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13
14 **UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**

17 ELECTRONIC FRONTIER FOUNDATION,)
18 Plaintiff,)
19 v.)
20 OFFICE OF THE DIRECTOR OF NATIONAL)
21 INTELLIGENCE and DEPARTMENT OF)
22 JUSTICE,)
23 Defendants.)

NOS. 08-1023 JSW & 08-2997 JSW
**DECLARATION OF MARCIA
HOFMANN IN SUPPORT OF REPLY TO
OPPOSITION TO CROSS MOTION FOR
SUMMARY JUDGMENT**

Date: TBD
Time: 9:00 a.m.
Courtroom: 2, 17th Floor

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2 I, MARCIA HOFMANN, declare:

3 1. I am an attorney of record for the plaintiff in this matter and a member in good
4 standing of the California State Bar, and am admitted to practice before this Court. I have personal
5 knowledge of the matters stated in this declaration. If called upon to do so, I am competent to
6 testify to all matters set forth herein.

7 2. I am Staff Attorney at Plaintiff Electronic Frontier Foundation (“EFF”), which is a
8 nonprofit corporation established under the laws of Massachusetts with its principal place of
9 business in San Francisco.

10 3. Attached hereto as Exhibit A are true and correct copies of records disclosed by the
11 Department of Justice (“DOJ”) Office of Legal Counsel in its May 12, 2009 discretionary release.

12 4. Attached hereto as Exhibit B are true and correct copies of records disclosed by the
13 DOJ National Security Division in its May 12, 2009 discretionary release.

14 5. Attached hereto as Exhibit C are true and correct copies of records disclosed by the
15 DOJ Office of Information Policy in its May 12, 2009 discretionary release.

16 6. Attached hereto as Exhibit D are true and correct copies of records disclosed by the
17 Office of the Director of National Intelligence in its May 12, 2009 discretionary release.

18 7. Attached hereto as Exhibit E is a true and correct copy of the following “fact sheet”:
19 *FISA Legislation Necessary to Keep Our Nation Safe*, available at
20 <http://www.usdoj.gov/archive/ll/docs/fisa-legislation-necessary-to-keep-our-nation-safe.pdf>.

21 8. Attached hereto as Exhibit F is a true and correct copy of the following press release:
22 Department of Justice and the Office of the Director of National Intelligence, *Statement by the*
23 *Department of Justice and the Office of the Director of National Intelligence Regarding House*
24 *FISA Proposal* (March 11, 2008), available at [http://www.usdoj.gov/archive/ll/docs/din-doj-](http://www.usdoj.gov/archive/ll/docs/din-doj-statement031108.pdf)
25 [statement031108.pdf](http://www.usdoj.gov/archive/ll/docs/din-doj-statement031108.pdf).

26 9. Attached hereto as Exhibit G is a true and correct copy of the following op-ed: Mike
27 McConnell, *Help Me Spy on Al Qaeda*, N.Y. TIMES, Dec. 10, 2007, available at
28 <http://www.nytimes.com/2007/12/10/opinion/10mccconnell.html>.

1 10. Attached hereto as Exhibit H is a true and correct copy of the following op-ed: Mike
2 McConnell, *A Key Gap In Fighting Terrorism*, WASHINGTON POST, Feb. 15, 2008, available at
3 <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/14/AR2008021403103.html>.

4 11. Attached hereto as Exhibit I is a true and correct copy of following statement of policy
5 from the Executive Office of the President, Office of Management and Budget: *Statement of*
6 *Administrative Policy on H.R. 3773—To Amend the Foreign Intelligence Surveillance Act of 1978*
7 *to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other*
8 *purposes* (Oct. 16, 2007), available at [http://www.whitehouse.gov/omb/legislative/sap/110-](http://www.whitehouse.gov/omb/legislative/sap/110-1/hr3773sap-r.pdf)
9 [1/hr3773sap-r.pdf](http://www.whitehouse.gov/omb/legislative/sap/110-1/hr3773sap-r.pdf).

10 12. Attached hereto as Exhibit J is a true and correct copy of the following web page:
11 Department of Justice, *IN CASE YOU MISSED IT: Director McConnell Interviewed on CNN's*
12 *"Late Edition,"* available at <http://www.usdoj.gov/archive/ll/docs/in-case-you-missed-it022508.pdf>
13 (last visited June 1, 2009). A transcript of Mr. McConnell's interview is also available at
14 <http://transcripts.cnn.com/TRANSCRIPTS/0802/24/le.01.html>.

15 13. Attached hereto as Exhibit K is a true and correct copy of the following magazine
16 article: Michael Isikoff and Mark Hosenball, *Scare Tactics*, NEWSWEEK, Feb. 27, 2008, available at
17 <http://www.newsweek.com/id/116683>.

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19 I declare under penalty of perjury of the laws of the State of California that the foregoing is true
20 and correct to the best of my knowledge and belief. Executed June 2, 2009 in San Francisco,
21 California.

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23 /s/ Marcia Hofmann
24 Marcia Hofmann
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