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12
13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16 ELECTRONIC FRONTIER FOUNDATION,) NO. 07-CV-05278-SI
17 Plaintiff,)
18 v.) **DECLARATION OF MARCIA**
19 OFFICE OF THE DIRECTOR OF NATIONAL) **HOFMANN IN SUPPORT OF MOTION**
20 INTELLIGENCE,) **FOR AWARD OF ATTORNEY’S FEES**
21 Defendant.) **AND COSTS**
22)
23)
Date: May 16, 2008
Time: 9:00 a.m.
Courtroom: 10, 19th Floor

24 1. I am an attorney of record for the plaintiff in this matter and a member in good
25 standing of the California State Bar, and am admitted to practice before this Court. I have personal
26 knowledge of the matters stated in this declaration. If called upon to do so, I am competent to
27 testify to all matters set forth herein.
28

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

4 3. EFF generally represents clients without charge in precedent-setting litigation of
5 national importance involving novel and complex issues arising from the intersection of new
6 technology with privacy rights, free press and free expression rights, and other civil liberties.
7 Nevertheless, EFF attorneys have hourly rates for purposes of cases in which EFF is entitled to
8 attorneys’ fees.

9 4. For 2007, my rate was \$350 per hour. For 2008, my rate is \$450 per hour.

10 5. My rates are well within the prevailing hourly rates in the San Francisco Bay Area
11 for lawyers of comparable education, expertise, and experience who handle matters of the type
12 involved in this litigation.
13

14 6. In 2003, I received my Juris Doctor degree from the University of Dayton School of
15 Law. I am admitted to the bars of the District of Columbia and California.
16

17 7. Before joining EFF in August 2006, I was Staff Counsel and Director of the Open
18 Government Project at the Electronic Privacy Information Center (“EPIC”), where I led EPIC’s
19 efforts to learn about emerging policies in the post-9/11 era.
20

21 8. In the course of my open government work at EPIC and EFF, I have litigated more
22 than a dozen Freedom of Information Act lawsuits. Documents made public as a result of these
23 cases have been reported by the *New York Times*, *Washington Post*, National Public Radio, Fox
24 News, and CNN, among others.

25 9. I am a co-author of *Proskauer on Privacy: A Guide to Privacy and Data Security*
26 *Law in the Information Age* (ISBN 1402408048). I am also a contributor to the two-volume
27 *Encyclopedia of Privacy* (ISBN 0313334773), for which I authored the “Freedom of Information
28

1 Act” entry.

2 10. After a careful review of our files on the case, I estimate the minimum number of
3 hours I spent on the complaint, motion for a preliminary injunction, and this motion as follows:

4	<u>Date</u>	<u>Task</u>	<u>Hours</u>
5	10/06/07	Drafted complaint; analyzed causes of action with co-counsel; 6 revised complaint	4.75
7	10/08/07	Analyzed complaint with co-counsel; revised complaint	2.5
8	10/09/07	Analyzed complaint with co-counsel; revised complaint	1.0
9	10/16/07	Revised complaint; reviewed final drafts of filings	1.25
10	10/19/07	Researched case law for motion for preliminary injunction re: 11 preliminary injunction standard in 9th Cir.	4.75
12	10/22/07	Researched case law for motion for preliminary injunction re: 13 9th FOIA precedents; analyzed preliminary injunction standards with co-counsel; conferred with opposing counsel	6.75
14	10/23/07	Began drafting motion for preliminary injunction and 15 accompanying papers; analyzed likelihood of success on the merits and public interest arguments with co-counsel	5.0
16	10/24/07	Continued drafting motion for preliminary injunction and 17 accompanying papers; analyzed irreparable injury and public interest arguments with co-counsel	6.75
18	10/25/07	Continued drafting motion for preliminary injunction and 19 drafted supporting papers; researched standard for application to shorten time; analyzed strategy to shorten time with co- 20 counsel; conferred with opposing counsel	7.5
21	10/26/07	Continued drafting motion for preliminary injunction; 22 researched application to shorten time and drafted supporting papers; analyzed claim with co-counsel; conferred with opposing counsel	6.5
23	10/27/07	Continued drafting and revising motion for preliminary 24 injunction and supporting papers	3.5
25	10/28/07	Continued revising motion for preliminary injunction and 26 supporting papers; continued drafting papers supporting application to shorten time	5.5
27	10/29/07	Finalized and filed motion for preliminary injunction, 28 application to shorten time, and supporting papers; analyzed final drafts with co-counsel	8.75

1	10/31/07	Conferred with co-counsel and opposing counsel about stipulating to a shortened hearing schedule; reviewed draft stipulation	1.0
2			
3	11/27/07	Reviewed court order granting in part PI motion	0.5
4		=====	===
5		Total 2007 hours:	54.25
6			
7			
8	4/7/08	Researched attorney's fee standard	2.5
9	4/8/08	Continued researching attorney's fee case law; began drafting motion for an award of attorney's fees and costs; revised co-counsel's declarations; analyzed attorney's fees claim with co-counsel	5.25
10			
11	4/9/08	Continued drafting and revising motion for an award of attorney's fees and costs; drafted declaration; analyzed attorney's fees claim with co-counsel	4.75
12			
13	4/10/08	Revised motion for an award of attorney's fees and costs; revised declarations; drafted proposed order; analyzed attorney's fees claim with co-counsel	2.25
14			
15	4/11/08	Finalized motion for an award of attorney's fees and costs and accompanying papers; filed motion	3.50
16		=====	===
17		Total 2008 hours:	18.25
18			

11. In total, I spent no fewer than 72.5 hours on this litigation, with 54.25 hours spent in 2007 when my hourly rate was \$350 per hour (\$18,987.50) and 18.25 hours spent in 2008 when my hourly rate was \$450 per hour (\$8,212.50). At my hourly rates during the relevant timeframe, my total fees are \$27,200.00.

12. David L. Sobel, Jennifer Stisa Granick, Kurt Opsahl and I have expended a reasonable number of hours to initiate this action, secure a favorable order on the motion for preliminary injunction, and request attorney's fees. The total amount of attorney's fees EFF seeks to recover is \$48,520.00.

13. EFF's costs for this litigation are as follows:

<u>Expense</u>	<u>Cost</u>
Filing fee for complaint	\$350.00
Filing fee for David L. Sobel's pro hac vice motion	\$210.00
Cost of serving complaint and summonses via certified mail to the Office on the Director of National Intelligence, United States Attorney, and Attorney General	\$12.39
Cost of messenger service for delivery of complaint and pro hac vice motion to Clerk's office, and chambers copies of motion for a preliminary injunction briefing to Court	\$128.80
Cost of serving motion for a preliminary injunction on counsel for ODNI via FedEx Overnight	\$30.78
=====	=====
Total:	\$731.97

14. In total, EFF seeks to recover \$49,251.97 in attorney's fees and costs.

15. Attached hereto as Exhibit A is a true and correct copy of the following press release: EFF Obtains Documents Detailing High-Level Battles Over Surveillance Law (Nov. 30, 2007), available at <http://www.eff.org/press/archives/2007/11/30>.

16. Attached hereto as Exhibit B is a true and correct copy of the following press release: EFF Obtains Documents on Congressional Intelligence Briefings (Dec. 11, 2007), available at <http://www.eff.org/press/archives/2007/12/11>.

17. Attached hereto as Exhibit C is a true and correct copy of the following news article: Bob Egelko, "AT&T Case Lobbying Yields Just One Document, Federal Spy Chief Says," SAN FRANCISCO CHRONICLE, Dec. 12, 2007, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/12/12/MN1FTSBTV.DTL>.

18. Attached hereto as Exhibit D is a true and correct copy of the following news article: Declan McCullagh, "Declassified Docs Show Fight Over Surveillance, Telecom

1 Immunity,” CNET NEWS, Dec. 11, 2007, available at [http://www.news.com/8301-13578_3-](http://www.news.com/8301-13578_3-9832641-38.html)
2 9832641-38.html.

3 19. Attached hereto as Exhibit E is a true and correct copy of the following news article:
4 Ryan Singel, “Top Spy Chief Pushed Congress For Wider Powers, Citing High Summer Threat
5 Level, Docs Show,” THREAT LEVEL, WIRED NEWS, Nov. 30, 2007, available at
6 <http://blog.wired.com/27bstroke6/2007/11/top-spy-pushed.html>.

7
8 20. Attached hereto as Exhibit F is a true and correct copy of the following webpage:
9 Office of the Director of National Intelligence, Electronic Reading Room,
10 http://www.odni.gov/electronic_reading_room/electronic_reading_room.htm (last visited April 9,
11 2008).

12
13 I declare under penalty of perjury of the laws of the State of California that the foregoing is true
14 and correct to the best of my knowledge and belief. Executed April 11, 2008 in San Francisco,
15 California.

16
17
18 /s/ Marcia Hofmann
19 Marcia Hofmann