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**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**IN RE NATIONAL SECURITY AGENCY
 TELECOMMUNICATIONS RECORDS
 LITIGATION**

This Document Relates Solely To:

*Al-Haramain Islamic Foundation, Inc., et al.
 v. Obama, et al.* (C07-CV-0109-VRW)

**AL-HARAMAIN ISLAMIC FOUNDATION,
 INC., et al.,**

Plaintiffs,

vs.

BARACK H. OBAMA, et al.,

Defendants.

MDL Docket No. 06-1792 VRW

**Declaration of Thomas H. Nelson in
 Support of Motion for Attorney's Fees**

1 I, Thomas H. Nelson, hereby declare as follows:

2 1. I make this Declaration based on my own personal knowledge and would
3 testify to the statements in this Declaration if called as a witness.

4 2. The purpose of this Declaration is to provide background and details
5 regarding certain activities for which attorneys fees are being requested.

6 Background: Education and Prior Experience

7 3. After graduation from high school (Soap Lake, WA, 1962) I attended the
8 University of Washington where I received a B.A. degree in 1966. Thereafter I spent
9 approximately four years as a Peace Corps Volunteer in Iran teaching and, following the
10 Khorrassan earthquake of 1968, working in relief and reconstruction activities. Upon
11 returning to the United States, beginning in the fall of 1970 I attended Valparaiso
12 University Law School, where I obtained a J.D. degree "With High Distinction" in 1973. I
13 then received a Sterling Fellowship to attend the LL.M. program at Yale University, from
14 which I was graduated in 1974. I was admitted to the Connecticut Bar in 1974.

15 4. Following my graduation I became an Assistant Professor of Law at the
16 University of Connecticut School of Law in West Hartford, CT, where I worked for three
17 years. I taught first-year Contracts, Administrative Law, and other courses.

18 5. I left UConn in 1977 to return to the Northwest, spending an interim year
19 as a Visiting Associate Professor of Law at Valparaiso University, where I taught
20 Constitutional Law, Securities Regulation, and Property II.

21 6. I was hired by the Portland law firm of Rives, Bonyhadi, and Smith in May
22 1978, where I engaged in utility regulatory matters on behalf of its main client, Pacific
23 Power & Light Company. Rives, Bonyhadi then merged with Davies Biggs of Portland,

1 ultimately to become the present firm of Stoel Rives. I became a partner in Stoel Rives
2 in 1982, where I continued to work primarily on utility regulatory matters.

3 7. I left Stoel Rives in 1996 to form my own firm in Portland, which ultimately
4 became Nelson Lovinger Norling and Kaufmann, and which continued to practice
5 primarily utility law on behalf of Pacific Power & Light Company's successor, PacifiCorp.
6 Beginning in about 2000 I became more active in civil and human rights activities on
7 behalf of Native Americans and Palestinians.

8 8. My recent pro bono activities include co-founder of Americans United for
9 Palestinian Human Rights (Portland, OR), member of International Solidarity Movement
10 nonviolent direct action campaigns in Israel and Occupied Territories, 2000-2006,
11 member and legal counsel of Free Gaza Movement first boatlift to Gaza, August 2008,
12 and member of National Lawyers Guild Delegation to Gaza, February 2009.

13 Events Leading to Representation of Al-Haramain Islamic Foundation

14 9. In 2004 I came to represent Al-Haramain Islamic Foundation of Ashland,
15 Oregon. This occurred because I had represented Brandon Mayfield, an Oregon
16 Muslim attorney who had been falsely accused of being involved in the Madrid train
17 bombing of that year. As a result of the national attention given to that affair I was
18 contacted by the charity's attorneys and asked to represent the charity in a number of
19 matters stemming from the freezing of its assets in Oregon by the Department of the
20 Treasury. Since that time I have been the primary attorney for the Oregon charity and
21 main liaison both to its personnel in Riyadh, Saudi Arabia and with its attorneys in the
22 United States. It was in that role that I initiated litigation on behalf of the charity in this
23 case; the facts surrounding the initiation of litigation are well established in the record of
24 this proceeding.

1 10. My role in this litigation has been to assist in the development and
2 implementation of legal theories challenging the government's "warrantless wiretapping"
3 program. In addition, I have been the primary, and often the only, direct contact
4 between the legal team's efforts in the United States and the plaintiffs in this litigation,
5 including Messrs. Belew and Ghafoor, the corporation's Board of Directors, and other
6 officials located in Riyadh, Saudi Arabia. I was also the primary liaison between the
7 legal team and other attorneys (primarily in Washington D.C.) who have represented
8 plaintiff Al-Haramain Islamic Foundation in related administrative and civil litigation.

9 11. I maintain time records in this case in the same manner as I maintain time
10 records for my other cases, both paying and nonpaying. Specifically, during the course
11 of the day I record time spent, in tenths of an hour, and following completion of the day's
12 work I enter that time in "Timeslips" software.

13 12. Pursuant to Civil Local Rule 54-5(b)(2), I provide the following statement
14 of the services activities I have undertaken, costs I have incurred, and the services I
15 have rendered in this case. At the Court's request, and pursuant to Civil Local Rule 54-
16 5(b)(2), I am prepared to produce my contemporary time records or an abstract thereof
17 for *in camera* inspection by the Court if the Court deems such appropriate. My hours
18 include time spent traveling to San Francisco, Washington D.C., and Riyadh, Saudi
19 Arabia to confer with the plaintiffs and potential witnesses in this case, to obtain
20 guidance, information, and records salient to this litigation, and to participate in court
21 proceedings.

22 Particular Items of Fees and Costs

23 13. There are two items for which recovery is requested that deserve
24 explanation and discussion. They are set forth below.

1 • 13.1 Retention of Expert Counsel on Ethical Matters: During the course
2 of the proceeding I requested expert legal advice on professional ethics from
3 Mark Fucile, an Oregon attorney admitted to practice in Oregon, Washington,
4 Idaho, Alaska, and the District of Columbia. His practice focuses on ethical
5 and professional responsibility issues that arise in the legal profession. The
6 journals of the Oregon, Washington, and Idaho bar associations regularly
7 publish articles by Mr. Fucile on the rules of professional responsibility in
8 those state. I requested Mr. Fucile to provide legal counsel on the following
9 two primary topics:

- 10 ○ What obligation does an attorney who has a reasonable suspicion that
11 his communications with and/or affecting his client have to protect his
12 communications from interception? What steps should the attorney
13 take to protect the client's confidences in such a situation?
- 14 ○ What obligation does an attorney faced with the United States
15 Government's demand for access to his computers on the basis that
16 classified information may be on those computers have to his client?
17 More specifically, may such an attorney allow the United States
18 Government, an adverse party in this and other unrelated litigation, to
19 have access to his computers?

20 I sought advice on the first issue because it was clear at the beginning of this
21 litigation that all communications with a director of the charity located in Saudi
22 Arabia were being intercepted and monitored by the defendant(s) in this
23 proceeding and that such surreptitious interceptions were being used to the
24 client's (clients') detriment. These interceptions were reasonably believed to

1 include my own communications with the director of the charity residing in
2 Saudi Arabia. Mr. Fucile's advice resulted in the international travel for which
3 recovery is being sought in this motion. I sought advice on the second issue
4 because the United States sought to have access to all of my computers
5 which may have once had an electronic copy of the classified document that
6 caused the initiation of this proceeding.

7 Mr. Fucile provided professional services from November 2006 through
8 June 2007 and billed for his services on a monthly basis. The total amount
9 paid to Mr. Fucile was \$6715.00, recovery for which is sought.

10 • 13.2 Travel Expenses: The fee petition includes charges for time and
11 expenses incurred in travel, including travel to Washington DC and to Riyadh,
12 Saudi Arabia, where the director of the charity referred to above resides.
13 During the relevant period (December 2005 to the present) I made
14 approximately 40 trips to the Middle East, most involving destinations that
15 included Riyadh, and on all visits to Riyadh I met with and provided legal
16 counsel to the Director of Al-Haramain Islamic Foundation regarding the
17 status of this litigation as well as other matters. This petition seeks recovery
18 of travel expenses for only two trips to Saudi Arabia (one prior to the filing of
19 the complaint in this case and one following the Court's order granting
20 plaintiffs' motion for summary judgment), for two trips to Washington DC to
21 meet with plaintiffs and plaintiffs' attorneys as well as potential witnesses, and
22 for three trips to San Francisco. The total travel reimbursement sought for
23 these trips is \$6489.18.

24 Synopsis of Time Charges

1 14. There follows a chronological synopsis of time charges and a general
2 description of the primary activities during the relevant periods. Detailed time records
3 are available to back up these charges.

- 4 • Period I: From Initial Disclosure of Wiretapping to Filing of Complaint (December
5 16, 2005 to February 28, 2006): Research and analysis of government's
6 “warrantless wiretap” program; consult with potential parties plaintiff; legal
7 research regarding FISA statute and potential remedies; arrange participation of
8 co-counsel; draft and revise complaint and circulate for comment and
9 amendment; prepare final version of complaint and file same along with classified
10 document with court. Total: 96.1 hours
- 11 • Period II: Post-Filing Procedures in Oregon - March 1, 2006 to December 20,
12 2006:
 - 13 ◦ II(A): March 1, 2006 to March 24, 2005: Serve complaint and file corporate
14 disclosure statement; research and consult with co-counsel regarding motion
15 to disqualify Judge Mosman; participate in preparation and review of
16 discovery materials; identify ethical issues involved in handling classified
17 document and access thereto and secure specialist advice re same; review
18 Oregonian motion to intervene and consult with Oregonian attorney re same.
19 Total: 65.6 hours.
 - 20 ◦ II(B): March 25, 2006 to May 1, 2006: Legal research and analysis regarding
21 ethical issues and consult with ethics specialist Mark Fucile re same; consult
22 with co-counsel and outside counsel regarding related warrantless
23 wiretapping cases; analysis of and consult with co-counsel regarding
24 intelligence issues and their impact on case; review and consult with co-

- 1 counsel regarding discovery matters; consult with co-counsel and file
2 opposition to ex parte filings by government. Total: 112.1 hours.
- 3 ○ II(C): May 6, 2006 to September 22, 2006: Consult with clients Ghafoor and
4 Belew; review government submissions in related Al-Haramain litigation and
5 legal research regarding same; prepare draft discovery materials, circulate
6 same, and participate in developing discovery; prepare and revise
7 declarations for clients to review and execute; consult with Oregonian
8 attorney re potential involvement in litigation; prepare and revise own
9 declaration for submission to court; prepare and circulate formatted version of
10 opposition to restrict access to classified document; prepare materials for
11 filing in MDL litigation and participate in telephone conferences regarding
12 same; review and analyze Judge King's order regarding classified document
13 and study how to proceed in response; participate in attorneys' meeting in
14 Portland; review Judge King's Opinion and Government's subsequent Petition
15 for Interlocutory Review and discuss subsequent steps. Total: 214.25 hours.
- 16 ○ II(D): September 25, 2006 to December 21, 2006 (Oregon litigation
17 terminates): Participation in analysis of transfer of case from Oregon;
18 consultations regarding preparation and responses to filings related to
19 classified document; outline issues relating to client confidentiality; outline
20 ethical issues and initial consultations with ethics consultant regarding
21 obligations to clients and issue of government access to computers. Total: 73
22 hours.
- 23 • Period III: Litigation in Northern District of California, January 2007 to Present:

- 1 ○ III(A): January 1, 2007 to June 29, 2007: Participate in review of status of
2 issues before Judge Walker and legal issues such as sovereign immunity;
3 review issues relating to telephone records and review records in Saudi
4 Arabia; review issue of potential amendment to complaint; respond to
5 proposals regarding government access to computers, including involvement
6 of ethics specialist; review proposed discovery; review and respond to
7 Government's appeal to the Ninth Circuit; review and participate in responses
8 thereto; in-person meetings with attorneys; review proposed communications
9 to Government regarding access to computers. Total: 152.7 hours.
- 10 ○ III(B): July 1, 2007 to December 14, 2007 (Ninth Circuit Ruling): Assemble
11 materials for corporate disclosure and corporate status issues; consult with
12 counsel regarding appeal to Ninth Circuit; review and suggest revisions to
13 draft briefs; assemble materials and information regarding FISA operating
14 procedures; further consultation regarding "scrubbing of computers"; review
15 transcript of oral argument and consult with clients regarding same; analyze
16 Ninth Circuit's decision remanding issues to trial court for further development
17 but with limitations on use of classified document; preparation for and
18 attendance at attorneys' meeting in Zigzag. Total: 48.1 hours.
- 19 ○ III(C): February 3, 2008 to July 2, 2008 (Decision on Motion to Dismiss):
20 Consult with co-counsel regarding responses to Ninth Circuit ruling; comment
21 on draft arguments in opposition to defendants' second motion to dismiss;
22 review drafts and comment on responses to defendants' third motion to
23 dismiss; review 1806(f) issues and comment on same; analyze Espionage
24 Act issues; consult regarding oral argument before Judge Walker; review

1 denial of motion to dismiss and initial consultation regarding subsequent
2 steps. Total: 11.7 hours.

3 ○ III(D): July 3, 2008 to December 15, 2008 (Argument on Motion to File
4 Amended Complaint): Consult with co-counsel regarding elements of
5 amended complaint; internet research regarding non-classified sources
6 regarding surveillance, including events following freezing of AHIF assets in
7 February 2004; review and respond to issues in amended complaint,
8 including non-classified sources relating to discussions between Mr. Al-Buthi
9 and plaintiffs Ghafoor and Belew; review, revise, and circulate draft
10 declarations of Messrs Belew and Ghafoor; consult with other attorneys
11 regarding 1806(f) issues. Total: 22.3 hours.

12 ○ III(E): January 2009 to Present (Amended Complaint, Motions for Summary
13 Judgment and to Dismiss): Review order regarding amended complaint and
14 consult with co-counsel regarding same; coordinate activities with clients;
15 review issues relating to government's motion for a stay and responses
16 thereto; consult regarding denial of government's motion to Ninth Circuit;
17 review issues relating to "inaccuracy"; consult regarding steps toward a
18 protective order; review show cause order and consult regarding position in
19 hearing in San Francisco show-cause hearing; consult with co-counsel
20 regarding filing of motion for summary judgment; review and respond to draft
21 motion; attend hearing on motion for summary judgment; consult with clients
22 regarding result of court's order and subsequent steps, including preparation
23 of draft judgment and attorneys' fees issues; legal research and prepare costs
24 and attorneys' fees materials. Total: 113 hours.

