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

19
20 FIRST UNITARIAN CHURCH OF LOS)
ANGELES, *et al.*,)
21)
Plaintiffs,)
22)
v.)
23)
NATIONAL SECURITY AGENCY, *et al.*,)
24)
Defendants.)
25)
26 _____)

Case No.: 4:13-cv-3287-JSW
**ADMINISTRATIVE MOTION TO
REQUEST HEARING DATES FOR
PENDING MOTIONS**

Courtroom 5, 2nd Floor
The Honorable Jeffrey S. White

1 **I. ADMINISTRATIVE MOTION**

2 Plaintiffs First Unitarian Church of Los Angeles, *et al.*, hereby request the Court to set a
3 hearing date on their motion for partial summary judgment and on the government's cross-motion
4 to dismiss. Plaintiffs filed their opening papers nearly one year ago, on November 6, 2013 (ECF
5 No. 24-49). The briefing on both motions was completed on February 21, 2014 (ECF No. 81-82).
6 On February 25, 2014, the Court vacated the previously-scheduled hearing date of April 25, 2014
7 (ECF No. 83). There is no hearing date pending.

8 This case is one of several cases filed throughout the nation in the summer of 2013 in
9 response to the revelation of a FISC order authorizing the mass collection of Americans' call
10 records. Since then, three such cases have proceeded to an appealable judgment, have been fully
11 briefed on appeal, and are now pending decision in the Courts of Appeals. One of these, *ACLU v.*
12 *Clapper*, No. 14-42 (2d Cir. filed Jan. 2, 2014), is on appeal to the Second Circuit, and oral
13 argument took place on September 2, 2014. Another, *Klayman v. Obama*, Nos. 04-5004, 14-5005,
14 14-5016, 14-5017 (D.C. Cir. filed Jan. 3, 2014), is on appeal to the D.C. Circuit, and oral argument
15 will take place next week. A further case, *Smith v. Obama*, No. 14-35555 (9th Cir. filed July 1,
16 2014), is on appeal to the Ninth Circuit, with oral argument set for December 8, 2014. Plaintiffs'
17 case is the outlier, with no forward progress despite the ongoing harms to the plaintiffs posed by
18 the continuing government collection of the records of their telephone calls.

19 This case is distinct from the other challenges to the mass collection of call records. None
20 of the other cases presents a First Amendment challenge in the way that it is presented in this case;
21 the constitutional arguments in those cases center around the Fourth Amendment. Here plaintiffs
22 are groups organized to present political, religious or social viewpoints that, in many instances,
23 may be viewed as outside the mainstream. They have argued that the mass collection program
24 hinders their ability to associate with and communicate with their members and associates. Thus,
25 even though the respective district courts have already decided *ACLU*, *Klayman*, and *Smith*, a
26 decision by this Court on the pending summary judgment motion under the First Amendment will
27 be one of first impression.

1 Additionally, a decision by this Court on plaintiffs’ motion on either the statutory
2 arguments or the First Amendment will not be mooted by the Ninth Circuit’s decision in *Smith*
3 because the issues do not overlap. *Smith* is limited to a single Fourth Amendment claim. There is
4 neither a First Amendment argument nor a statutory argument. Plaintiffs’ motion, in contrast,
5 addresses only their First Amendment and statutory claims. ECF No. 24. There is no reason to
6 await a Ninth Circuit ruling in *Smith*.

7 A hearing is also necessary because plaintiffs are suffering continual harms from these
8 ongoing governmental activities. As plaintiffs demonstrated in the 23 declarations they filed last
9 November, the government’s mass collection program creates an ongoing burden on plaintiffs’
10 rights to free expression and association.

11 “[A] federal court’s obligation to hear and decide a case is virtually unflagging.” *Sprint*
12 *Commc’ns, Inc. v. Jacobs*, __ U.S. __, 134 S. Ct. 584, 591 (2013) (internal quotation marks
13 omitted). A hearing on the pending motions is overdue. Plaintiffs respectfully suggest that the
14 December 19, 2014 hearing date set in *Jewel v. National Security Agency*, No. 4:08-cv-4373-JSW,
15 also be used for a hearing on the pending motions in this case. The parties will already be before
16 the Court on that date, and it will be an efficient use of the time and resources of the Court and the
17 parties to have this matter heard on that date as well. If that date is not convenient for the Court,
18 plaintiffs respectfully request that the Court set the pending motions in this case for hearing on
19 whatever date in the near future is convenient for the Court.

20 Dated: October 31, 2014

Respectfully submitted,

21 /s/ Thomas E. Moore III

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

18 FIRST UNITARIAN CHURCH OF LOS
 19 ANGELES, *et al.*,
 20
 Plaintiffs,
 21
 v.
 22 NATIONAL SECURITY AGENCY, *et al.*,
 23
 Defendants.

) Case No. 4:13-cv-03287-JSW
)
) **[PROPOSED] ORDER GRANTING**
) **PLAINTIFFS' ADMINISTRATIVE**
) **MOTION TO REQUEST HEARING**
) **DATES FOR PENDING MOTIONS**
)
) Courtroom 5, 2nd Floor
) The Honorable Jeffrey S. White

[PROPOSED] ORDER

1
2 Upon consideration of the Plaintiffs' Administrative Motion to Request Hearing Dates for
3 Pending Motions, and Defendants' response thereto, and good cause appearing, **IT IS HEREBY**
4 **ORDERED** that:

5 Plaintiffs' motion is **GRANTED**. Plaintiffs' Motion for Partial Summary Judgment and
6 the Government's Cross-Motion to Dismiss will be heard on _____.

7
8 **IT IS SO ORDERED.**

9
10 Dated: _____

HON. JEFFREY S. WHITE
UNITED STATES DISTRICT COURT JUDGE

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