

1 AARON S. DYER #192991
aaron.dyer@pillsburylaw.com
2 LAUREN M. LEAHY #260651
lauren.leahy@pillsburylaw.com
3 PILLSBURY WINTHROP SHAW PITTMAN LLP
725 South Figueroa Street, Suite 2800
4 Los Angeles, CA 90017-5406
Telephone: (213) 488-7100
5 Facsimile: (213) 629-1033

6 CINDY A. COHN (State Bar No. 145997)
cindy@eff.org
7 LEE TIEN (State Bar No. 148216)
tien@eff.org
8 MATTHEW ZIMMERMAN (State Bar No. 212423)
mattz@eff.org
9 MARCIA HOFMANN (State Bar No. 250087)
marcia@eff.org
10 ELECTRONIC FRONTIER FOUNDATION
454 Shotwell Street
11 San Francisco, CA 94110
Telephone: (415) 436-9333 x108
12 Facsimile: (415) 436-9993

13 Attorneys for Petitioner
14 [Redacted]

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION
18

19 IN RE MATTER OF NATIONAL SECURITY)
20 LETTER ISSUED TO [Redacted])
21 [Redacted])
22)
23)
24)
25)
26)
27)

No. _____
DECLARATION OF [Redacted]
IN SUPPORT OF
[Redacted]
PETITION TO SET ASIDE
NATIONAL SECURITY LETTER AND
NONDISCLOSURE REQUIREMENT
IMPOSED IN CONNECTION
THEREWITH
FILED UNDER SEAL
[Civil L.R. 79-5, 7-11]
Judge: Hon. William H. Alsup

28
Case No. _____ DECLARATION OF [Redacted] IN SUPPORT OF
PETITION TO SET ASIDE NATIONAL SECURITY LETTER
AND NONDISCLOSURE REQUIREMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF [REDACTED]

I, [REDACTED] declare as follows:

1. I am the [REDACTED] of [REDACTED]

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

2. I submit this declaration in support of [REDACTED] Petition to Set Aside National Security Letter And Nondisclosure Requirement Imposed In Connection Therewith.

3. I have been employed at [REDACTED] since [REDACTED]

4. [REDACTED] is an [REDACTED] company that provides long distance and mobile phone services to its customers.

5. [REDACTED]

[REDACTED]

6. [REDACTED]

[REDACTED]

7. [REDACTED]

[REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. [REDACTED]

[REDACTED]

9. [REDACTED]

[REDACTED]

10. [REDACTED] has an interest in protecting the communications privacy of its customers.

11. [REDACTED]

[REDACTED]

12. [REDACTED] believes that it should ensure that any request for information about its customers fully meets both statutory and constitutional standards.

13. On [REDACTED] 2011, [REDACTED] received an NSL addressed to [REDACTED]

[REDACTED] (“[REDACTED] 2011 NSL”).

14. Attached hereto as Exhibit A is a true and correct copy of the [REDACTED] 2011 NSL.

15. Though the NSL was addressed to [REDACTED] is the actual custodian of records, not [REDACTED] and [REDACTED] is the entity filing this petition and responding to the [REDACTED] 2011 NSL.

16. The NSL prohibits [REDACTED] from disclosing information about the NSL or this petition to [REDACTED] to most of [REDACTED] employees and staff, to the press, to members of the public, and to members of Congress.

17. It likewise prohibits [REDACTED] from disclosing that an NSL has been directed to [REDACTED]

[REDACTED]

[REDACTED]

18. Likewise, [REDACTED] is prohibited by law from disclosing that information has been sought about an [REDACTED] that, [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



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

Executed this 2nd day of May, 2011, at San Francisco, California.



Case No. _____

DECLARATION OF _____ IN SUPPORT OF
PETITION TO SET ASIDE NATIONAL SECURITY LETTER
AND NONDISCLOSURE REQUIREMENT



U.S. Department of Justice

Federal Bureau of Investigation

In reply, please refer to

[Redacted]

[Redacted]

[Redacted]

2011

[Redacted]

Dear

[Redacted]

Under the authority of Executive Order 12333 (as amended), dated July 30, 2008, and pursuant to Title 18 United States Code (U.S.C.), § 2709 (§ 201 of the Electronic Communications Privacy Act of 1986) (as amended), you are hereby directed to provide to the Federal Bureau of Investigation (FBI) all subscriber information, limited to name, address, and length of service, for all services provided to or accounts held by the named subscriber and/or subscriber of the named account.

[Redacted]

If the time period noted above is from "inception," that term is intended to apply to the current account holder only. If the time period noted above is to the "present," that term is intended to direct production of information to the date of the processing of this letter. If providing information to the date of processing is not feasible, please provide information to the date of receipt of this letter.

In accordance with Title 18 U.S.C., § 2709(b), I certify that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, and that such an investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment to the Constitution of the United States.

[REDACTED]

In accordance with Title 18 U.S.C. § 2709(c)(1), I certify that a disclosure of the fact that the FBI has sought or obtained access to the information sought by this letter may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of a person. Accordingly, Title 18 U.S.C. § 2709(c)(1) and (2) prohibits you, or any officer, employee, or agent of yours, from disclosing this letter, other than to those to whom disclosure is necessary to comply with the letter or to an attorney to obtain legal advice or legal assistance with respect to this letter.

In accordance with Title 18 U.S.C. § 2709(c)(3), you are directed to notify any persons to whom you have disclosed this letter that they are also subject to the nondisclosure requirement and are therefore also prohibited from disclosing the letter to anyone else.

In accordance with Title 18 U.S.C. § 2709(c)(4), if the FBI asks for the information, you should identify any person to whom such disclosure has been made or to whom such disclosure will be made. In no instance will you be required to identify any attorney to whom disclosure was made or will be made in order to obtain legal advice or legal assistance with respect to this letter.

In accordance with 18 U.S.C. § 3511(a) and (b)(1), you have a right to challenge this letter if compliance would be unreasonable, oppressive, or otherwise unlawful.

You also have the right to challenge the nondisclosure requirement set forth above. If you wish to make a disclosure that is prohibited by the nondisclosure requirement, you must notify the FBI, in writing, of your desire to do so within 10 calendar days of receipt of this letter. That notice must be mailed or faxed to the [REDACTED] attention: [REDACTED] with a copy to FBI HQ, attention: General Counsel (fax number: 202-324-5366) and must reference the date of the NSL and the identification number found on the upper left corner of the NSL. If you send notice within 10 calendar days, the FBI will initiate judicial proceedings in approximately 30 days in order to demonstrate to a federal judge the need for nondisclosure and to obtain a judicial order requiring continued nondisclosure. The nondisclosure requirement will remain in effect unless and until there is a final court order holding that disclosure is permitted.

If you do not send notice of your desire to disclose the NSL or the fact that you produced records in response to it within 10 calendar days of receipt, then the nondisclosure provision will remain in effect, subject to your opportunity to make an annual challenge to the nondisclosure requirement as provided by subsection 3511(b).

[REDACTED]

In accordance with Title 18 U.S.C. § 3511(c), an unlawful failure to comply with this letter, including any nondisclosure requirement, may result in the United States bringing an enforcement action.

You are directed to provide records responsive to this letter through a controlled delivery service such as the United States Postal Service or Federal Express to the [REDACTED] within 5 business days of receipt of this letter. If possible, please provide records in response to this letter in electronic format. Due to security considerations, you should neither send the records through routine mail service nor non-secure fax, nor disclose the substance of this letter in any telephone conversation. In responding to this request in order to facilitate processing of the information, please reference the [REDACTED]

Any questions you have regarding this letter should be directed to the [REDACTED] or [REDACTED]

Your cooperation in this matter is greatly appreciated.

Sincerely, [REDACTED]

[REDACTED]

Acting Special Agent In Charge

[REDACTED]