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11 Counsel for Plaintiffs

12 *Pro hac vice applications to be filed upon the assignment of this case to a judge.

13 UNITED STATES DISTRICT COURT
 14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

CW

15 INTERNET ARCHIVE; AMERICAN CIVIL
 16 LIBERTIES UNION; AMERICAN CIVIL
 LIBERTIES UNION FOUNDATION;
 17 AMERICAN CIVIL LIBERTIES UNION OF
 NORTHERN CALIFORNIA, INC.;
 18 AMERICAN CIVIL LIBERTIES UNION
 FOUNDATION OF NORTHERN
 19 CALIFORNIA, INC.; and ELECTRONIC
 FRONTIER FOUNDATION,

Plaintiffs,

21 v.

22 MICHAEL B. MUKASEY, in his official
 capacity as Attorney General of the United
 23 States; ROBERT S. MUELLER III, in his
 official capacity as Director of the Federal
 24 Bureau of Investigation; and ARTHUR M.
 CUMMINGS II, in his official capacity as
 25 Deputy Assistant Director of the
 Counterterrorism Division of the Federal Bureau
 26 of Investigation,

Defendants.

FILED
 07 DEC 14 PM 12:16
 EDWARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

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Case No. 13-cv-00486

**DECLARATION OF ANN BRICK IN
 SUPPORT OF PLAINTIFFS' MOTION
 TO FILE CASE UNDER SEAL**



AA

1 I, Ann Brick, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and am
3 admitted to practice before this Court. I am an attorney with the American Civil Liberties Union
4 Foundation of Northern California, Inc., and am co-counsel for plaintiff Internet Archive (the
5 "Archive") and for the other plaintiffs in this civil action. Except for those matters stated on
6 information and belief, which I believe to be true, I have personal knowledge of the facts stated
7 herein and, if called as a witness, I could and would competently testify thereto.

8 2. I am informed and believe that on November 26, 2007, an agent of the
9 Federal Bureau of Investigation ("FBI") served a National Security Letter ("November 2007
10 NSL") on the Archive through its counsel, Electronic Frontier Foundation.

11 3. The November 2007 NSL directed the Archive to disclose records
12 pertaining to one of its patrons, and pursuant to 18 U.S.C. § 2709(c), expressly prohibited the
13 Archive, its officers, employees, and agents from disclosing that the FBI had demanded
14 information from it through the NSL.

15 4. Plaintiffs in this case are challenging the facial and as-applied
16 constitutionality of 18 U.S.C §§ 2709 and 3511(b),(d), and (e). Nevertheless, because it appears
17 that the filing of the Complaint on the public docket would violate the NSL statute's gag
18 provisions and the gag imposed by the November 2007 NSL, and in order to avoid any penalties,
19 plaintiffs believe that they are obligated to file the entire case initially under seal.

20 5. Because it is the FBI that included the gag order in the November 2007
21 NSL, I have no reason to believe that defendants would oppose an order sealing the documents
22 in this case.

23 6. Upon filing the Complaint, plaintiffs intend immediately to ask defendants
24 for a stipulation that would allow plaintiffs to disclose certain information about the case without

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1 violating Section 2709(c). If defendants agree to the stipulation, plaintiffs will immediately seek
2 the Court's leave to unseal the case, and file on the public docket a redacted version of all sealed
3 documents that have already been filed in the case.

4 I declare under penalty of perjury under the laws of the State of California and the
5 United States that the foregoing is true and correct.

6 Executed this 14th day of December, 2007, at San Francisco, California.

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Ann Brick