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 16 UNITED STATES DISTRICT COURT
 17 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 18 OAKLAND DIVISION

19 CAROLYN JEWEL, TASH HEPTING,) CASE NO. 08-CV-4373-JSW
 20 YOUNG BOON HICKS, as executrix of the)
 estate of GREGORY HICKS, ERIK KNUTZEN)
 21 and JOICE WALTON, on behalf of themselves)
 and all others similarly situated,)
 22)
 Plaintiffs,) Courtroom 5, Second Floor
 23) The Honorable Jeffrey S. White
 24)
 v.)
 25)
 NATIONAL SECURITY AGENCY, *et al.*,)
 26)
 Defendants.)

DECLARATION OF DAVID E. McCRAW

(Jewel v. National Security Agency, 08-CV-4373-JSW (N.D. Cal.)

I, David E. McCraw, do hereby declare:

1. I am a member in good standing of the Bar of the State of New York and the bar of the United States District Court for the Southern District of New York. I am Vice President and Deputy General Counsel of The New York Times Company. If called as a witness, I could and would testify competently to the following.

2. I represented plaintiffs The New York Times Company and its reporter Charlie Savage in a Freedom of Information Act (“FOIA”) lawsuit against the National Security Agency (“NSA”) in the Southern District of New York titled *The New York Times Company v. National Security Agency*, No. 15-cv-2383 (S.D.N.Y., filed Mar. 31, 2015) (the “NSA FOIA Action”).

3. In the NSA FOIA Action, the plaintiffs sought disclosure under FOIA of certain NSA Inspector General Reports (the “Reports”). No. 15-cv-2383 (S.D.N.Y. Mar. 31, 2015), Complaint (ECF No. 1), ¶ 9.

4. The plaintiffs and defendant NSA agreed on a schedule by which defendant NSA would disclose the requested Reports, subject to redactions and withholdings pursuant to exemptions contained in FOIA. The Court entered a Scheduling Order pursuant to this agreement. No. 15-cv-2383 (S.D.N.Y. May 15, 2015), Scheduling Order (ECF No. 10).

5. On August 11, 2015, in accordance with the Scheduling Order, the NSA, through its counsel at the Department of Justice (“DOJ”), produced to plaintiffs via email one tranche of the Reports (the “August 2015 Tranche”).

6. I have examined Exhibit B to the September 28, 2018, Declaration of Richard R. Wiebe (the “Wiebe Declaration”). ECF No. 417-4. Exhibit B to the Wiebe Declaration is a true and correct copy of a redacted excerpt from the August 2015 Tranche titled “Audit Report of NSA Controls to Comply with the Foreign Intelligence Surveillance Court Order Regarding Business Records—Control Weaknesses (ST-1.0-0004C)” (the “Audit Report”), together with the cover letter from the U.S. Attorney’s Office for the Southern District of New York addressed to me. The letter accompanied the NSA’s production of the August 2015 Tranche.

7. Subsequent to the production of the August 2015 Tranche, the NSA’s attorneys at DOJ notified plaintiffs that a document contained within the Audit Report had been inadvertently produced and asked for its return. The document, a letter to Judge John Bates, dated August 2, 2010 (the “Bates Document”), appears at pages 53 and 54 in Exhibit B to the Wiebe Declaration.

8. Plaintiffs declined to return the Bates Document.

9. The Bates Document was the subject of an article by Mr. Savage in the New York Times. *N.S.A. Used Phone Records Program to Seek Iran Operatives*, New York Times, Aug. 12, 2015, available at <https://www.nytimes.com/2015/08/13/us/nsa-used-phone-records-program-to-seek-iran-operatives.html>.

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

Executed October 29, 2018.



David E. McCraw