed that one
2 or more Naval vessels, on classified
3 maneuvers, fled the scene.
4

57. [C Hill Aff. Bates 43 ¶ 14:
Identifying large vessel close to Flight
800 which traveled at 32-knots away
from the disaster.] [D Donaldson Aff.
Bates 82 (quoting FBI response to
6 questions from Congressman): "[I]n
7 1997 the FBI first noted the presence of
8 a surface vessel, which, because of its
9 speed of between 25 and 35 knots, is
10 believed to be at least 25-30 feet in
11 length, approximately 2.9 nautical miles
12 from the position of Flight 800 at the
13 time of the initial explosion... Despite
14 extensive efforts, the FBI has been
15 unable to identify this vessel." [D
16 Donaldson Aff. Bates 84 (quoting FBI
17 SAIC James Kallstrom): "They were
18 [three] naval vessels that were on
19 classified maneuvers... [The 30-knot
20 track] was a helicopter."]
21

22 58. The government continues to
23 withhold evidence.
24

58. [AA Sephton Aff. Bates 461 ¶ 2:
"I have made seven FOIA requests to
the NTSB for Flight 800 investigative
25 records since mid-1988. The NTSB has
26 consistently contravened the FOIA
27 statute... with non-responses,
28 excessively delayed responses, illicit

withholding, and in at least one case a false Affidavit filed with the court. Examples... appear below."]

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5 59. The probe was politicized.

59. [C Hill Aff. Bates 45, ¶ 1: Members of the NTSB appointed by President.] [Q Gross Aff. Bates 211 ¶ 5: "Any time you take away from the NTSB, which, by congressional charter, must be in charge, and have the FBI say that they will not investigate or interrogate any witnesses whatsoever, that immediately raises an issue in my mind about the politics of it."]

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16 60. Missile fire was the initiating event
17 of the disaster.

60. [C Hill Aff. Bates 43-44, ¶ 17: "On more than one occasion during these proceedings [press conferences] I heard [former Chief, Joint Chiefs of Staff] Admiral Moorer express his opinion publicly and with members of the press present that it was a missile that brought TWA-800 down..."] [E Stalcup Aff. Bates 129-30: "*TWA Flight 800 Probable Cause Announced*, "A surface-to-air missile, launched from the ocean off the coast of Long Island rose up and exploded at or near TWA Flight

1 800." [Q Gross Aff. Bates 211 ¶ 7:
2 "When I saw photographs of the left
3 side, with that large indentation forward
4 of the wing, then I immediately was
5 curious, what in the world could cause it
6 to be dented in. It would have to be
7 something external to the aircraft." [U
8 Perry Aff. Bates 251 ¶ 38: "it was so
9 clear, and it was so vivid, was so
10 obvious that what was happening was
11 that this plane was being assaulted..."]
12 [X Lahr Aff. Bates 369 ¶ 8 Ex 10
13 (April, 2000, *International Association*
14 *of Machinists and Aerospace Workers*
15 submission to NTSB final Report):
16 "Approximately nineteen (19) holes in
17 the fuselage below the L3 door that
18 appear to originate from the exterior of
19 the aircraft."]

20
21 61. The government pursued a cover-
22 up.

23 61. [C Hill Aff. Bates 43 ¶ 16:
24 "[D]isavow[ment of] witnesses and
25 investigators... in my view prima facie
26 evidence that it was in pursuit of a
27 cover-up"] [G Krugar Aff. Bates 151 ¶
28 3: "...said, 'well, you can't tell me it
was anything other than a missile.'
[FBI SAIC] Jim Kallstrom said, 'you're

1 right, but if you quote me I'll deny it."]
2 [L Speer Aff. Bates 186-87 ¶ 32-33:
3 "And so for whatever reason, it's been
4 successfully covered up, the truth is not
5 known, and there are many people
6 fortunately still working on it trying to
7 discover the truth for future accident
8 prevention, to let the loved ones and
9 family and friends know what happened
10 to the airplane. They feel they have a
11 right to know, since it was never
12 declared a crime scene... So here we
13 are in limbo, a dedicated group of
14 people with a mission to seek the truth,
15 obstructed by the government..."]

16
17 62. By letter of January 26, 2001, in
18 response to plaintiff's first CIA FOIA
19 request, the CIA denied generating any
20 records upon which its zoom-climb
21 animation was based.

22 62. [X Lahr Aff. Bates 391 Ex 16 (Jan.
23 26, 2001, Letter from CIA to Ray Lahr):
24 "We have researched this matter, and
25 have learned that the pertinent data, and
26 resulting conclusions, were provided by
27 the National Transportation Safety
28 Board (NTSB). CIA simply
incorporated the NTSB conclusions into
our videotape.... Accordingly, you may
wish to submit your request to the
NTSB...]

1 63. The CIA did not identify or produce
2 most of its responsive records.

3 63. [3 Schulze Aff Bates 56 ¶ 31:
4 "These 15 computer files are required in
5 electronic e-format."] [Id. Bates 58 ¶
6 33: "This Computer program is
7 required in e-format."] [Id. Bates 70 ¶
8 44: "This Computer program is
9 required in e-format."] [Id. Bates 79 ¶
10 52: "The referred to attachments are
11 required and missing."] [Id. Bates 90 ¶
12 62: "This program is required in e-
13 format on computer disk."] [Id. Bates
14 95 ¶ 67: "These missing computer files
15 and disks are necessities for reviewing
16 the zoom-climb video. The subject CIA
17 electronic file disks have been
18 withheld."] [Id. Bates 97 ¶ 69:
19 "[C]omputer software program has been
20 withheld."] [Id. Bates 100 ¶ 72: "[I]t is
21 not made clear what exact work
22 products were produced by this three
23 month effort and in what form this work
24 product was produced. However, it is
25 clear that numerous computer files and
26 computer programs were generated in
27 some form or another."] [Id. Bates
28 100 ¶ 72: "The following redacted
reference of Aerodynamics Science for
TWA 800 is the major goal of this

1 FOIA and does not qualify to be
2 redacted under any justification. The
3 following aerodynamic information is
4 required:"] [**Id.** Schulze Aff Bates 111
5 § IV: "[N]o timing sequence data for
6 the radar data, CVR and FDR was found
7 in any form.] [**Id.** Schulze Aff Bates
8 112 § IV: "No correlation of zoom-
9 climb aerodynamic calculations with
10 actual radar data was found in any
11 form.] [**Id.** Schulze Aff Bates 113 § IV:
12 "[N]o records of the zoom-climb
13 conclusion reaching process were
14 supplied.]

15
16 64. Defendant failed to produce the
17 computer program or simulation that
18 was used to create its zoom-climb
19 animation.

20 64. [**3** Schulze Aff Bates 96 ¶ 68:
21 "This computer program is one of the
22 major CIA records sought by the subject
23 FOIA. The subject electronic program
24 has been withheld."] [**Id.** Bates 105 ¶
25 82: "In displaying the presence of this
26 computer program and the resultant
27 output data graphs and tables the CIA is
28 providing evidence that this flight
trajectory software program for a
crippled 747 aircraft exists."] [**Id.** Bates
111 § IV: "[N]o electronic records of
simulation and animation programs

have been herein produced]

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3 65. Defendant failed to produce or
4 identify the calculations underlying the
5 computer program or simulation
6 identified in the foregoing paragraph.
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65. [3 Schulze Aff Bates 100 ¶ 72:
"(1) the flight/trajectory path
calculations of TWA 800 are the key
information items being sought, (2) the
establishment of this flight/trajectory
path relied heavily on computer based
data files and computer executed
computer programs using these files, (3)
it is impossible to make use, and derive
benefit from, the originally supplied
handwritten notes and information
without these computer files and
programs... (6) no computer files or
programs have yet to be provided in e-
format...] [Id. Bates 109 § IV:
"[F]ormulas and calculations performed
by use of computer files and executable
computer programs have not been herein
provided."] [Id. Bates 111 § IV:
"[P]rintouts received were not
sufficiently identifiable, dated...]

25 66. Defendant failed to produce or
26 identify the "recently declassified...
27 report on eyewitnesses to the crash of
28 TWA Flight 800" referred to in the

66. [1 Lahr Aff. Bates 31: CIA on
Flight 800, Wash. Times, Dec. 5, 2003,
B. Gertz & R. Scarborough.

1 December 2003 Washington Times
2 article.

3
4 67. The CIA participated in covering up
5 a crime which took the lives of 230
6 people.

67. [O Meyer Aff. Bates 206 ¶ 57: "If
you're conducting a missile shoot under
the main traffic control routes into New
York City, you have exhibited in my
mind depraved indifference to human
life. That's not an accident - under any
statute - any codes anywhere. That's
murder."]

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13 68. The threat of missile fire is a
14 legitimate concern to the flying public.

68. [C Hill Aff. Bates 51 ¶ 4: (quoting
Commander William S. Donaldson):
"This was the 27th large aircraft hit by
these missiles in the last 15 years. Not
all of them went down."]

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19 69. Flight 800 is the most controversial
20 disaster in aviation history.

69. [Z Leffler Aff. Bates 405-07, ¶ 58-
60.]

21
22 Date: June 5, 2006

23 Respectfully submitted,

24
25 Captain H. Ray Lahr
26 By Counsel

27
28 _____
John H. Clarke

1 **PROOF OF SERVICE – BY HAND**

2 DISTRICT OF COLUMBIA:

3
4 I am a resident of the District of Columbia, over the age of 18 years. My business
5 address is 1717 K Street, NW, Suite 600, Washington, DC 20036. I am counsel
6 for plaintiff.

7 On June 5, 2006, I served a true copy of **PLAINTIFF'S STATEMENT OF**
8 **GENUINE ISSUES** on the interested parties in this action by first class mail
9 proper postage prepaid, addressed to:

10 David M. Glass, Esquire
11 Assistant United States Attorney
12 20 Massachusetts Avenue, NW
13 Room 7140
14 Washington, DC 20530

15
16
17
18
19 I declare under penalty of perjury that the foregoing is correct and that this
20 Proof of Service was executed on June 5, 2006.

21
22
23 _____
24 John H. Clarke
25
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