

1 CINDY COHN (SBN 145997)
 cindy@eff.org
 2 LEE TIEN (SBN 148216)
 KURT OPSAHL (SBN 191303)
 3 JAMES S. TYRE (SBN 083117)
 MARK RUMOLD (SBN 279060)
 4 ELECTRONIC FRONTIER FOUNDATION
 454 Shotwell Street
 5 San Francisco, CA 94110
 Telephone: (415) 436-9333
 6 Fax: (415) 436-9993

RACHAEL E. MENY (SBN 178514)
 rmeny@kvn.com
 PAULA L. BLIZZARD (SBN 207920)
 MICHAEL S. KWUN (SBN 198945)
 AUDREY WALTON-HADLOCK (SBN
 250574)
 KEKER & VAN NEST, LLP
 633 Battery Street
 San Francisco, California 94111
 Telephone: (415) 391-5400
 Fax: (415) 397-7188

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

THOMAS E. MOORE III (SBN 115107)
 tmoore@moorelawteam.com
 THE MOORE LAW GROUP
 228 Hamilton Avenue, 3rd Floor
 Palo Alto, CA 94301
 Telephone: (650) 798-5352
 Fax: (650) 798-5001

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

14 Attorneys for Plaintiffs

15 **UNITED STATES DISTRICT COURT**

16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 CAROLYN JEWEL, TASH HEPTING,
 18 GREGORY HICKS, ERIK KNUTZEN and
 JOICE WALTON, on behalf of themselves and
 19 all others similarly situated,

20 Plaintiffs,

21 v.

22 NATIONAL SECURITY AGENCY, *et al.*,

23 Defendants.

) CASE NO. 08-CV-4373-JSW

)
)
) **DECLARATION OF KURT OPSAHL**
) **REGARDING PLAINTIFFS' EVIDENCE**
) **AND RULE 1006 SUMMARY OF**
) **VOLUMINOUS EVIDENCE FILED IN**
) **SUPPORT OF PLAINTIFFS' MOTION**
) **FOR PARTIAL SUMMARY JUDGMENT**
) **AND OPPOSITION TO THE**
) **GOVERNMENT DEFENDANTS' CROSS**
) **MOTION**

) Date: December 14, 2012
) Time: 9:00 a.m.
) Courtroom 11, 19th Floor
) The Honorable Jeffrey S. White

1 I, KURT OPSAHL, hereby declare,

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

6 2. In support of plaintiffs' Combined Reply in Support of Their Motion for Partial
7 Summary Judgment and Opposition to the Government Defendants' Cross Motion, plaintiffs also
8 submit a Summary of Voluminous Evidence pursuant to Federal Rule of Evidence 1006. The
9 Summary of Voluminous Evidence is based on evidence previously filed in this case, as well as
10 information disclosed in testimony before Congress, speeches, letters and other statements by
11 government officials, publicly released government documents, books, magazine, newspaper
12 articles, and other sources.

13 3. For the convenience of the Court, and to facilitate judicial access to plaintiffs'
14 supporting evidence, plaintiffs file both the new information (supplemental evidence) and the
15 previously filed evidence along with the Rule 1006 Summary of Voluminous Evidence. The
16 supplemental evidence is contained in Volumes I-VI of the Evidence Filed in Support of Plaintiffs'
17 Motion for Partial Summary Judgment and Opposition to the Government Defendants' Cross
18 Motion. Evidence previously filed before this Court has been provided for the Court's convenience
19 in Volume VII.

20 4. The Summary of Voluminous Evidence is an accurate summary conveying
21 information contained in the evidence, described below.

22 5. Attached hereto as Exhibit 1 is a true and correct copy of an excerpt from the
23 following book: ERIC LICHTBLAU, BUSH'S LAW: THE REMAKING OF AMERICAN JUSTICE (Pantheon
24 Books 2008).

25 6. Attached hereto as Exhibit 2 is a true and correct copy of the following document:
26 *The Nomination of Gen. Michael V. Hayden to be the Dir. of the Central Intelligence Agency*,
27 Hearing of the S. Select Comm. on Intelligence on, 109th Cong. (May 18, 2006), *available at*
28 http://www.fas.org/irp/congress/2006_hr/051806transcript.pdf.

1 7. Attached hereto as Exhibit 3 is a true and correct copy of the following document:
2 Letter from Shannen W. Coffin, Counsel to the Vice President, Office of the Vice President, to Sen.
3 Patrick J. Leahy, Chairman, S. Comm. on the Judiciary, and Sen. Arlen Specter, Ranking Minority
4 Member, S. Comm. on the Judiciary (Aug. 20, 2007).

5 8. Attached hereto as Exhibit 4 is a true and correct copy of the following document:
6 National Security Agency, *Transition 2001* (December 2000), provided by the National Security
7 Agency in response to a Freedom of Information Act request and available through the National
8 Security Archive at George Washington University at
9 <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB24/nsa25.pdf>.

10 9. Attached hereto as Exhibit 5 is a true and correct copy of the following document:
11 *FISA Hearing: Hearing Before the H. Permanent Select Comm. on Intelligence, 110th Cong. (Sept.*
12 *18, 2007) available at* http://www.fas.org/irp/congress/2007_hr/fisa091807.pdf.

13 10. Attached hereto as Exhibit 6 is a true and correct copy of the following document:
14 Dept. of Justice Press Release, *Transcript of Background Briefing By Senior Justice Department*
15 *Officials On FISA Authority Of Electronic Surveillance* (Jan. 17, 2007), *available at*
16 <http://www.fas.org/irp/news/2007/01/doj011707.html>.

17 11. Attached hereto as Exhibit 7 is a true and correct copy of the following document:
18 Dept. of Justice, Office of the Inspector Gen., *Report of Investigation Regarding Allegations of*
19 *Mishandling of Classified Documents by Att'y Gen. Alberto Gonzales* (Sept. 2, 2008), *available at*
20 <http://www.usdoj.gov/oig/special/s0809/final.pdf>.

21 12. Attached hereto as Exhibit 8 is a true and correct copy of an excerpt from the
22 following book: BARTON GELLMAN, *ANGLER: THE CHENEY VICE PRESIDENCY* (Penguin Press
23 2008).

24 13. Attached hereto as Exhibit 9 is a true and correct copy of an excerpt from the
25 following book: JACK L. GOLDSMITH, *THE TERROR PRESIDENCY: LAW AND JUDGMENT INSIDE THE*
26 *BUSH ADMINISTRATION* (W. W. Norton 2007).

27
28

1 14. Attached hereto as Exhibit 10 is a true and correct copy of the following document:
2 PBS Frontline, *Spying on the Homefront*, Interview with John C. Yoo (Jan. 10, 2007), *available at*
3 <http://www.pbs.org/wgbh/pages/frontline/homefront/interviews/yoo.html>.

4 15. Attached hereto as Exhibit 11 is a true and correct copy of the following document:
5 *Dept. of Justice Oversight: Hearing before the S. Comm. on the Judiciary, 110th Cong. (Jan 18,*
6 *2007), available at* http://www.fas.org/irp/congress/2007_hr/doj.pdf.

7 16. Attached hereto as Exhibit 12 is a true and correct copy of the following document:
8 *Proposed FISA Modernization Legislation: Hearing of the S. Select Comm. on Intelligence, 110th*
9 *Cong. (May 1, 2007), available at* http://www.odni.gov/testimonies/20070501_transcript.pdf.

10 17. Attached hereto as Exhibit 13 is a true and correct copy of the following document:
11 *The Terrorist Surveillance Program and the Foreign Intelligence Surveillance Act (FISA): Hearing*
12 *of the Subcomm. on the Constitution, Civil Rights, and Civil Liberties, H. Comm. on the Judiciary,*
13 *110th Cong. (June 7, 2007) (Statement of Steven G. Bradbury, Principal Deputy Asst. Att’y Gen.,*
14 *Office of Legal Counsel, U.S. Dept. of Justice), available at*
15 http://www.fas.org/irp/congress/2007_hr/060707bradbury.pdf.

16 18. Attached hereto as Exhibit 14 is a true and correct copy of the following document:
17 Interview with Rep. Peter Hoekstra by Paul Gigot, *Lack of Intelligence: Congress Dawdles on*
18 *Terrorist Wiretapping*, WALL ST. J. ED. REP., FOX NEWS CHANNEL (Aug. 6, 2007).

19 19. Attached hereto as Exhibit 15 is a true and correct copy of the following document:
20 White House Press Release, *Transcript of Background Briefing by Senior Administration Officials*
21 *on FISA*, (Feb 26, 2008), *available at* [http://georgewbush-](http://georgewbush-whitehouse.archives.gov/news/releases/2008/02/20080226-11.html)
22 [whitehouse.archives.gov/news/releases/2008/02/20080226-11.html](http://georgewbush-whitehouse.archives.gov/news/releases/2008/02/20080226-11.html).

23 20. Attached hereto as Exhibit 16 is a true and correct copy of the following document:
24 Eric Lichtblau & Scott Shane, *Bush Is Pressed Over New Report on Surveillance*, N.Y. TIMES (May
25 12, 2006), *available at* <http://www.nytimes.com/2006/05/12/washington/12nsa.html>.

26 21. Attached hereto as Exhibit 17 is a true and correct copy of the following document:
27 *Warrantless Surveillance And The Foreign Intelligence Surveillance Act: The Role Of Checks And*
28

1 *Balances In Protecting Americans' Privacy Rights (Part II):* Hearing before the H. Comm. on the
2 Judiciary, 110th Cong. (Sept. 18, 2007).

3 22. Attached hereto as Exhibit 18 is a true and correct copy of the Executive Summary
4 of the following report: Committee on Technical and Privacy Dimensions of Information for
5 Terrorism Prevention, *Protecting Individual Privacy in the Struggle Against Terrorists: A*
6 *Framework for Assessment*, NATIONAL RESEARCH COUNCIL, Executive Summary (2008).

7 23. Attached hereto as Exhibit 19 is a true and correct copy of the following document:
8 Transcript of *Strengthening FISA (Foreign Intelligence Surveillance Act): Does the Protect*
9 *America Act Protect Americans' Civil Liberties and Enhance Security?:* Hearing before the S.
10 Comm. on the Judiciary, 110th Cong. (Sept. 25, 2007).

11 24. Attached hereto as Exhibit 20 is a true and correct copy of the following document:
12 *The Foreign Intelligence Surveillance Act and Implementation of the Protect America Act:* Hearing
13 before the S. Comm. on the Judiciary, 110th Cong. (Sept. 25, 2007) (Statement of J. Michael
14 McConnell, Dir. of Nat'l Intelligence), available at
15 http://www.fas.org/irp/congress/2007_hr/092507mcconnell.pdf

16 25. Attached hereto as Exhibit 21 is a true and correct copy of the following document:
17 ODNI Minimization Attachment, provided by the Office of the Dir. of Nat'l Intelligence in
18 response to a Freedom of Information Act request and available through the ODNI's Electronic
19 Reading Room at <http://www.dni.gov/index.php/intelligence-community/ic-policies-reports>.

20 26. Attached hereto as Exhibit 22 is a true and correct copy of the following document:
21 Letter from Kathleen Turner, Dir. of Legislative Affairs, Office of the Dir. of Nat'l Intelligence, to
22 Rep. Silvestre Reyes, Chairman, and Rep. Peter Hoekstra, Ranking Member of the H. Intelligence
23 Comm (Oct. 16, 2007), provided by the Office of the Dir. of Nat'l Intelligence in response to a
24 Freedom of Information Act request and available through the ODNI's Electronic Reading Room at
25 <http://www.dni.gov/index.php/intelligence-community/ic-policies-reports>.

26 27. Attached hereto as Exhibit 23 is a true and correct copy of the following document:
27 PBS Frontline, *Spying on the Homefront*, Interview with James A. Baker (March 2, 2007) available
28 at <http://www.pbs.org/wgbh/pages/frontline/homefront/interviews/baker.html>.

1 28. Attached hereto as Exhibit 24 is a true and correct copy of the following document:
2 Department of Defense, DOD 5240 1-R, Procedures Governing the Activities of DOD Intelligence
3 Components that Affect United States Persons (Dec. 1982), available at
4 www.fas.org/irp/doddir/dod/d5240_1_r.pdf.

5 29. Attached hereto as Exhibit 25 is a true and correct copy of the following document:
6 Lawrence Wright, *The Spymaster: Can Mike McConnell Fix America's Intelligence Community?*,
7 NEW YORKER (Jan. 21, 2008), available at
8 http://www.newyorker.com/reporting/2008/01/21/080121fa_fact_wright?currentPage=all.

9 30. Attached hereto as Exhibit 26 is a true and correct copy of the following document:
10 Mark Hosenball, *Spying: Giving Out U.S. Names*, NEWSWEEK (May 1, 2005), available at
11 <http://www.newsweek.com/id/51880>.

12 31. Attached hereto as Exhibit 27 is a true and correct copy of the following document:
13 Brian Ross, et. al., *Exclusive: Inside Account of U.S. Eavesdropping on Americans, U.S. Officers'*
14 *"Phone Sex" Intercepted; Senate Demanding Answers*, ABC NEWS (Oct. 9, 2008), available at
15 <http://abcnews.go.com/Blotter/Story?id=5987804&page=1>.

16 32. Attached hereto as Exhibit 28 is a true and correct copy of the following document:
17 White House Press Release, *Statement by the Press Secretary on FISA* (Feb. 25, 2008), available at
18 <http://georgewbush-whitehouse.archives.gov/news/releases/2008/02/20080225-1.html>.

19 33. Attached hereto as Exhibit 29 is a true and correct copy of the following document:
20 *Transcript of FISA Amendments: How to Protect Americans' Security and Privacy and Preserve*
21 *the Rule of Law and Government Accountability* (Panel I), Hearing before the S. Comm. on the
22 Judiciary, 110th Cong. (Oct. 31, 2007).

23 34. Attached hereto as Exhibit 30 is a true and correct copy of the following document:
24 Leslie Cauley, *NSA Has Massive Database of Americans' Phone Calls*, USA TODAY (May 11,
25 2006), available at http://usatoday30.usatoday.com/news/washington/2006-05-10-nsa_x.htm.

26 35. Attached hereto as Exhibit 31 is a true and correct copy of the following document:
27 White House Press Release, *Transcript of President Bush Meets with National Governors*
28

1 Association (Feb. 25, 2008), available at [http://georgewbush-](http://georgewbush-whitehouse.archives.gov/news/releases/2008/02/20080225-2.html)
2 whitehouse.archives.gov/news/releases/2008/02/20080225-2.html.

3 36. Attached hereto as Exhibit 32 is a true and correct copy of the following document:
4 White House Press Release, *Press Briefing by Dana Perino* (Feb. 12, 2008), available at
5 <http://georgewbush-whitehouse.archives.gov/news/releases/2008/02/20080212-2.html>.

6 37. Attached hereto as Exhibit 33 is a true and correct copy of the following document:
7 U.S. Dept. of Defense, Dept. of Justice, Central Intelligence Agency, National Security Agency, &
8 Office of the Dir. of Nat'l Intelligence, Offices of the Inspector Gen., *Unclassified Report on the*
9 *President's Surveillance Program* (July 10, 2009), available at
10 <http://www.justice.gov/oig/special/s0907.pdf>.

11 38. Attached hereto as Exhibit 34 is a true and correct copy of the following document:
12 Marcus Baram, *Ex-Qwest CEO: Spy Agency Retaliated Against Us, Joseph Nacchio Claims Telco*
13 *Was Punished for Not Cooperating in Records Program*, ABC NEWS (Oct. 12, 2007), available at
14 <http://www.abcnews.go.com/print?id=3723676>.

15 39. Attached hereto as Exhibit 35 is a true and correct copy of the following document:
16 Barton Gellman & Arshad Mohammed, *Data on Phone Calls Monitored; Extent of*
17 *Administration's Domestic Surveillance Decried in Both Parties*, WASH. POST (May 12, 2006).

18 40. Attached hereto as Exhibit 36 is a true and correct copy of the following document:
19 Joseph Menn & Josh Meyer, *U.S. Spying is Much Wider, Some Suspect*, L.A. TIMES (Dec. 25,
20 2005), available at <http://articles.latimes.com/2005/dec/25/nation/na-spy25>.

21 41. Attached hereto as Exhibit 37 is a true and correct copy of the following document:
22 Department of Justice Press Release, *Transcript of Conference Call with Senior Administration*
23 *Officials Regarding FISA Modernization Legislation* (Aug. 7, 2007), available at
24 <http://www.justice.gov/archive/ll/docs/fisa-transcript080707.pdf>.

25 42. Attached hereto as Exhibit 38 is a true and correct copy of the following document:
26 Eric Lichtblau & James Risen, *Officials Say U.S. Wiretaps Exceeded Law*, N.Y. TIMES (Apr. 16,
27 2009), available at <http://www.nytimes.com/2009/04/16/us/16nsa.html?pagewanted=all>.

28

1 43. Attached hereto as Exhibit 39 is a true and correct copy of the following document:
2 Eric Lichtblau, *F.B.I. Data Mining Reached Beyond Initial Targets*, N.Y. TIMES (Sept. 9, 2007),
3 available at <http://www.nytimes.com/2007/09/09/washington/09fbi.html>.

4 44. Attached hereto as Exhibit 40 is a true and correct copy of the following document:
5 Public Certification of Att’y Gen. of the United States Michael Mukasey, *In re NSA Telecomm.*
6 *Records Litigation*, MDL Case No. M:06-1791-VRW (N.D. Cal. Dec. 2, 2008) (Dkt. # 469-3).

7 45. Attached hereto as Exhibit 41 is a true and correct copy of the following document:
8 Dan Eggen & Joby Warrick, *Data Mining Figured In Dispute Over NSA*, WASH. POST (July 29,
9 2007), available at [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/content/article/2007/07/28/AR2007072801401.html)
10 [dyn/content/article/2007/07/28/AR2007072801401.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/07/28/AR2007072801401.html).

11 46. Attached hereto as Exhibit 42 is a true and correct copy of the following document:
12 *Preserving the Rule of Law in the Fight Against Terrorism*: Hearing before the S. Comm. on the
13 Judiciary, 110th Cong. (Oct. 2, 2007), available at
14 http://www.fas.org/irp/congress/2007_hr/ruleoflaw.html.

15 47. Attached hereto as Exhibit 43 is a true and correct copy of the following document:
16 Scott Shane, et al., *Secret U.S. Endorsement of Severe Interrogations*, N.Y. TIMES (Oct. 4, 2007),
17 available at <http://www.nytimes.com/2007/10/04/washington/04interrogate.html>.

18 48. Attached hereto as Exhibit 44 is a true and correct copy of the following document:
19 Dan Eggen & Paul Kane, *Gonzales, Senators Spar on Credibility; Account of Meeting In '04 Is*
20 *Challenged*, WASH. POST (July 25, 2007), available at [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/content/article/2007/07/24/AR2007072400207.html)
21 [dyn/content/article/2007/07/24/AR2007072400207.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/07/24/AR2007072400207.html).

22 49. Attached hereto as Exhibit 45 is a true and correct copy of the following document:
23 *Oversight of the Department of Justice*: Hearing before the S. Comm. on the Judiciary, 110th Cong.
24 (July 24, 2007), available at [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-srv/politics/documents/gonzalez_transcript_072407.html)
25 [srv/politics/documents/gonzalez_transcript_072407.html](http://www.washingtonpost.com/wp-srv/politics/documents/gonzalez_transcript_072407.html).

26 50. Attached hereto as Exhibit 46 is a true and correct copy of the following document:
27 Scott Shane & David Johnston, *Mining of Data Prompted Fight Over U.S. Spying*, N.Y. TIMES
28 (July 29, 2007), available at <http://www.nytimes.com/2007/07/29/washington/29nsa.html>.

1 51. Attached hereto as Exhibit 47 is a true and correct copy of the following document:
2 White House Press Release, *Press Briefing by Tony Snow*, (Jan. 17, 2007), *available at*
3 <http://georgewbush-whitehouse.archives.gov/news/releases/2007/01/20070117-5.html>.

4 52. Attached hereto as Exhibit 48 is a true and correct copy of the following document:
5 James Risen, *Administration Pulls Back on Surveillance Agreement*, N.Y. TIMES (May 2, 2007),
6 *available at* <http://www.nytimes.com/2007/05/02/washington/02intel.html>.

7 53. Attached hereto as Exhibit 49 is a true and correct copy of the following document:
8 David Johnston & Scott Shane, *Senators Demand Details on New Eavesdropping Rules*, N.Y.
9 TIMES (Jan. 19, 2007), *available at*
10 <http://www.nytimes.com/2007/01/19/washington/19justice.html>.

11 54. Attached hereto as Exhibit 50 is a true and correct copy of the following document:
12 Greg Miller, *New Limits Put On Overseas Surveillance*, L.A. TIMES (Aug. 2, 2007), *available at*
13 <http://articles.latimes.com/2007/aug/02/nation/na-spying2>.

14 55. Attached hereto as Exhibit 51 is a true and correct copy of the following document:
15 Ryan Singel, *Can the NSA Wiretap in Iraq Without A Warrant?*, WIRED NEWS (Feb. 28, 2008),
16 *available at* <http://blog.wired.com/27bstroke6/2008/02/can-the-nsa-wir.html>.

17 56. Attached hereto as Exhibit 52 is a true and correct copy of the following document:
18 Ellen Nakashima & Paul Kane, *Wiretap Compromise in Works: FISA Update May Hinge On Two*
19 *Separate Votes*, WASH. POST (March 4, 2008), *available at* [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/content/article/2008/03/03/AR2008030302814_pf.html)
20 [dyn/content/article/2008/03/03/AR2008030302814_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2008/03/03/AR2008030302814_pf.html).

21 57. Attached hereto as Exhibit 53 is a true and correct copy of the following document:
22 Letter from Kenneth L. Wainstein, Asst. Att’y Gen. for Nat’l Sec., Dept. of Justice, to Rep.
23 Silvestre Reyes, Chairman, H. Permanent Select Comm. on Intelligence (Sept. 14, 2007).

24 58. Attached hereto as Exhibit 54 is a true and correct copy of the following document:
25 Michael Isikoff, *Uncle Sam Is Still Watching You*, NEWSWEEK (July 21, 2008), *available at*
26 <http://www.newsweek.com/id/145847>.

27 59. Attached hereto as Exhibit 55 is a true and correct copy of the following document:
28 Memorandum from Alberto Gonzales, Fmr. Att’y Gen. of the U.S., *Concerning the Report of*

1 *Investigation Regarding Allegations of Mishandling of Classified Documents by Fmr. Att’y Gen.*
2 *Alberto Gonzales* (Aug. 28, 2008).

3 60. Attached hereto as Exhibit 56 is a true and correct copy of the following document:
4 *Preserving Prosecutorial Independence: Is the Department of Justice Politicizing the Hiring and*
5 *Firing of U.S. Attorneys?:* Hearing before the S. Comm. on the Judiciary, Part IV, 110th Cong.
6 (May 15, 2007).

7 61. Attached hereto as Exhibit 57 is a true and correct copy of the following document:
8 Eric Lichtblau & James Risen, *E-Mail Surveillance Renews Concern in Congress*, N.Y. TIMES
9 (June 16, 2009), available at <http://www.nytimes.com/2009/06/17/us/17nsa.html>.

10 62. Attached hereto as Exhibit 58 is a true and correct copy of the following document:
11 Letter from William E. Moschella, Asst. Att’y Gen., U.S. Dept. of Justice, to Sen. Arlen Specter,
12 Chairman, S. Comm. on the Judiciary (February 3, 2006), available at
13 <http://www.usdoj.gov/ag/readingroom/surveillance17.pdf>.

14 63. Attached hereto as Exhibit 59 is a true and correct copy of the following transcript:
15 White House Press Release, *Press Briefing by Tony Snow* (Aug. 8, 2007), available at
16 <http://georgewbush-whitehouse.archives.gov/news/releases/2007/08/20070808-4.html>.

17 64. Attached hereto as Exhibit 60 is a true and correct copy of an excerpt from the
18 following book: JAMES RISEN, *STATE OF WAR: THE SECRET HISTORY OF THE CIA AND THE BUSH*
19 *ADMINISTRATION* (Free Press 2006).

20 65. Attached hereto as Exhibit 61 is a true and correct copy of the following document:
21 Letter from William E. Moschella, Asst. Att’y Gen., U.S. Dept. of Justice, to Sen Arlen Specter,
22 Chairman, S. Comm. on the Judiciary (March 24, 2006), available at
23 <http://www.usdoj.gov/ag/readingroom/surveillance21.pdf>.

24 66. Attached hereto as Exhibit 62 is a true and correct copy of the following document:
25 Computer Crime and Intellectual Property Section, U.S. Dept. of Justice, *Searching and Seizing*
26 *Computers and Obtaining Electronic Evidence in Criminal Investigations* (2002).

1 67. Attached hereto as Exhibit 63 is a true and correct copy of the following document:
2 U.S. Dept. of Justice, *U.S. Attorneys' Manual 9-7.400 et seq.* (2003), available at
3 http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/7mcrm.htm.

4 68. Attached hereto as Exhibit 64 is a true and correct copy of the following document:
5 Government's Response to Pls.' Req. for Judicial Notice, available at
6 http://www.eff.org/files/filenode/att/hepting_response_to_RFJN.pdf.

7 69. Attached hereto as Exhibit 65 is a true and correct copy of the following document:
8 Letter from Michael Mukasey, Att'y Gen. of the U.S., and J. Michael McConnell, Dir. of Nat'l
9 Intelligence, to Sen. Harry Reid, S. Majority Leader (July 7, 2008).

10 70. Attached hereto as Exhibit 66 is a true and correct copy of the following document:
11 Eric Lichtblau & James Risen, *Spy Agency Mined Vast Data Trove, Officials Report*, N.Y. TIMES
12 (Dec. 24, 2005), available at <http://www.nytimes.com/2005/12/24/politics/24spy.html>.

13 71. Attached hereto as Exhibit 67 is a true and correct copy of the following document:
14 Shane Harris and Tim Naftali, *Tinker, Tailor, Miner, Spy*, SLATE (Jan. 3, 2006), available at
15 http://www.slate.com/articles/news_and_politics/politics/2006/01/tinker_tailor_miner_spy.html.

16 72. Attached hereto as Exhibit 68 is a true and correct copy of the following document:
17 Barton Gellman, *et al.*, *Surveillance Net Yields Few Suspects*, WASH. POST (Feb. 5, 2006),
18 available at [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/content/article/2006/02/04/AR2006020401373.html)
19 [dyn/content/article/2006/02/04/AR2006020401373.html](http://www.washingtonpost.com/wp-dyn/content/article/2006/02/04/AR2006020401373.html).

20 73. Attached hereto as Exhibit 69 is a true and correct copy of the following newspaper
21 article: Morton Kondracke, *NSA Data Mining is Legal, Necessary, Chertoff Says*, Roll Call
22 Newspaper (Jan. 25, 2006), available at
23 http://www.realclearpolitics.com/Commentary/com-1_20_06_MK.html.

24 74. Attached hereto as Exhibit 70 is a true and correct copy of the following document:
25 "The AT&T Advantage, First Quarter 2004."

26 75. Attached hereto as Exhibit 71 is a true and correct copy of the following document:
27 "SBC Investor Briefing, January 31, 2005, No. 246."

28

1 76. Attached hereto as Exhibit 72 is a true and correct copy of the following article:
2 James Risen & Eric Lichtblau, *Bush Lets U.S. Spy on Callers Without Courts*, N.Y. TIMES (Dec. 16,
3 2005).

4 77. Attached hereto as Exhibit 73 is a true and correct copy of the following document:
5 Remarks by Gen. Michael Hayden, *Address to the National Press Club*, Washington, D.C. (Jan. 23,
6 2006).

7 78. Attached hereto as Exhibit 74 is a true and correct copy of the following document:
8 Letter from Alberto Gonzales, Att’y Gen. of the United States, to Sen. Patrick J. Leahy and Sen.
9 Arlen Specter (Jan. 17, 2007).

10 79. Attached hereto as Exhibit 75 is a true and correct copy of the following article:
11 Kim Zetter, *Is the NSA Spying on U.S. Internet Traffic?*, SALON (Jun. 21, 2006), *available at*
12 http://www.salon.com/2006/06/21/att_nsa/.

13 80. Attached hereto as Exhibit 76 is a true and correct copy of the following article:
14 Declan McCullagh, *AT&T Says Cooperation with NSA Could Be Legal*, CNET NEWS (Aug. 24,
15 2006), *available at* [http://news.cnet.com/AT38T-says-cooperation-with-NSA-could-be-legal/2100-](http://news.cnet.com/AT38T-says-cooperation-with-NSA-could-be-legal/2100-1030_3-6108386.html)
16 [1030_3-6108386.html](http://news.cnet.com/AT38T-says-cooperation-with-NSA-could-be-legal/2100-1030_3-6108386.html).

17 81. Attached hereto as Exhibit 77 is a true and correct copy of the following document:
18 Memorandum of the United States in Support of the Military and State Secrets Privilege and
19 Motion to Dismiss or for Summary Judgment, *In Re NSA Telecommunications Records Litigation*,
20 MDL Case No. M:06-1791-VRW (Apr. 20, 2007) (Dkt. # 254).

21 82. Attached hereto as Exhibit 78 is a true and correct copy of the following document:
22 Public Declaration of J. Michael McConnell, Dir. of Nat’l Intelligence, *Shubert v. Bush*, 07-CV-693
23 (May 24, 2007).

24 83. Attached hereto as Exhibit 79 is a true and correct copy of the following article:
25 Seymour Hersh, *Listening In*, NEW YORKER (May 29, 2006).

26 84. Attached hereto as Exhibit 80 is a true and correct copy of the following article:
27 Lowell Berman, et al., *Spy Agency Data After Sept. 11 Led F.B.I. to Dead Ends*, N.Y. TIMES (Jan.
28 17, 2006), *available at* <http://www.nytimes.com/2006/01/17/politics/17spy.html>.

1 85. Attached hereto as Exhibit 81 is a true and correct copy of the following article:
2 Shane Harris, *NSA Spy Program Hinges on State-of-the-Art Technology*, NAT'L J. (Jan. 20, 2006),
3 available at [http://www.govexec.com/defense/2006/01/nsa-spy-program-hinges-on-state-of-the-art-](http://www.govexec.com/defense/2006/01/nsa-spy-program-hinges-on-state-of-the-art-technology/20996/)
4 [technology/20996/](http://www.govexec.com/defense/2006/01/nsa-spy-program-hinges-on-state-of-the-art-technology/20996/).

5 86. Attached hereto as Exhibit 82 is a true and correct copy of the following document:
6 Dept. of Justice Press Release, *Transcript of "Operation GlobalCon" Press Conference* (May 23,
7 2006).

8 87. Attached hereto as Exhibit 83 is a true and correct copy of the following document:
9 *Transcript of All Things Considered: Senate Intelligence Chair Readies for Hayden Hearings* (NPR
10 radio broadcast, May 17, 2006).

11 88. Attached hereto as Exhibit 84 is a true and correct copy of the following article:
12 Gloria Berger, *Congress to Be Briefed on NSA*, CBS/AP (May 16, 2006).

13 89. Attached hereto as Exhibit 85 is a true and correct copy of the following document:
14 Letter from John D. Negroponte, Dir. of Nat'l Intelligence, to J. Dennis Hastert, Speaker of the U.S.
15 House of Representatives (May 17, 2006).

16 90. Attached hereto as Exhibit 86 is a true and correct copy of the following document:
17 *Online NewsHour Debate: NSA Wire Tapping Program Revealed* (PBS television broadcast,
18 May 11, 2006).

19 91. Attached hereto as Exhibit 87 is a true and correct copy of the following document:
20 *Late Edition with Wolf Blitzer, Interview with Bill Frist; Interview with Stephen Hadley* (CNN
21 television broadcast, May 14, 2006).

22 92. Attached hereto as Exhibit 88 is a true and correct copy of the following document:
23 White House Press Release, *Press Briefing by Tony Snow* (May 17, 2006).

24 93. Attached hereto as Exhibit 89 is a true and correct copy of the following document:
25 Susan Page, *Lawmakers: NSA Database Incomplete*, USA TODAY (June 30, 2006).

26 94. Attached hereto as Exhibit 90 is a true and correct copy of the following document:
27 *The Department of Homeland Security State and Local Fusion Center Program: Advancing*
28 *Information Sharing while Safeguarding Civil Liberties: Hearing of the Subcomm. on Intelligence,*

1 Information Sharing, and Terrorism Risk Assessment of the H. Homeland Security Comm., 110th
2 Cong. (Mar. 14, 2007).

3 95. Attached hereto as Exhibit 91 is a true and correct copy of the following document:
4 *Full Statement From Attorney Of Former Qwest CEO Nacchio*, WALL ST. J. ONLINE (May 12,
5 2006).

6 96. Attached hereto as Exhibit 92 is a true and correct copy of the following document:
7 *Transcript of Online NewsHour: New Cell Phone Technology Can Track Users*, (PBS television
8 broadcast, April 11, 2007).

9 97. Attached hereto as Exhibit 93 is a true and correct copy of the following document:
10 Letter from J. Michael McConnell, Dir. of Nat'l Intelligence, to Sen. Arlen Specter, Ranking
11 Member, S. Comm. on the Judiciary (July 31, 2007).

12 98. Attached hereto as Exhibit 94 is a true and correct copy of the following document:
13 Chris Roberts, *Transcript: Debate On The Foreign Intelligence Surveillance Act*, EL PASO TIMES
14 (Aug. 22, 2007).

15 99. Attached hereto as Exhibit 95 is a true and correct copy of the following document:
16 Siobhan Gorman, *NSA's Domestic Spying Grows As Agency Sweeps Up Data*, WALL ST. J. (Mar.
17 10, 2008).

18 100. Attached hereto as Exhibit 96 is a true and correct copy of the following document:
19 Report on S. Rep. 110-209, *Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2007*,
20 Sen. Select Comm. on Intelligence, 110th Cong. (Oct. 26, 2007).

21 101. Attached hereto as Exhibit 97 is a true and correct copy of the following document:
22 Motion Pursuant to 50 U.S.C. § 1806(f) to Discover or Obtain Material Relating to Electronic
23 Surveillance, *Al-Haramain v. Bush*, 07-CV-0109-VRW (N.D. Cal. Sept. 30, 2008).

24 102. Attached hereto as Exhibit 98 is a true and correct copy of the following document:
25 *The Foreign Intelligence Surveillance Act*: Hearing before the H. Permanent Select Comm. on
26 Intelligence, 110th Cong. (Sept. 20, 2007), available at
27 http://www.fas.org/irp/congress/2007_hr/fisa092007.pdf.

28

1 103. Attached hereto as Exhibit 99 is a true and correct copy of the following article:
2 Scott Shane, *Former Phone Chief Says Spy Agency Sought Surveillance Help Before 9/11*, N.Y.
3 TIMES (Oct. 14, 2007), available at <http://www.nytimes.com/2007/10/14/business/14qwest.html>.

4 104. Attached hereto as Exhibit 100 is a true and correct copy of the following document:
5 White House Press Release, *Straight To The Point* (Feb. 28, 2008), available at
6 <http://www.justice.gov/archive/ll/docs/straight-to-the-point022808.pdf>.

7 105. Attached hereto as Exhibit 101 is a true and correct copy of the following document:
8 Letter from Wayne Watts, Senior Executive Vice President and General Counsel, AT&T, to Reps.
9 John Dingell, Edward Markey and Bart Stupak (Oct. 12, 2007).

10 106. Attached hereto as Exhibit 102 is a true and correct copy of the following document:
11 Letter from Alberto Gonzales, Att’y Gen. of the U.S., to Sen. Patrick Leahy (Aug. 1, 2007).

12 107. Attached hereto as Exhibit 103 is a true and correct copy of the following document:
13 *National Defense Authorization Act for Fiscal Year 2013 and Oversight of Previously Authorized*
14 *Programs*: Hearing before the H. Comm. on Armed Services, 112th Cong. (March 20, 2012),
15 available at <http://www.gpo.gov/fdsys/pkg/CHRG-112hhr73790/pdf/CHRG-112hhr73790.pdf>.

16 108. Attached hereto as Exhibit 104 is a true and correct copy of the following document:
17 Pls.’ Req. for Judicial Notice, *Hepting v. AT&T Corp.*, 06-CV-00672-VRW (N.D. Cal. Mar. 31,
18 2006).

19 109. Attached hereto as Exhibit 105 is a true and correct copy of the following transcript:
20 *The Nomination of John Bolton to Be U.S. Representative to the United Nations*: Transcript of
21 Hearing before the S. Comm. on Foreign Relations, Part 2, 109th Cong. (April 11, 2005).

22 110. Attached hereto as Exhibit 106 is a true and correct copy of the following document:
23 *The AT&T And Bellsouth Merger: What Does It Mean For Consumers?*: Hearing before the
24 Subcomm. on Antitrust, Competition Policy and Consumer Rights of the S. Comm. on the
25 Judiciary, 109th Cong. (June 22, 2006), available at [http://www.gpo.gov/fdsys/pkg/CHRG-](http://www.gpo.gov/fdsys/pkg/CHRG-109shrg29938/html/CHRG-109shrg29938.htm)
26 [109shrg29938/html/CHRG-109shrg29938.htm](http://www.gpo.gov/fdsys/pkg/CHRG-109shrg29938/html/CHRG-109shrg29938.htm).

27
28

1 111. Attached hereto as Exhibit 107 is a true and correct copy of the following article:
2 John Yoo, Op-Ed., *Why We Endorsed Warrantless Wiretaps*, WALL ST. J. (July 16, 2009), available
3 at <http://online.wsj.com/article/SB124770304290648701.html>.

4 112. Attached hereto as Exhibit 108 is a true and correct copy of the following document:
5 Dept. of Justice, Office of the Inspector Gen., *A Review of the FBI's Use of Section 215 Orders for*
6 *Business Records in 2006* (March 2008), available at
7 <http://www.justice.gov/oig/special/s0803a/final.pdf>.

8 113. Attached hereto as Exhibit 109 is a true and correct copy of the following document:
9 *The USA PATRIOT Act: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil*
10 *Liberties of the H. Comm. on the Judiciary, 111th Cong.* (Sept. 22, 2009), available at
11 http://judiciary.house.gov/hearings/printers/111th/111-35_52409.PDF.

12 114. Attached hereto as Exhibit 110 is a true and correct copy of a URL to the following
13 video: Executive Business Meeting, S. Comm. on Judiciary, 111th Cong. (Oct. 1, 2009), available
14 at <http://www.judiciary.senate.gov/resources/webcasts/index.cfm?changedate=09-28-09&p=all>.

15 115. Attached hereto as Exhibit 111 is a true and correct copy of the following document:
16 Senate Congressional Record for May 26, 2011, 157 Cong. Rec. S3372-3402.

17 116. Attached hereto as Exhibit 112 is a true and correct copy of the following document:
18 Dept. of Justice, Office of the Inspector Gen., *A Review of the Federal Bureau of Investigation's*
19 *Use of Exigent Letters and Other Informal Requests for Telephone Records* (Jan. 2010), available
20 at <http://www.justice.gov/oig/special/s1001r.pdf>.

21 117. Attached hereto as Exhibit 113 is a true and correct copy of the following document:
22 Letter from Kathleen Turner, Director of Legislative Affairs, Office of the Dir. of Nat'l
23 Intelligence, to Sen. Ron Wyden (Jul. 20, 2012).

24 118. Attached hereto as Exhibit 114 is a true and correct copy of the following document:
25 *The Inspector General's Report on the FBI's use of National Security Letters: Hearing Before the*
26 *H. Judiciary Comm., 110th Cong.* (Mar. 20, 2007).

1 119. Attached hereto as Exhibit 115 is a true and correct copy of the following document:
2 Decl. of Mark Klein With Redacted Exs. Filed in Supp. of Pls.' Mot. for Summ. J., *Jewel v. NSA*,
3 No. 08-CV-4373-JSW (N.D. Cal. Nov. 2, 2012) (Dkt. # 85).

4 120. Attached hereto as Exhibit 116 is a true and correct copy of the following document:
5 Decl. of J. Scott Marcus Filed in Supp. of Pls.' Mot. for Summ. J., *Jewel v. NSA*, No. 08-CV-4383-
6 JSW (N.D. Cal. Nov. 2, 2012) (Dkt. # 89).

7 121. Attached hereto as Exhibit 117 is a true and correct copy of a slipsheet referencing
8 the following document: Decl. of James W. Russell in Supp. of AT&T's Mot. to Compel, *Hepting*
9 *v. AT&T*, No. 06-CV-0672 (N.D. Cal. July 2, 2012) (filed under seal at Dkt. # 84-2).

10 122. Attached hereto as Exhibit 118 is a true and correct copy of the following document:
11 Decl. of William E. Binney in Supp. of Pls.' Mot. for Partial Summ. J. Rejecting the Government
12 Defs.' State Secret Defense, *Jewel v. NSA*, No. CV-08-04373-JSW (N.D. Cal. Sept. 28, 2012)
13 (Dkt. # 88).

14 123. Attached hereto as Exhibit 119 is a true and correct copy of the following document:
15 Decl. of Thomas A. Drake in Supp. of Pls.' Mot. for Partial Summ. J. Rejecting the Government
16 Defs.' State Secret Defense, *Jewel v. NSA*, No. 08-04373-JSW (N.D. Cal. Sept. 28, 2012)
17 (Dkt. # 87).

18 124. Attached hereto as Exhibit 120 is a true and correct copy of the following document:
19 Decl. of J. Kirk Wiebe in Supp. of Pls.' Mot. for Partial Summ. J. Rejecting the Government Defs.'
20 State Secret Defense, *Jewel v. NSA*, No. CV-08-04373-JSW (Sept. 28, 2012) (Dkt # 86).

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 on October 9, 2012 at San Francisco, California.

s/ Kurt Opsahl
KURT OPSAHL