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12 *Counsel for Petitioner*

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

17
18
19 IN RE NATIONAL SECURITY LETTER

) Case No. 11-cv-2173 SI
) Related Case No. 11-cv-2667
) **DECLARATION OF [REDACTED] IN**
) **SUPPORT OF RENEWED PETITION TO**
) **SET ASIDE NATIONAL SECURITY**
) **LETTERS AND MOTION FOR**
) **PRELIMINARY INJUNCTION**
) **LODGED UNDER SEAL PURSUANT TO**
) **THE COURT'S ORDER DATED MAY 13,**
) **2011**
)
) Date: December 18, 2015
) Time: 9:00 am
) Judge: Hon. Susan Illston
) Place: Courtroom 10, 19th Floor

1 **DECLARATION OF** [redacted]

2 I, [redacted] declare as follows:

3 1. I am [redacted] Petitioner [redacted]

4 [redacted] If called upon
5 as a witness, I could and would testify competently to the matters stated herein of my own personal
6 knowledge.

7 2. I submit this declaration in support of [redacted] Renewed Petition to Set Aside
8 National Security Letters and Motion for Preliminary Injunction.

9 3. I have been employed at [redacted] since [redacted]
10 [redacted]

11 4. [redacted]
12 [redacted]
13 [redacted]
14 [redacted]
15 [redacted]
16 [redacted]
17 [redacted]
18 [redacted]

19 5. In [redacted] 2011, [redacted] received an NSL numbered [redacted] that contained
20 a non-disclosure provision. In [redacted] 2013, [redacted] received two additional NSLs, both numbered
21 [redacted] also containing non-disclosure provisions. [redacted] pursuant to this Court's
22 order, [redacted] provided the information requested in the [redacted] NSLs. Even though the
23 information requests in those NSLs are no longer at issue, the non-disclosure provisions for all
24 three NSLs remain in effect.

25 6. Since receiving the NSLs in 2011 and 2013, [redacted]
26 [redacted] National Security letters are and have been
27 particularly controversial since the expansion of their scope by the USA PATRIOT Act. Multiple
28 times over the years since 2011, [redacted] has wished to rely upon its own experience to add

1 gravitas and credibility to our criticisms of the law, but have been unable to do so and have had to
2 comment as if we had no first-hand knowledge of how NSLs and the gag orders are used in
3 practice.

4 7. The gags associated with the NSLs have been [REDACTED]

5 [REDACTED]
6 The problem has existed since we received the first NSL in 2011, as noted further below, but was
7 most acute in hampering our effectiveness during the discussions leading up to the passage of the
8 USA FREEDOM Act in June 2015, which began as early as 2013. Now passed, that bill has set
9 back the implementation of the historic decision [REDACTED] won after this Court ruled that NSL
10 provisions violate the Constitution as a result of a case I helped bring.

11 8. [REDACTED] experience as a recipient of an NSL confirmed its belief that the proposed
12 changes to the NSL law in the USA FREEDOM Act were grossly insufficient. This was chiefly
13 because the proposed changes largely just enacted into law the government's practice through the
14 "reciprocal notice" process. As a company that had been subjected to this "reciprocal notice"
15 process we knew that it was not sufficiently protective of our First Amendment rights or the rights
16 of our customers. Had we not been gagged, [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 9. [REDACTED]

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 10. [REDACTED]
28 [REDACTED]

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[Redacted]

[Redacted]

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[Redacted]

16. [Redacted]

17. [Redacted]

[Redacted]

[Redacted]

18. [Redacted]

[Redacted] including the fact that the FBI affirmatively sued [Redacted] for seeking judicial review of the first NSL we received (Related Case No. 11-cv-2667 SI). We could also not disclose

[Redacted]

1 the fact that the legal process had resulted in a multi-year gag for [redacted] even though we had
2 been successful in our legal challenge. I believe that this information would have been important to
3 Congress as they considered whether to adopt the package of NSL reforms that the government
4 proposed (many of which ultimately became part of the new law) or whether to require additional
5 protections for companies like [redacted]

6 19. Because of the gag, members of Congress only heard from the government about
7 the impact of the gag and did not hear from [redacted] During the entire fight we were acutely aware
8 that the same federal administration and surveillance agencies that were supporting the USA
9 FREEDOM Act would likely be able to use that passage to delay or hinder our victory against
10 them in federal district court by arguing that the bill took into account all of concerns publicly
11 raised by companies like [redacted]

12 [redacted]
13 [redacted]
14 [redacted]
15 20. [redacted]
16 [redacted]
17 [redacted] Ultimately I cannot help but think that our inability to participate fully
18 in the public and legislative debate likely contributed to the fact that the NSL statutes remain
19 broadly unconstitutional even after the USA FREEDOM Act.

20 21. Similarly, after the USA FREEDOM Act passed, [redacted]
21 [redacted] explaining our criticism of the newly enacted
22 provisions requiring NSL recipients to report the numbers of NSLs they have received in large
23 bands that include "0." [redacted]

24 [redacted]
25 22. The USA FREEDOM Act was not the only time that the NSL gag prevented
26 [redacted]
27 [redacted]
28 [redacted]

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[Redacted]

23. [Redacted] in the *Twitter v. Lynch* case (N.D. Cal. No. 14-cv-4480 YGR), supporting Twitter's First Amendment right to publish its own transparency report of government requests for user information, including NSLs. The [Redacted] brief discussed the experience of receiving an NSL, but due to the NSLs gags, [Redacted] was forced to sign the brief anonymously. [Redacted]

[Redacted]

24. Because of the continuing gag the government has imposed through the NSLs, [Redacted] [Redacted] have had and continue to have our speech on matters of public policy to the legislative branch, as well as to the general public, silenced or severely truncated. So long as the gag continues in effect, we will continue to be silenced in the political arena on this important issue. But for the gag, we would have and would continue to participate fully in the debate on this issue.

[Redacted]

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 23rd day of October, 2015, at

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CERTIFICATE OF SERVICE

I, Stephanie Shattuck, certify that on October 23, 2015, pursuant to prior agreement of the parties, I caused the foregoing to be served electronically on the government's counsel, Steven Y. Bressler, Steven.Bressler@usdoj.gov.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 23, 2015, at San Francisco, California.


Stephanie Shattuck

