

1 STUART F. DELERY
Acting Assistant Attorney General

2 JOSEPH H. HUNT
Director, Federal Programs Branch

3 ANTHONY J. COPPOLINO
Deputy Branch Director

4 tony.coppolino@usdoj.gov

5 MARCIA BERMAN
Senior Trial Counsel

6 marcia.berman@usdoj.gov
U.S. Department of Justice

7 Civil Division, Federal Programs Branch
8 20 Massachusetts Avenue, NW, Rm. 7132

9 Washington, D.C. 20001
Phone: (202) 514-2205; Fax: (202) 616-8470

10 *Attorneys for the Government Defs. in their Official Capacity*

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

14 _____)
CAROLYN JEWEL, *et al.*,)

Case No. 3:08-cv-04373-JSW

15 Plaintiffs,)

16 v.)

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

18 Defendants.)

19 _____)
20 *In re National Security Agency*)
21 *Telecommunications Records Litigation*)
(M:06-cv-1791))

Case No. 07-cv-00693-JSW

DEFENDANTS' NOTICE AND
REQUEST THAT THE COURT HOLD
THE PENDING CROSS-MOTIONS
FOR SUMMARY JUDGMENT
IN ABEYANCE

22 This Document Relates To:)
23 VIRGINIA SHUBERT, *et al.*,)

24 Plaintiffs,)

25 v.)

26 BARACK OBAMA, *et al.*)

27 Defendants.)

Judge Jeffrey S. White

Courtroom 11, 19th Floor

28 Defs.' Notice & Request that the Court hold Cross-Mtns. for Summ. Judgment in Abeyance
Jewel v. National Security Agency (08-cv-4373-JSW)
Shubert v. Obama (07-cv-00693-JSW) (M:06-cv-1791)

1 The Government Defendants, sued in their official capacities in these actions, hereby
2 submit this request that the Court defer further consideration of pending cross-dispositive
3 motions in this case, which were heard on December 14, 2012, and allow the parties to submit a
4 status report to the Court on further proceedings in this case by July 12, 2013. The grounds for
5 this request are as follows.
6

7 In recent days there have been several media reports concerning alleged surveillance
8 activities, including in particular concerning an Order of the Foreign Intelligence Surveillance
9 Court. In response to these reports, the Director of National Intelligence (“DNI”) directed that
10 certain information related to the “business records” provision of the Foreign Intelligence
11 Surveillance Act be declassified and immediately released to the public. *See* DNI Statement on
12 Recent Unauthorized Disclosures of Classified Information, *available at*
13 [http://www.odni.gov/index.php/newsroom/press-releases/191-press-releases-2013/868-dni-](http://www.odni.gov/index.php/newsroom/press-releases/191-press-releases-2013/868-dni-statement-on-recent-unauthorized-disclosures-of-classified-information)
14 [statement-on-recent-unauthorized-disclosures-of-classified-information](http://www.odni.gov/index.php/newsroom/press-releases/191-press-releases-2013/868-dni-statement-on-recent-unauthorized-disclosures-of-classified-information). Plaintiffs in this
15 litigation have asserted claims concerning the alleged collection of communications records. *See*
16 *Jewel* Complaint at ¶¶ 7, 10-11, 73-75, 82-97.
17
18

19 In light of these developments, the Government Defendants request that the Court defer
20 further consideration of the pending motions and grant the Government time to consider the
21 effect on the pending motions of the Government’s decision to declassify certain information,
22 and to consult with plaintiffs concerning the matter. Accordingly, the Government Defendants
23 respectfully request that the Court hold the pending cross-motions for summary judgment (Dkt.
24 Nos. 83, 102) in abeyance at this time, and propose further that the parties file a joint or separate
25 status report with the Court by July 12, 2013.
26
27

28 Defs.’ Notice & Request that the Court hold Cross-Mtns. for Summ. Judgment in Abeyance
Jewel v. National Security Agency (08-cv-4373-JSW)
Shubert v. Obama (07-cv-00693-JSW) (M:06-cv-1791)

1 Dated: June 7, 2013

Respectfully Submitted,

2 STUART F. DELERY
Acting Assistant Attorney General

3 JOSEPH H. HUNT
4 Director, Federal Programs Branch

5 ANTHONY J. COPPOLINO
6 Deputy Branch Director
7 tony.coppolino@usdoj.gov

8
9 s/ Marcia Berman
10 MARCIA BERMAN
Senior Trial Counsel
11 marcia.berman@usdoj.gov
U.S. Department of Justice
12 Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW, Rm. 7132
13 Washington, D.C. 20001
Phone: (202) 514-2205
14 Fax: (202) 616-8470
15 *Attorneys for the Government Defendants*
16 *Sued in their Official Capacities*
17
18
19
20
21
22
23
24
25
26
27

28 Defs.' Notice & Request that the Court hold Cross-Mtns. for Summ. Judgment in Abeyance
Jewel v. National Security Agency (08-cv-4373-JSW)
Shubert v. Obama (07-cv-00693-JSW) (M:06-cv-1791)