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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CAROLYN JEWEL, TASH HEPTING, *et al.*,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY, *et al.*,

Defendants.

FIRST UNITARIAN CHURCH OF LOS ANGELES, et al.,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY, *et al.*,

Defendants.

CASE NO. 08-cv-4373-JSW
CASE NO. 13-cv-3287-JSW

[PROPOSED] ORDER

Date: March 19, 2014
Time: 2:00 p.m.
Hon. Jeffrey S. White
Courtroom 11 - 19th Floor

This matter is now before the Court pursuant to the Court's March 10, 2014 order granting plaintiffs' motion for a temporary restraining order and setting a briefing and hearing schedule regarding evidence preservation. After receiving briefing from the parties, the Court held a hearing in this matter on March 19, 2014. Having considered the briefing and arguments of the parties, the Court now orders as follows:

1. The Court reaffirms and enforces the existing evidence preservation order in *Jewel, et al. v. NSA, et al.* (ECF No. 51 in No. 08-cv-4373-JSW). The Court reaffirms that this order extends to all of plaintiffs' communications content and communications records claims, including claims related to telephone records (also sometimes called "call detail records," "telephone metadata," or "BR Metadata"), Internet metadata records, Internet or telephone content data. The Court reaffirms that this order extends to telephone records, Internet metadata records, Internet or telephone content data without regard to when the government obtained them or the legal authority under which the government obtained them, whether under orders of the Foreign Intelligence Surveillance Court or otherwise. The order extends specifically to the telephone records the government proposes to destroy (ECF No. 85 in No. 13-cv-3287-JSW) and all similar records. The order also extends by its terms to all other materials potentially relevant or reasonably anticipated to be subject to discovery in the *Jewel v. NSA* action.

2. In *First Unitarian Church of Los Angeles, et al. v. NSA, et al.*, No. 13-CV-3287-JSW, the Court enters the following evidence preservation order, based on the *Jewel v. NSA* preservation order:

A. The Court reminds all parties of their duty to preserve evidence that may be relevant to this action. The duty extends to documents, data and tangible things in the possession, custody and control of the parties to this action, and any employees, agents, contractors, carriers, bailees or other non-parties who possess materials reasonably anticipated to be subject to discovery in this action. Counsel are under an obligation to exercise efforts to identify and notify such non-parties, including employees of corporate or institutional parties.

B. "Documents, data and tangible things" is to be interpreted broadly to include writings, records, files, correspondence, reports, memoranda, calendars, diaries, minutes, electronic messages, voicemail, e-mail, telephone message records or logs, computer and network activity logs, hard drives, backup data, removable computer storage media such as tapes, disks and cards, printouts, document image files, web pages, databases, spreadsheets, software, books, ledgers, journals, orders, invoices, bills, vouchers, checks, statements, worksheets, summaries, compilations, computations, charts, diagrams, graphic presentations, drawings, films, digital or chemical process photographs, video, phonographic, tape or digital recordings or transcripts thereof, drafts, jottings and notes. Information that serves to identify, locate, or link such material, such as file inventories, file folders, indices and metadata, is also included in this definition.

C. "Preservation" is to be interpreted broadly to accomplish the goal of maintaining the integrity of all documents, data and tangible things reasonably anticipated to be subject to discovery under FRCP 26, 45 and 56(e) in this action. Preservation includes taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of such material, as well as negligent or intentional handling that would make material incomplete or inaccessible.

D. Counsel are directed to inquire of their respective clients if the business or government practices of any party involve the routine destruction, recycling, relocation, or mutation of such materials and, if so, direct the party, to the extent practicable for the pendency of this order, either to

(1) halt such business or government practices;

(2) sequester or remove such material from the business or government practices; or

(3) arrange for the preservation of complete and accurate duplicates or copies of such material, suitable for later discovery if requested.

3. Nothing in this order or in the Court's prior evidence preservation orders shall be construed as authorizing any review or use of telephone records or other materials subject to the Court's preservation orders for intelligence-gathering or any other non-litigation purposes. The Court takes note that the Foreign Intelligence Surveillance Court has imposed this restriction on the government's retention of records for litigation purposes, directing that telephone ("BR") metadata records "otherwise required to be destroyed under the five-year limitation on retention . . . may be preserved and/or stored in a format that precludes any access or use by NSA intelligence analysts for any purpose, including to conduct contact chaining queries of the BR metadata approved under the applicable 'reasonable, articulable suspicion' standards for the purpose of obtaining foreign intelligence information." FISC Order of March 12, 2014 in Docket No. BR 14-01.

4. The Court orders and directs that within 15 days from the date of this order the government defendants shall disclose to the Court and to plaintiffs what they have done to comply with the Court's preservation orders, and to disclose whether they have destroyed telephone records, Internet metadata records, Internet or telephone content data, or any other evidence potentially relevant to these lawsuits since the commencement of the related *Hepting, et al. v. AT&T, et al.* litigation (No. 06-cv-0672-VRW) in January 2006.

IT IS SO ORDERED.

Dated: _____

_____
HONORABLE JEFFREY S. WHITE
UNITED STATES DISTRICT COURT JUDGE