

1 CINDY COHN (SBN 145997)
cindy@eff.org
2 LEE TIEN (SBN 148216)
3 KURT OPSAHL (SBN 191303)
4 JAMES S. TYRE (SBN 083117)
5 MARK RUMOLD (SBN 279060)
6 ANDREW CROCKER (SBN 291596)
7 DAVID GREENE (SBN 160107)
ELECTRONIC FRONTIER FOUNDATION
815 Eddy Street
San Francisco, CA 94109
Telephone: 415/436-9333; Fax: 415/436-9993

8 RICHARD R. WIEBE (SBN 121156)
wiebe@pacbell.net
9 LAW OFFICE OF RICHARD R. WIEBE
10 One California Street, Suite 900
11 San Francisco, CA 94111
Telephone: 415/433-3200; Fax: 415/433-6382

12
13
14
15 *Counsel for Plaintiffs*

RACHAEL E. MENY (SBN 178514)
rmeny@kvn.com
MICHAEL S. KWUN (SBN 198945)
AUDREY WALTON-HADLOCK (SBN 250574)
BENJAMIN W. BERKOWITZ (SBN 244441)
JUSTINA K. SESSIONS (SBN 270914)
PHILIP J. TASSIN (SBN 287787)
KEKER & VAN NEST, LLP
633 Battery Street
San Francisco, CA 94111
Telephone: 415/391-5400; Fax: 415/397-7188

THOMAS E. MOORE III (SBN 115107)
tmoore@rroyselaw.com
ROYSE LAW FIRM, PC
1717 Embarcadero Road
Palo Alto, CA 94303
Telephone: 650/813-9700; Fax: 650/813-9777

ARAM ANTARAMIAN (SBN 239070)
aram@eff.org
LAW OFFICE OF ARAM ANTARAMIAN
1714 Blake Street
Berkeley, CA 94703
Tel.: 510/289-1626

16 **UNITED STATES DISTRICT COURT**
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
18 **OAKLAND DIVISION**

19)
20) CAROLYN JEWEL, TASH HEPTING,
21) YOUNG BOON HICKS, as executrix of the
22) estate of GREGORY HICKS, ERIK KNUTZEN
23) and JOICE WALTON, on behalf of themselves
24) and all others similarly situated,
25)
26) Plaintiffs,
27)
28) v.
29) NATIONAL SECURITY AGENCY, *et al.*,
30)
31) Defendants.

Case No.: 4:08-cv-4373-JSW
**PLAINTIFFS CAROLYN JEWEL, ERIK
KNUTZEN AND JOICE WALTON'S
NOTICE OF MOTION AND MOTION
FOR ENTRY OF FINAL JUDGMENT ON
THEIR FOURTH AMENDMENT
INTERNET CONTENT INTERCEPTION
CLAIM PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 54(b)**
Date: May 22, 2015
Time: 9:00 a.m.
Courtroom 5, 2nd Floor
The Honorable Jeffrey S. White

1 **NOTICE OF MOTION AND MOTION FOR ENTRY OF FINAL JUDGMENT PURSUANT**
2 **TO FEDERAL RULE OF CIVIL PROCEDURE 54(b)**

3 PLEASE TAKE NOTICE that on May 22, 2015 at 9:00 a.m. in Courtroom 5, Second Floor,
4 United States District Court, 1301 Clay Street, Oakland, CA, plaintiffs Carolyn Jewel, Erik
5 Knutzen, and Joice Walton (collectively “plaintiffs”) will and hereby do move the Court to enter
6 final judgment pursuant to Federal Rule of Civil Procedure 54(b) on its grant of partial summary
7 judgment in favor of defendants National Security Agency, United States Department of Justice,
8 Barack H. Obama, Michael S. Rogers, Eric H. Holder, Jr., and James R. Clapper, Jr. (in their
9 official capacities) (collectively, the “government defendants”) on plaintiffs’ claim that the
10 government defendants have violated the Fourth Amendment rights of plaintiffs Jewel, Knutzen,
11 and Walton by intercepting their Internet communications.

12 Because there is no just reason for delay of entry of judgment on this claim, plaintiffs move
13 the Court for entry of final judgment pursuant to Rule 54(b). Plaintiffs rely upon the Memorandum
14 of Points and Authorities below, the proposed order accompanying this motion, the pleadings on
15 file in this action, and such additional matters that the Court may entertain. Plaintiffs are informed
16 that the government defendants intend to oppose this motion.

17 **MEMORANDUM IN SUPPORT OF MOTION FOR ENTRY OF FINAL JUDGMENT**
18 **PURSUANT TO RULE 54(b)**

19 The Court recently granted summary judgment in favor of the government defendants on
20 plaintiffs’ claim that the government is searching and seizing their Internet communications in
21 violation of the Fourth Amendment. ECF No. 321. Plaintiffs respectfully request that the Court
22 now enter final judgment on this claim pursuant to Federal Rule of Civil Procedure 54(b) so that
23 they may seek appellate review of the Court’s ruling without undue delay. This lawsuit has been
24 pending for over six years, but in many ways it still remains at the threshold. Defendants have yet
25 to answer the complaint, no discovery has yet been permitted, and many other statutory and
26 constitutional claims remain for decision. Much labor remains and much time will elapse before
27 the Court has finally resolved all of plaintiffs’ claims in this lawsuit. Given the great public
28 significance of the Court’s ruling on plaintiffs’ Fourth Amendment Internet content interception

1 claim, in the words of Rule 54(b) there is “no just reason for delay” of appellate review during the
2 years it is likely to take to resolve the remaining claims.

3 ARGUMENT

4 Rule 54(b) provides that a district court may enter final judgment on a single claim in an
5 action with multiple claims “if the court expressly determines that there is no just reason for
6 delay.” As explained below, the Court’s summary judgment order satisfies Rule 54(b)’s
7 requirements, and there is no just reason to delay appellate review.

8 Accordingly, plaintiffs respectfully request entry of final judgment pursuant to Rule 54(b)
9 as to their Fourth Amendment claim regarding the interception of their Internet communications.

10 I. Entry of Final Judgment under Rule 54(b) Is Warranted.

11 A. The Court’s Adjudication of Plaintiff’s Fourth Amendment Internet Content 12 Interception Claim is Final.

13 When deciding to enter judgment under 54(b), “[a] district court must first determine that it
14 is dealing with a ‘final judgment.’ It must be a ‘judgment’ in the sense that it is a decision upon a
15 cognizable claim for relief, and it must be ‘final’ in the sense that it is ‘an ultimate disposition of an
16 individual claim entered in the course of a multiple claims action.’” *Curtiss-Wright Corp. v. Gen.
17 Elec. Co.*, 446 U.S. 1, 7 (1980) (citation omitted).

18 The Court’s summary judgment order is a final adjudication of plaintiffs’ claim that the
19 government is currently violating their Fourth Amendment rights by intercepting the contents of
20 their Internet communications. The Court granted summary judgment to the government
21 defendants, eliminating this claim and leaving plaintiffs’ other claims—including violations of
22 statutory provisions and other constitutional provisions—intact. *See* ECF No. 261 at 1:23-25.
23 Plaintiffs’ remaining claims are separate and distinct from the single claim at issue in the Court’s
24 summary judgment order, and hence this claim is appropriate for entry of final judgment under
25 Rule 54(b).

26 B. There Is No Just Reason to Delay Entry of Final Judgment.

27 Entry of judgment under Rule 54(b) “is proper if it will aid ‘expeditious decision’ of the
28 case.” *Texaco, Inc. v. Ponsoldt*, 939 F.2d 794, 797 (9th Cir. 1991). Absent entry of final judgment

1 now, it will likely be years until this lawsuit is finally resolved and plaintiffs are able to appeal the
2 Court's summary judgment ruling. There is no just reason for delaying plaintiffs' appeal of the
3 summary judgment ruling until far into the future.

4 There is a strong public interest in avoiding a delay in the appeal of the Court's order. As
5 the Court has recognized, the Court's order addresses "serious issues, namely national security and
6 the preservation of the rights and liberties guaranteed by the United States Constitution. The Court
7 finds the predicament delicate and the resolution must strike a balance of these significant
8 competing interests." ECF No. 321 at 2:4-7. It is in the interest of all that appellate review of these
9 serious issues proceed expeditiously, without further delay. Given the importance of plaintiffs'
10 claim to the national debate on the NSA's activities and the "broad impact" that a final appellate
11 ruling on plaintiffs' claim would have, "[t]he most important factor counseling in favor of allowing
12 an immediate appeal in this case is the public interest." *Quinn v. City of Boston*, 325 F.3d 18, 27
13 (1st Cir. 2003).

14 If judgment is not entered under Rule 54(b), it will be a substantial period before the case is
15 completed and can be appealed. This lawsuit has been pending since 2008. Despite the extensive
16 efforts of the Court and the parties, progress has been slow and much more remains to be done:
17 plaintiffs have numerous remaining statutory and constitutional claims, the defendants have not yet
18 answered the complaint, discovery has not yet begun, and the claims against the individual
19 defendants remain stayed. Given the constitutional importance and significant and historic impact
20 of the Court's order, there is no just reason why the parties or the public should wait until the entire
21 case is resolved before obtaining appellate review.

22 Entry of judgment under Rule 54(b) is also appropriate because the many claims that do
23 remain are "legally and factually distinct" from the Fourth Amendment claim of ongoing Internet
24 content interception the Court has adjudicated. *See Gregorian v. Izvestia*, 871 F.2d 1515, 1520 (9th
25 Cir. 1989). The remaining claims include constitutional and statutory claims challenging past
26 surveillance activities conducted before 2007 without any FISA court authorization and in violation
27 of FISA solely on assertions of inherent presidential authority. They include claims challenging the

1 acquisition of telephone and Internet records, as distinct from content. They include claims against
2 individual defendants as well as the government. Thus, here “the adjudicated claim[] [is] separable
3 from the others and . . . the nature of the claim [is] such that no appellate court would have to
4 decide the same issues more than once.” *Wood v. GCC Bend, LLC*, 422 F.3d 873, 878 n.2 (9th Cir.
5 2005).

6 **CONCLUSION**

7 For the reasons stated above, plaintiffs respectfully request that the Court enter final
8 judgment pursuant to Rule 54(b) on plaintiffs’ Fourth Amendment Internet content interception
9 claim.

10 Dated: April 17, 2015

Respectfully submitted,

11 /s/ Andrew Crocker
12 Andrew Crocker

13 CINDY COHN
14 LEE TIEN
15 KURT OPSAHL
16 JAMES S. TYRE
17 MARK RUMOLD
18 ANDREW CROCKER
19 DAVID GREENE
20 ELECTRONIC FRONTIER FOUNDATION

RICHARD R. WIEBE
LAW OFFICE OF RICHARD R. WIEBE

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26 JUSTINA K. SESSIONS
27 PHILIP J. TASSIN
28 KEKER & VAN NEST LLP

ARAM ANTARAMIAN
LAW OFFICE OF ARAM ANTARAMIAN

Counsel for Plaintiffs