

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 ELECTRONIC FRONTIER FOUNDATION  
815 Eddy Street  
San Francisco, CA 94109  
Telephone: (415) 436-9333  
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)  
BENJAMIN W. BERKOWITZ (SBN 244441)  
KEKER & VAN NEST, LLP  
633 Battery Street  
San Francisco, CA 94111  
Telephone: (415) 391-5400  
Fax: (415) 397-7188

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  
12 Telephone: (415) 433-3200  
13 Fax: (415) 433-6382

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  
Telephone: (510) 289-1626

16 Attorneys for Plaintiffs

17 **UNITED STATES DISTRICT COURT**  
18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
19 **SAN FRANCISCO DIVISION**

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 )  
and all others similarly situated, )  
Plaintiffs, )  
24 v. )  
25 NATIONAL SECURITY AGENCY, *et al.*, )  
26 Defendants. )

Case No.: 08-cv-4373-JSW

**DECLARATION OF MARK RUMOLD  
FILED IN SUPPORT OF PLAINTIFFS'  
RESPONSE TO DEFENDANTS' PUBLIC  
FILINGS**

Courtroom 11, 19th Floor  
The Honorable Jeffrey S. White

1 I, MARK RUMOLD, hereby declare,

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

6 2. Attached hereto as Exhibit 1 is a true and correct copy of the following document: Mem.  
7 Op., *Redacted*, No. [Redacted] (FISC Sep. 25, 2012), *available at*  
8 [http://www.dni.gov/files/documents/September%202012%20Bates%20Opinion%20and%20Order.](http://www.dni.gov/files/documents/September%202012%20Bates%20Opinion%20and%20Order.pdf)  
9 pdf.

10 3. The following is a true and correct transcription of an excerpt of a statement made by  
11 Senator Diane Feinstein on September 26, 2013 during a hearing:

12 “Upstream collection . . . comprises about 10 percent of all collection that takes  
13 place under 702, and occurs when NSA obtains Internet communications, such as e-  
14 mails, from certain U.S. companies that operate the Internet backbone [*sic*]; *i.e.*,  
15 the companies that own and operate the domestic telecommunication lines over  
which Internet traffic flows.”

16 Hearing on FISA legislation before the S. Select Comm. on Intelligence, 113th Cong. (Sep. 26,  
17 2013). Video available at C-SPAN: <http://www.c-spanvideo.org/clip/4466341>.

18 4. Attached hereto as Exhibit 2 is a true and correct copy of the following document:  
19 Siobhan Gorman & Jennifer Valentino-Devries, *New Details Show Broader NSA Surveillance*  
20 *Reach*, Wall. St. J. (Aug. 20, 2013), *available at*  
21 <http://online.wsj.com/news/articles/SB10001424127887324108204579022874091732470>.

22 5. Attached hereto as Exhibit 3 is a true and correct copy of the following document: Joint  
23 Statement From the Office of the Director of National Intelligence and the National Security  
24 Agency (Aug. 21, 2013), *available at*  
25 [http://www.nsa.gov/public\\_info/\\_files/speeches\\_testimonies/2013\\_08\\_21\\_Joint\\_Statement\\_ODNI\\_](http://www.nsa.gov/public_info/_files/speeches_testimonies/2013_08_21_Joint_Statement_ODNI_NSA.pdf)  
26 NSA.pdf.

27 6. Attached hereto as Exhibit 4 is a true and correct copy of the following document:  
28 Charlie Savage, *NSA Said to Search Content of Messages To and From U.S.*, N.Y. Times (Aug. 8,

1 2013), *available at* [www.nytimes.com/2013/08/08/us/broader-sifting-of-data-abroad-is-seen-by-nsa.html](http://www.nytimes.com/2013/08/08/us/broader-sifting-of-data-abroad-is-seen-by-nsa.html).

3 7. Attached hereto as Exhibit 5 is a true and correct copy of the following document:  
4 *Procedures Used by the National Security Agency for Targeting Non-United States Persons* (July  
5 28, 2009). This document was obtained from the website of the Guardian newspaper, which  
6 published it on June 20, 2013: [http://www.theguardian.com/world/interactive/2013/jun/20/exhibit-](http://www.theguardian.com/world/interactive/2013/jun/20/exhibit-a-procedures-nsa-document)  
7 [a-procedures-nsa-document](http://www.theguardian.com/world/interactive/2013/jun/20/exhibit-a-procedures-nsa-document).

8 8. Attached hereto as Exhibit 6 is a true and correct copy of the following document:  
9 Director of National Intelligence, *Facts on the Collection of Intelligence Pursuant to Section 702 of*  
10 *the Foreign Intelligence Surveillance Act* (June 8, 2013), *available at*  
11 [http://www.dni.gov/files/documents/Facts%20on%20the%20Collection%20of%20Intelligence%20](http://www.dni.gov/files/documents/Facts%20on%20the%20Collection%20of%20Intelligence%20Pursuant%20to%20Section%20702.pdf)  
12 [Pursuant%20to%20Section%20702.pdf](http://www.dni.gov/files/documents/Facts%20on%20the%20Collection%20of%20Intelligence%20Pursuant%20to%20Section%20702.pdf).

13 9. The following is a true and correct transcription of an excerpt of a statement made by  
14 General Keith Alexander on September 26, 2013 during a hearing of the Senate Select Committee  
15 on Intelligence: “NSA’s programs have contributed to understanding and disrupting 54 terror-  
16 related events, 25 in Europe, 11 in Asia and five in Africa, and 13 in the United States.” Hearing on  
17 FISA legislation before the S. Select Comm. on Intelligence, 113th Cong. (Sep. 26, 2013).  
18 Transcript *available at* [http://icontherecord.tumblr.com/post/62359076197/remarks-as-delivered-](http://icontherecord.tumblr.com/post/62359076197/remarks-as-delivered-by-general-keith-alexander)  
19 [by-general-keith-alexander](http://icontherecord.tumblr.com/post/62359076197/remarks-as-delivered-by-general-keith-alexander).

20 10. The following is a true and correct transcription of an excerpt of an exchange between  
21 Senator Leahy and General Keith Alexander on October 2, 2013 during a hearing of the Senate  
22 Select Committee on Judiciary:

23 SEN. LEAHY: [W]e’ve heard over and over again the assertion that 54 terrorist plots were  
24 thwarted by the use of Section 215 and-or Section 702 authorities. That’s plainly wrong, but  
25 we still get it in letters to members of Congress, we get it in statements. These weren’t all  
26 plots and they weren’t all thwarted. The American people are getting left with the inaccurate  
impression of the effectiveness of NSA programs.

27 Would you agree that the 54 cases that keep getting cited by the administration were not all  
28 plots, and of the 54, only 13 had some nexus to the U.S., would you agree with that, yes or  
no?

1 GEN. ALEXANDER: Yes.

2 SEN. LEAHY: OK. At our last hearing, Deputy Director Inglis' testimony stated that there's  
3 only really one example of a case where "but for" the use of Section 215, both phone records  
4 collection, terrorist activity was stopped. Is Mr. Inglis right?

5 GEN. ALEXANDER: He's right. I believe he said two, Chairman. I may have that wrong,  
6 but I think he said two. And I would like to point out that it could only have applied in 13 of  
7 the cases, because of the 54 terrorist plots or events, only 13 occurred in the U.S. Business  
8 record FISA was only used in 12.

9 SEN. LEAHY: I understand that, but what I worry about is that some of the statements that  
10 all is well, and we have these overstatements of what's going on. We're talking about  
11 massive, massive, massive collection. We're told we have to do that to protect us, and then  
12 statistics are rolled out. If they are not accurate, it doesn't help with the credibility here in the  
13 Congress, doesn't help the credibility with this chairman, and doesn't help with the credibility  
14 with the country.

15 Hearing on FISA oversight before the S. Comm. on the Judiciary, 113th Cong. (Oct 2, 2013).

16 Video *available at* [http://www.c-span.org/Events/Intel-Chiefs-Testify-at-Senate-FISA-Oversight-](http://www.c-span.org/Events/Intel-Chiefs-Testify-at-Senate-FISA-Oversight-Hearing/10737441809-1)  
17 [Hearing/10737441809-1](http://www.c-span.org/Events/Intel-Chiefs-Testify-at-Senate-FISA-Oversight-Hearing/10737441809-1) (exchange occurs at approximately 42 minutes).

18 11. Attached hereto as Exhibit 7 is a true and correct copy of an excerpt of the following  
19 document: President's Review Grp. on Intelligence and Commc'ns Tech., Liberty and Security in a  
20 Changing World (Dec. 12, 2013) (pages 1-7, 94-104), *available at*  
21 [http://www.whitehouse.gov/sites/default/files/docs/2013-12-12\\_rg\\_final\\_report.pdf](http://www.whitehouse.gov/sites/default/files/docs/2013-12-12_rg_final_report.pdf).

22 12. The following is a true and correct transcription of an excerpt of a statement made by  
23 General Keith Alexander on June 18, 2013 during a hearing of the House Permanent Select  
24 Committee on Intelligence: "We couldn't connect the dots because we didn't have the dots."  
25 Hearing on disclosure of National Security Agency surveillance programs before the H. Permanent  
26 Select Comm. on Intelligence, 113th Cong. (Jun. 18, 2013). Transcript *available at*  
27 [http://icontherecord.tumblr.com/post/57812486681/hearing-of-the-house-permanent-select-](http://icontherecord.tumblr.com/post/57812486681/hearing-of-the-house-permanent-select-committee-on)  
28 [committee-on](http://icontherecord.tumblr.com/post/57812486681/hearing-of-the-house-permanent-select-committee-on).

13. Attached hereto as Exhibit 8 is a true and correct copy of an excerpt of the following  
document: Peter Bergen, *Would NSA Surveillance Have Stopped 9/11 Plot?*, CNN (Dec. 30, 2013),  
*available at* <http://us.cnn.com/2013/12/30/opinion/bergen-nsa-surveillance-september-11>.

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

14. Attached hereto as Exhibit 9 is a true and correct copy of an excerpt of the following document: Justin Elliot, *Judge on NSA Case Cites 9/11 Report, But It Doesn't Actually Support His Ruling*, ProPublica (Dec. 28, 2013), available at <http://www.propublica.org/article/fact-check-the-nsa-and-sept-11>.

15. Attached hereto as Exhibit 10 is a true and correct copy of an excerpt of the following document: Michael German, *No NSA Poster Child: The Real Story of 9/11 Hijacker Khalid al-Mihdhar*, Defense One (Oct. 16, 2013), available at <http://www.defenseone.com/ideas/2013/10/no-nsa-poster-child-real-story-911-hijacker-khalid-al-mihdhar>.

DATE: January 10, 2014

Respectfully submitted,

/s/ Mark Rumold

MARK RUMOLD

CINDY COHN

LEE TIEN

KURT OPSAHL

JAMES S. TYRE

ANDREW CROCKER

ELECTRONIC FRONTIER FOUNDATION

RICHARD R. WIEBE

LAW OFFICE OF RICHARD R. WIEBE

THOMAS E. MOORE III

ROYSE LAW FIRM, PC

RACHAEL E. MENY

PAULA L. BLIZZARD

MICHAEL S. KWUN

AUDREY WALTON-HADLOCK

BENJAMIN W. BERKOWITZ

KEKER & VAN NEST LLP

ARAM ANTARAMIAN

LAW OFFICE OF ARAM ANTARAMIAN

Attorneys for Plaintiffs