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

17 FIRST UNITARIAN CHURCH OF LOS)
18 ANGELES, *et al.*,)

19 Plaintiffs,)

20 v.)

21 NATIONAL SECURITY AGENCY, *et al.*,)

22 Defendants.)
23

Case No. 4:13-cv-03287-JSW

**GOVERNMENT DEFENDANTS’
RESPONSE TO PLAINTIFFS’
ADMINISTRATIVE MOTION TO
REQUEST HEARING DATES
FOR PENDING MOTIONS**

24 Plaintiffs’ Administrative Motion to Request Hearing Dates for Pending Motions (ECF
25 No. 122) requests that the Court set a hearing date on Plaintiffs’ pending motion for partial
26 summary judgment and the Government’s pending cross-motion to dismiss. Pls.’ Admin. Mot.
27 at 1. The Government Defendants submit that it would disserve the interests of judicial economy
28 to set a hearing on the cross-motions at this time, because the very same claim made by
Gov’t Defs.’ Resp. to Pls.’ Admin. Mot. for a Hearing, Case No. 4:13-cv-03287-JSW

1 Plaintiffs— that the Government’s Section 215 telephony metadata program violates the Fourth
2 Amendment—is currently before the Ninth Circuit. As the Government previously advised the
3 Court, the United States District Court for the District of Idaho held in *Smith v. Obama, et al.*, --
4 F. Supp. 2d --, 2014 WL 2506421 (June 3, 2014), that the Section 215 telephony metadata
5 program does not violate the Fourth Amendment. Gov’t Defs.’ Statement of Recent Decision
6 (ECF No. 121). The plaintiffs in that case—represented by the same attorneys representing
7 Plaintiffs in this case—appealed and requested that the appeal be expedited. *Smith* is now fully
8 briefed, and oral argument is set for December 8, 2014. *See* Notice of Oral Argument, Docket
9 No. 54, Case No. 14-35555 (9th Cir.).¹

10 It is of no moment that Plaintiffs have asserted other claims along with their Fourth
11 Amendment claim that are not present in *Smith*, such as their First Amendment claim. Plaintiffs’
12 Fourth Amendment claim is squarely at issue in the Government’s cross-motion to dismiss, on
13 which Plaintiffs request a hearing date, and it is squarely at issue in the *Smith* appeal. Indeed, as
14 Plaintiffs acknowledge, it is *the* issue before the Ninth Circuit in *Smith*, virtually ensuring that
15 the Ninth Circuit will soon rule on the very same claim, regarding the very same intelligence
16 program, that Plaintiffs assert here. It would simply not be in the interests of judicial economy to
17 hold a hearing on this very issue while it is pending for decision before the Ninth Circuit. *See*
18 ECF No. 98, *Jewel v. NSA*, Case No. 08-4373-JSW (July 26, 2012) (staying proceedings until
19 after Ninth Circuit reached decision in another case, where the plaintiffs’ motion for partial
20 summary judgment raised an issue presented in the other case on appeal).

21 Moreover, Plaintiffs’ suggestion that the Court hear argument on the parties’ cross-
22 motions on December 19, 2014, combined with the hearing in *Jewel v. NSA* on pending cross-
23 motions in that case, is ill-advised. Plaintiffs claim this would be efficient because “[t]he parties
24 will already be before the Court on that date” Pls.’ Admin. Mot. at 2. The parties to *Jewel*

25
26 ¹ Similar Fourth Amendment challenges to the Section 215 telephony metadata program
27 have also been briefed and argued and are now awaiting decision in the Second and D.C.
28 Circuits. *ACLU v. Clapper*, No. 14-42 (2d Cir.); *Klayman v. Obama*, Nos. 14-5004, 14-5005,
14-5016, 14-5017 (D.C. Cir.).

1 and this case are in fact different. While it is true that the lawyers are the same, that is the extent
2 of the overlap between the proceedings. The cross-motions set for argument in *Jewel* on
3 December 19 relate to the Government's Upstream collection pursuant to Section 702 of the
4 Foreign Intelligence Surveillance Act ("FISA"), an entirely different intelligence-gathering
5 program that operates under different statutory authority than the Section 215 telephony
6 metadata program. Consequently, the motions in the two cases present numerous non-
7 overlapping issues. As the briefing demonstrates in this case, Plaintiffs' claims here raise
8 significant jurisdictional, statutory, and constitutional issues. The *Jewel* cross-motions also raise
9 complicated factual and legal issues pertaining to the scope of the plaintiffs' claims, their
10 standing, and a variety of issues subsumed under the merits of their Fourth Amendment claim
11 that differ from those involved here, owing to the differences in the two challenged programs. It
12 would not serve the Court, or the parties to either case, to further complicate matters by
13 combining the *Jewel* hearing with a hearing on the dissimilar cross-motions in the instant case.

14 Dated: November 4, 2014

Respectfully Submitted,

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