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12 **UNITED STATES DISTRICT COURT**
 13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 14 **OAKLAND DIVISION**

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 17 ELECTRONIC FRONTIER FOUNDATION,) Case No. 4:11-cv-05221-YGR
)
 18 Plaintiff,) **STATUS REPORT**
 v.)
 19)
 20 UNITED STATES DEPARTMENT OF)
 JUSTICE,)
 21)
 Defendant.)
 22)
 23)

24 Defendant, the United States Department of Justice, by and through undersigned counsel,
 25 provides this Status Report in response to the Court’s Order dated July 19, 2013 (Dkt. No. 62)
 26 (“Order”).
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1 In June, the President directed the United States Intelligence Community to declassify
2 and make public as much information as possible about certain sensitive United States
3 Government surveillance programs while being mindful of the need to protect national security.
4 Consistent with this directive and in the interest of increased transparency, the Director of
5 National Intelligence (“DNI”) has exercised his discretion under Executive Order 13,526 to
6 declassify certain information that otherwise would have remained properly classified under that
7 Executive Order, including information related to the Government’s collection of telephony
8 metadata under supervision of the Foreign Intelligence Surveillance Court (“FISC”) and pursuant
9 to Section 215 of the USA PATRIOT ACT, as amended.
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11 Following the DNI’s decisions and pursuant to Paragraph 1 of this Court’s Order of July
12 19, defendant respectfully advises the Court that relevant entities in the United States
13 Intelligence Community are completing on this date declassification review of orders and
14 opinions of the FISC that are responsive to plaintiff’s Freedom of Information Act (“FOIA”)
15 request for records related to Section 215 as narrowed by negotiation of the parties in this
16 litigation, *i.e.*, orders and opinions of the FISC issued from January 1, 2004, to June 6, 2011, that
17 contain a significant legal interpretation of the government’s authority or use of its authority
18 under Section 215; and responsive “significant documents, procedures, or legal analyses
19 incorporated into FISC opinions or orders and treated as binding by the Department of Justice or
20 the National Security Agency.” *See* Order at 2, ¶ 1(b). The Government has determined that
21 some portions of these records are no longer classified given the DNI’s decisions to declassify
22 certain information over the past three months. In addition, the Government is further
23 declassifying, in its discretion under Executive Order 13,526 § 3.1, additional information
24 contained in these records that would otherwise have remained properly classified.
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1 To ensure compliance, the Government is broadly construing ¶ 1(b) of the Court's Order
2 and, accordingly, has completed classification review of a larger set of documents than the
3 Government believes is required by that Order at this time. These records total hundreds of
4 pages. Over the next several days, the Government respectfully advises the Court pursuant to
5 Paragraph 2 of its Order that defendant will prepare these records for release to plaintiff on or
6 before September 10, 2013. The parties have met and conferred through counsel, and counsel
7 for plaintiff, Mark Rumold, stated that plaintiff does not object to production on or before that
8 date.
9

10 The parties also met and conferred concerning a schedule for declassification review of
11 other documents previously withheld in response to plaintiff's FOIA request. Pursuant to
12 Paragraph 3 of the Court's Order, defendant respectfully advises the Court that it intends to
13 complete further re-review of a subset of the remaining responsive records on or before October
14 10, 2013; and to complete re-review of all remaining responsive records on or before October 31,
15 2013. Counsel for plaintiff, Mr. Rumold, stated that plaintiff does not object to further review
16 and production consistent with that schedule.
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19 Pursuant to Paragraph 4 of the Court's Order, the parties also met and conferred
20 regarding a proposed schedule for any further briefing of summary judgment in this matter. The
21 parties anticipate that, following re-processing and production of documents that were previously
22 withheld as exempt under FOIA, the remaining areas of dispute in this litigation will be
23 substantially narrowed if not eliminated. The parties further anticipate that plaintiff will require
24 time to review documents to be produced, and it will be productive for the parties to meet and
25 confer regarding those documents. While further briefing and motions practice concerning
26 summary judgment may be necessary, the parties agreed that it would be premature to set
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1 deadlines for further briefing at this time. Therefore, defendant respectfully suggests that after
2 defendant's expected completion of document re-processing by October 31, 2013, the parties file
3 a Joint Status Report on or before December 6, 2013, advising the Court of the status of the
4 parties' discussions and proposing a schedule for any further proceedings. Plaintiff, through
5 counsel, agrees with this suggested schedule.
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7 Dated: September 4, 2013

Respectfully submitted,

8 STUART F. DELERY
Assistant Attorney General

9 MELINDA HAAG
United States Attorney

10 ELIZABETH J. SHAPIRO
Deputy Director, Federal Programs Branch

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12
13 /s/ Steven Y. Bressler
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22 **DECLARATION**

23 I, Steven Y. Bressler, hereby declare that I met and conferred by telephone with counsel
24 for plaintiff, Mark Rumold, and the description of our conversation contained in the
25 accompanying Status Report is true and correct to the best of my recollection. I declare under
26 penalty of perjury that the foregoing is true and correct. Executed this 4th day of September,
2013, at Washington, D.C.

27 /s/ Steven Y. Bressler
28 STEVEN Y. BRESSLER