

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE NATIONAL SECURITY LETTER

CASE NO. C13-1048RAJ

ORDER

This matter came before the court on the parties' May 20, 2014 stipulated motion to unseal specific documents from the docket in this action. The court GRANTS that motion, and orders as follows: The clerk shall UNSEAL this civil action. Before doing so, the clerk shall SEAL every document on the docket of this action *except* this order and the two documents attached to it.

The two documents attached to this order are the parties' stipulation to resolve this dispute, as well as a redacted version of Microsoft's 18 U.S.C. § 3511 petition challenging a national security letter it received from the Federal Bureau of Investigation.

In granting this stipulated motion, the court suggests no opinion on whether it is appropriate to maintain the remainder of the docket in this action under seal, or whether the redactions to Microsoft's petition are necessary to protect any legitimate interest of the FBI. The court merely observes that the parties' stipulation and this order are sufficient to ensure that the public can become aware of the existence of the national security letter that the FBI issued to Microsoft, Microsoft's petition challenging it, and other facts relevant to the petition. That will enable any member of the public to seek relief in this court if he or she believes that the redactions are inappropriate or that it is

ORDER – 1

1 inappropriate to continue to maintain the remainder of the docket in this action under
2 seal.

3 DATED this 21st day of May, 2014.

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7 The Honorable Richard A. Jones
8 United States District Court Judge
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13-CV-01048-APPO

EXHIBIT 1

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re NATIONAL SECURITY LETTER) No. 13-cv-001048-RAJ
)
) STIPULATION AND
) ~~PROPOSED~~ ORDER OF
) DISMISSAL
)
) **FILED UNDER SEAL**
)
) **Note for Motion:**
) September 25, 2013

STIPULATION

Microsoft Corporation ("Microsoft") and Eric H. Holder, in his capacity as Attorney General of the United States, by and through their attorneys, agree and stipulate as follows:

1. In 2013, Microsoft received a National Security Letter issued by the Federal Bureau of Investigation ("FBI") pursuant to 18 U.S.C. § 2709 (the "NSL").
2. The NSL directed Microsoft to provide certain information regarding a single user account associated with a Microsoft enterprise customer (the "Customer").
3. Pursuant to 18 U.S.C. § 2709(c), the NSL also forbade Microsoft from disclosing that the FBI had sought access to information or records through the NSL, other than to those persons to whom such disclosure was necessary to comply with the request or to attorneys to obtain legal advice or assistance with respect to the NSL.

1 4. In 2013, Microsoft filed a Petition to Set Aside National Security Letter Under
2 18 U.S.C. § 3511 and Complaint for Declaratory Judgment Pursuant to 28 U.S.C. §§ 2201 and
3 2202 (the "Petition") in the U.S. District Court for the Western District of Washington. The
4 Petition challenged the constitutionality of the statutes authorizing NSLs, 18 U.S.C. §§ 2709
5 and 3511, *inter alia*, under the First Amendment and the Separation of Powers doctrine.

6 5. Microsoft's Petition alleges, among other things, that:

- 7 i. Microsoft provides online services to both individual and enterprise
8 customers;
9 ii. Microsoft provides enterprise online services that operate in the "cloud," *i.e.*,
10 the services run in Microsoft's data centers and customer data is stored and
11 processed in those data centers;
12 iii. Microsoft devotes substantial resources to protecting its users' privacy; and
13 iv. The NSL was unreasonable and oppressive under § 3511.

14 6. In 2013, the United States withdrew the information request portion of the NSL.

15 7. The Government has filed a Notice stating that the NSL information request has
16 been withdrawn. The Government's Notice informed the Court that "the FBI obtained the
17 requested information through lawful means from a third party, the Customer, in a way that
18 maintains the confidentiality of the underlying investigation."

19 8. Once entered by the Court, this Stipulation and Order modifies the
20 nondisclosure requirement of the NSL such that the nondisclosure requirement shall not be
21 construed to prohibit public discussion of this Stipulation and any of its contents.

22 9. The parties agree that Microsoft shall not disclose the contents or nature of the
23 NSL, except that six weeks after the date of this Stipulation, neither party will oppose a motion
24 to unseal the redacted versions of this Stipulation and the Petition which are attached as
25 Exhibits A and B, respectively, to this Stipulation and Order.

26 10. This action should be dismissed with prejudice and without award of attorney
27 fees or costs to any party.

1 11. This Stipulation does not signify agreement or acquiescence by the United
2 States to any of the claims, factual, legal, or otherwise, in the Petition. This Stipulation does
3 not constitute, and may not be construed as, a determination or an admission of a violation of
4 any law, rule, regulation, policy, or contract by the United States, or an admission that the
5 United States is liable in this matter or that Microsoft is a prevailing party.

6 DATED this 25th day of October, 2013.
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ORDER

This matter having come on regularly for hearing before the undersigned Judge upon the above stipulation, and the Court being fully advised, now, therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED that this action is DISMISSED WITH PREJUDICE and without attorney fees or costs to any party.

It is further ORDERED that the Stipulation and proposed order, along with the attached exhibits, (Dkt. # 25) and this Order shall be filed under seal, without prejudice to the Court's consideration of any motion to unseal filed by either party.

It is further ORDERED that the Court shall retain exclusive jurisdiction over this matter for purposes of enforcing the above Stipulation and resolving any disputes that may arise in the future regarding the Stipulation by the parties.

The Clerk shall provide a copy of this order to the parties.

DATED this 23rd day of October, 2013.



The Honorable Richard A. Jones
United States District Judge

EXHIBIT 2

RECEIVED
2013
★
U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re NATIONAL SECURITY LETTER

No. 13-cv-1048-RAJ

MICROSOFT CORPORATION'S
PETITION TO SET ASIDE
NATIONAL SECURITY LETTER
UNDER 18 U.S.C. § 3511
AND COMPLAINT FOR
DECLARATORY JUDGMENT
PURSUANT TO 28 U.S.C. §§ 2201
AND 2202

FILED UNDER SEAL UNDER
18 U.S.C. §§ 2709 and 3511

Microsoft Corporation ("Microsoft") received a National Security Letter (the "NSL") issued by the Federal Bureau of Investigation ("FBI") requesting information about an individual user account associated with one of Microsoft's enterprise customers:

The NSL seeks information relating to a specific user account. The NSL also purports to restrict Microsoft from disclosing its receipt of the NSL to *anyone*—including anyone at

Microsoft brings this petition under 18 U.S.C. § 3511, seeking to set aside or modify the NSL as unreasonable, oppressive, or otherwise unlawful, and requesting declaratory relief as set forth below. *First*, the NSL is unlawful because the nondisclosure provisions of 18 U.S.C.

Petition to Set Aside National Security Letter Under
18 U.S.C. § 3511 and Complaint for Declaratory Judgment – 1
DWT 22162834v1 0050033-001919

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1 §§ 2709 and 3511 (the "NSL Statutes"), both facially and as applied, violate the First
 2 Amendment. The nondisclosure provisions constitute both an improper prior restraint and a
 3 content-based restriction on speech that fail to satisfy strict scrutiny.

4 —the NSL Statutes' nondisclosure
 5 provisions, as applied, are not narrowly tailored to promote the government's national security
 6 interests. *Second*, the NSL Statutes improperly violate the separation of powers by purporting
 7 to limit this Court's judicial review of the nondisclosure requirements imposed in connection
 8 with NSLs. *Third*, even beyond the serious constitutional deficiencies, the details of this NSL
 9 require that the Court modify it or set it aside as unreasonable and oppressive.

10 For these reasons, among others, Microsoft hereby avers the following:

11 I. PARTIES

12 1. Microsoft is a corporation organized under the laws of the State of Washington,
 13 with its principal place of business at One Microsoft Way, Redmond, Washington 98052.

14 2. The NSL in this case was issued by the FBI, which
 15 is located at

16 3. The FBI is an entity within the U.S. Department of Justice, an agency of the
 17 executive branch of the federal government.

18 II. JURISDICTION AND VENUE

19 4. This Court has jurisdiction over this action pursuant to 18 U.S.C. § 3511
 20 because this is a petition to set aside an NSL.

21 5. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331
 22 because the action concerns a federal question arising under 18 U.S.C. §§ 2709 and 3511, and
 23 the U.S. Constitution, and pursuant to 28 U.S.C. §§ 2201 and 2202 because this is a civil action
 24 for a declaratory judgment.

25 6. Microsoft resides and has its principal place of business in Redmond,
 26 Washington, located within the Western District of Washington. Accordingly, venue is proper
 27 under 18 U.S.C. § 3511 and 28 U.S.C. § 1391.

III. FACTUAL BACKGROUND

7. Microsoft is a provider of online services to individual and enterprise customers. One of Microsoft's enterprise online services is Office 365. Office 365 offers a suite of online productivity and collaboration services to enterprise customers, including Exchange Online, SharePoint Online, and Lync Online.

8. What distinguishes Office 365 from productivity software traditionally associated with Microsoft is that it operates in the "cloud." This means that Office 365 customers do not install Microsoft software on servers in their own premises to provide Office 365 services to users in their organizations. Rather, the Office 365 services run in Microsoft data centers, and customer data is stored or processed in those services in the Microsoft data centers. Users connect to the Internet and log on to a Microsoft portal, through which they are able to access their Office 365 services. Content created using Office 365 is stored remotely on a Microsoft server, which allows users to access content at any time, from any device, so long as they can connect to the Internet.

9. As more users migrate from locally installed software and locally stored data to cloud-based computing platforms, Microsoft increasingly is entrusted to store its customers' data safely and securely. Consequently, Microsoft maintains industry-leading privacy policies and practices and devotes substantial resources to protecting its users' privacy. Microsoft's comprehensive approach to privacy in the cloud is described in greater detail on its website (<http://www.microsoft.com/privacy/cloudcomputing.aspx>).

10. Most Office 365 customers use a multi-tenant service, meaning the data associated with many customers is stored and processed on the same servers, with logical separation among customers. Office 365 customers large enough to have tens of thousands of user accounts may elect to purchase a "dedicated" version of the services, in which the customer has servers in the Microsoft data centers dedicated solely to running services, and storing and processing data, for that particular customer. Currently the dedicated service offers

1 customers the ability to implement certain administrative controls or advanced service features
 2 not available in the multi-tenant offering, though service capabilities are converging over time.

3 11. uses Microsoft's Office 365 dedicated online services.
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10 12. The cloud services that Microsoft provides to are governed by
 11 contract (the "Contract"). The Contract provides that Microsoft may disclose data
 12 to satisfy legal requirements, comply with law or respond to lawful requests by a regulatory or
 13 judicial body, or as required in a legal proceeding. The Contract also provides that, unless
 14 prohibited by law, Microsoft must use commercially reasonable efforts to give
 15 notice of any such disclosures in advance, or as soon as commercially reasonable after such
 16 disclosures.

17 13. On , 2013, Microsoft received the NSL from the FBI (Exhibit 3). (The
 18 NSL is dated 2013.) The NSL directs Microsoft to provide several categories of
 19 information regarding a single user account associated with the e-mail domain "
 20 which is supported within the block of individual Office 365 accounts (or
 21 "seats") provided to by Microsoft under the Contract.

22 14. Among other things, the NSL states:

23 In accordance with Title 18 U.S.C. § 2709(c)(1), I certify that a
 24 disclosure of the fact that the FBI has sought or obtained access to
 25 the information sought by this letter may endanger the national
 26 security of the United States; interfere with a criminal,
 27 counterterrorism, or counterintelligence investigation; interfere
 with diplomatic relations; or endanger the life or physical safety of
 a person. *Accordingly, Title 18 U.S.C. § 2709(c)(1) and (2)*
prohibits you, or any officer, employee or agent of yours, from
disclosing this letter, other than to those to whom disclosure is

necessary to comply with the letter or to an attorney to obtain legal advice or legal assistance with respect to this letter.

(emphasis added).

In fact, it prohibits Microsoft from telling anyone, other than its counsel and those “to whom disclosure is necessary to comply with the letter,” that it received an NSL.

IV. BASES FOR PETITION

COUNT I

PETITION TO SET ASIDE NSL UNDER 18 U.S.C. § 3511 AND DECLARATION THAT THE NSL STATUTES VIOLATE THE FIRST AMENDMENT (FACIAL CHALLENGE)

15. Microsoft restates, realleges, and incorporates by reference paragraphs 1 to 14 above as if set forth in full herein.

16. The NSL Statutes, 18 U.S.C. §§ 2709 and 3511, facially violate the First Amendment for at least two independent reasons, as set forth below.

17. ***Nondisclosure Provisions Fail to Meet Procedural Safeguards for Prior Restraints on Speech.*** The NSL Statutes fail constitutional scrutiny because the nondisclosure requirements (and the associated judicial review provision) set forth in 18 U.S.C. §§ 2709(c) and 3511(a) and (b) (the “Nondisclosure Provisions”) do not comport with the three procedural safeguards for prior restraints under *Freedman v. Maryland*, 380 U.S. 51, 58-59 (1965). These procedural safeguards apply to the NSL Statutes. *See In re Nat’l Sec. Letter*, No. C-11-02173, 2013 WL 1095417, at *7 (N.D. Cal. Mar. 14, 2013), *appeal pending* (9th Cir. 2013), (concluding that *Freedman* protections apply to the NSL Statutes); *Doe v. Mukasey*, 549 F.3d 861, 880-81, 883 (2d Cir. 2008) (applying *Freedman* safeguards to NSL Statutes). Specifically, *Freedman* requires that “(1) any restraint prior to judicial review can be imposed only for a specified brief period during which the status quo must be maintained; (2) expeditious judicial review of that decision must be available; and (3) the censor must bear the burden of going to court to suppress the speech and must bear the burden of proof once in court.” *Thomas v. Chi. Park Dist.*, 534 U.S. 316, 321 (2002) (citation omitted). The failure to

1 comply with *Freedman*'s procedural safeguards renders the NSL Statutes unconstitutional. *In*
 2 *re Nat'l Sec. Letter*, 2013 WL 1095417, at *8-10.

3 18. The NSL Statutes fail to comply with the first *Freedman* procedural safeguard
 4 because the restraint on speech lasts indefinitely. "Under *Freedman*'s first prong, any restraint
 5 prior to judicial review can be imposed only for a specified brief period. The NSL provisions
 6 do not provide any limit to the period of time the nondisclosure order can be in place prior to
 7 judicial review." *Id.* at *10.

8 19. The NSL Statutes fail to comply with the second *Freedman* procedural
 9 safeguard because they impermissibly circumscribe the judicial review available to NSL
 10 recipients. *See infra* ¶¶ 23, 35-36.

11 20. The NSL Statutes fail to comply with the third *Freedman* procedural safeguard
 12 because the NSL Statutes do not require the government to initiate judicial review, and the
 13 government does not bear the burden of proof once in court. *See In re Nat'l Sec. Letter*, 2013
 14 WL 1095417, at *9 ("There is no dispute that the NSL provisions do not require the
 15 government to initiate judicial review of the NSL nondisclosure orders."); *Mukasey*, 549 F.3d
 16 at 880-81 (lack of government-initiated judicial review fails constitutional scrutiny under
 17 *Freedman*).

18 21. ***Nondisclosure Provisions Not "Narrowly Tailored" to Survive Constitutional***
 19 ***Scrutiny.*** The NSL Statutes also violate the First Amendment because the Nondisclosure
 20 Provisions constitute content-based restrictions on speech (*i.e.*, speech about the NSL) that are
 21 not narrowly tailored to serve a compelling government interest. Microsoft does not dispute
 22 that the NSL Statutes implicate compelling national security interests. But "the NSL
 23 nondisclosure provisions are not narrowly tailored on their face, since they apply, without
 24 distinction, to both the content of the NSLs and to the very fact of having received one." *In re*
 25 *Nat'l Sec. Letter*, 2013 WL 1095417, at *10.

26 22. The NSL Statutes' restrictions on speech also last an impermissible length of
 27 time: "[n]othing in the statute requires or even allows the government to rescind the non-

1 disclosure order once the impetus for it has passed.” *Id.* at *11; *see also Doe v. Gonzales*, 500
2 F. Supp. 2d 379, 421 (S.D.N.Y. 2007), *aff’d in part, rev’d in part by Mukasey*, 549 F.3d 861
3 (“Once disclosure no longer poses a threat to national security, there is no basis for further
4 restricting NSL recipients from communicating their knowledge of the government’s activities.
5 International terrorism investigations might generally last longer than run-of-the-mill domestic
6 criminal investigations, but they do not last forever.”).

7 23. Finally, the NSL Statutes’ judicial review provisions are not narrowly tailored
8 insofar as they *require* the Court to consider *ex parte* submissions by the Government, whether
9 or not they contain classified information and whether or not they can be disclosed to the
10 petitioner (or even its cleared counsel) consistent with the national security concerns in any
11 particular case. *See* 18 U.S.C. § 3511(e).

12 24. The unconstitutional portions of the NSL Statutes are not severable because
13 Congress would not have enacted the constitutional portions of the statute without the
14 unconstitutional portions of the statute. *See In re Nat’l Sec. Letter*, 2013 WL 1095417, at *15
15 (finding it impossible to sever the unconstitutional nondisclosure provisions from the remaining
16 portions of the NSL Statutes).

17 25. The unconstitutional portions of the NSL Statutes cannot be narrowed or
18 conformed by judicial construction to save the constitutionality of the NSL Statutes. *See id.* at
19 *14 (finding it beyond the court’s power to conform the NSL Statutes to constitutional
20 requirements). Courts “may impose a limiting construction on a statute only if it is readily
21 susceptible to such a construction. [They] will not rewrite a . . . law to conform it to
22 constitutional requirements, for doing so would constitute a serious invasion of the legislative
23 domain, and sharply diminish Congress’s incentive to draft a narrowly tailored law in the first
24 place.” *United States v. Stevens*, 130 S. Ct. 1577, 1591-92 (2010) (internal quotations and
25 citations omitted) (ellipsis in original).

26 26. A judicial declaration that the NSL Statutes violate the First Amendment is
27 necessary and appropriate so that Microsoft may ascertain its obligations under law and ensure

1 compliance . Absent such a declaration, the FBI will continue to issue
2 NSLs that impermissibly restrict the First Amendment rights of Microsoft and other electronic
3 communication service providers.

4 **COUNT II**
5 **PETITION TO SET ASIDE NSL UNDER 18 U.S.C. § 3511 AND**
6 **DECLARATION THAT THE NSL STATUTES VIOLATE THE**
7 **FIRST AMENDMENT AS APPLIED TO MICROSOFT IN THIS CASE**
8 **(AS-APPLIED CHALLENGE)**

9 27. Microsoft restates, realleges, and incorporates by reference paragraphs 1 to 26
10 above as if set forth in full herein.

11 28. The NSL Statutes violate the First Amendment as applied to Microsoft in this
12 case because the non-disclosure obligations imposed on Microsoft are not narrowly tailored.

13 29. *First*, the non-disclosure obligation is not narrowly tailored because it prohibits
14 disclosure to *anyone* at . The purpose of the non-disclosure obligation is to mitigate
15 any “danger to the national security of the United States, interference with a criminal,
16 counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or
17 danger to the life or physical safety of any person.” 18 U.S.C. § 2709(c)(1).
18

19 30. *Second*, the non-disclosure obligation is not narrowly tailored because a less
20 restrictive means for the FBI to obtain the information sought by the NSL exists that would not
21 restrict Microsoft’s speech rights: the FBI could seek this information directly

22 . Requesting the information directly would avoid both burdening
23 Microsoft’s speech rights and requiring Microsoft to bear the significant expense of searching
24 for, collecting, and producing the information sought by the NSL.

25 31. *Third*, the non-disclosure obligation is not narrowly tailored because it
26 indiscriminately bars Microsoft from disclosing to both the content of the NSL and
27 the mere fact that Microsoft received an NSL. Even if Microsoft could be constitutionally

1 prohibited from informing of the NSL's content (*i.e.*, the specific user account
 2 targeted), there is no plausible justification for barring Microsoft from notifying
 3 of the *fact* that Microsoft received an NSL directed at
 4 (without revealing the identity of the targeted account).

5 32. A judicial declaration that the NSL Statutes violate the First Amendment as-
 6 applied to Microsoft in this case is necessary and appropriate so that Microsoft may ascertain
 7 its obligations under law and ensure compliance . Absent such a
 8 declaration, Microsoft will continue to suffer from the unconstitutional impairment of its First
 9 Amendment rights.

10 **COUNT III**
 11 **PETITION TO SET ASIDE NSL UNDER 18 U.S.C. § 3511 AND**
 12 **DECLARATION THAT THE NSL STATUTES VIOLATE**
 13 **THE U.S. CONSTITUTION'S SEPARATION OF POWERS**
 14 **(FACIAL CHALLENGE)**

15 33. Microsoft restates, realleges, and incorporates by reference paragraphs 1 to 32
 16 above as if set forth in full herein.

17 34. The NSL Statutes are unconstitutional because the judicial review provisions
 18 violate the separation of powers required by the U.S. Constitution. The NSL Statutes create a
 19 judicial review process, *see* 18 U.S.C. § 3511, but they simultaneously prevent courts from
 20 conducting the searching review required by the First Amendment in two distinct ways.

21 35. *First*, the NSL Statutes provide that a district court may modify or set aside the
 22 nondisclosure requirement only if the court finds "there is no reason to believe" that disclosure
 23 "may" result in an enumerated harm. *See* 18 U.S.C. § 3511(b). "The statute's intent—to
 24 circumscribe a court's ability to modify or set aside nondisclosure NSLs unless the essentially
 25 insurmountable standard 'no reason to believe' that a harm 'may' result is satisfied—is
 26 incompatible with the court's duty to searchingly test restrictions on speech." *In re Nat'l Sec.*
 27 *Letter*, 2013 WL 1095417, at *12.

36. *Second*, if a specified government official has certified that such a harm "may"
 occur, that determination is "conclusive." *See* 18 U.S.C. § 3511(b). "The fiat of a

1 governmental official, though senior in rank and doubtless honorable in the execution of
 2 official duties, cannot displace the judicial obligation to enforce constitutional requirements.
 3 Under no circumstances should the Judiciary become the handmaiden of the Executive.”
 4 *Mukasey*, 549 F.3d at 882-83 (internal quotation omitted).

5 37. A judicial declaration that the NSL Statutes violate separation of powers
 6 principles is necessary and appropriate so that Microsoft may ascertain its obligations under
 7 law and ensure compliance Absent such a declaration, the FBI will
 8 continue to issue NSLs that impermissibly violate separation of powers principles.

9 **COUNT IV**
 10 **PETITION TO SET ASIDE NSL UNDER 18 U.S.C. § 3511, OR, IN THE**
 11 **ALTERNATIVE, TO MODIFY NONDISCLOSURE REQUIREMENT**
 12 **AS “UNREASONABLE” AND “OPPRESSIVE”**

13 38. Microsoft restates, realleges, and incorporates by reference paragraphs 1 to 37
 14 above as if set forth in full herein.

15 39. Even if the Court finds the NSL Statutes constitutional, the NSL at issue in this
 16 case should be set aside or modified to conform to the NSL Statutes.

17 40. The NSL Statutes provide that a “court may modify or set aside [an NSL] if
 18 compliance would be unreasonable, oppressive, or otherwise unlawful.” 18 U.S.C. § 3511(a).
 19 The NSL received by Microsoft is unreasonable and oppressive because it imposes on
 20 Microsoft the significant expense of searching for, collecting, and producing the requested
 21 information when could more easily collect and produce the same information itself.

22 41. The NSL Statutes further provide that a “court may modify or set aside . . . a
 23 nondisclosure requirement [imposed by the NSL statute] if it finds that there is no reason to
 24 believe that disclosure may” create a risk of an enumerated harm. 18 U.S.C. § 3511(b). Here,
 25 there is no reason to believe that disclosure to
 26 would create a risk of an enumerated harm.
 27

42. A judicial declaration that the NSL should be set aside, or modified to allow Microsoft to inform about it, is necessary and appropriate so that Microsoft may ascertain its obligations under law and ensure compliance with Absent such a declaration, Microsoft will continue to be illegally burdened by this NSL.

V. PRAYER FOR RELIEF

Wherefore, Microsoft prays for an Order and Judgment:

- a) Declaring 18 U.S.C. §§ 2709 and 3511 unconstitutional, both facially and as-applied to Microsoft in this case;
- b) Setting aside the NSL as oppressive and unreasonable because the documents requested are more appropriately sought directly from , or, in the alternative, modifying the Nondisclosure Provisions to allow Microsoft to disclose the NSL to ; and
- c) Granting such other and further equitable or legal relief as the Court deems proper.

DATED this 18th day of June, 2013.

By s/Mark N. Bartlett

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18 aberengaut@cov.com

19 **Pro hac vice application pending*
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CERTIFICATE OF SERVICE

I hereby certify that on the _____, 2013, I filed the foregoing with the court and I caused to be served a true and correct copy of the following document(s) by the method indicated below and addressed as follows:

Petition to Set Aside NSL and Complaint for Declaratory Judgment

United States Attorney's Office
Western District of Washington
700 Steward St., Suite 5220
Seattle, WA 98101
Tel: (206) 553-7970
Fax: (206) 553-0882

☐ U.S. Mail
☒ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ CM/ECF Notification
☐ Email

DATED this _____, 2013.

s/Candice M. Tewell
Candice M. Tewell