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 12 *Sued in their Official Capacity*

13 **UNITED STATES DISTRICT COURT**  
 14 **NORTHERN DISTRICT OF CALIFORNIA**  
 15 **SAN FRANCISCO DIVISION**

17 CAROLYN JEWEL, TASH HEPTING, )  
 18 GREGORY HICKS, ERIK KNUTZEN, and )  
 19 JOICE WALTON, )  
 20 *Plaintiffs,* )  
 21 v. )  
 22 NATIONAL SECURITY AGENCY (“NSA”); )  
 KEITH B. ALEXANDER, Director of the NSA; )  
 23 UNITED STATES OF AMERICA; )  
 24 BARACK OBAMA, President of the United )  
 States; UNITED STATES DEPARTMENT OF )  
 25 JUSTICE; ERIC HOLDER, Attorney General )  
 of the United States; DENNIS C. BLAIR, )  
 Director of National Intelligence. )  
 26 *Government Defendants* )  
 27 *Sued in Their Official Capacity.* )

Case No. C:08-cv-4373-VRW

**NOTICE OF ORDER BY  
 COURT OF APPEALS GRANTING  
 REHEARING EN BANC IN  
 MOHAMED V. JEPPESEN  
 DATAPLAN, INC.**

Chief Judge Vaughn R. Walker

1 **NOTICE OF ORDER BY COURT OF APPEALS GRANTING REHEARING *EN BANC***  
2 **IN *MOHAMED V. JEPPESEN DATAPLAN, INC.***

3 Government Defendants hereby give notice of the attached Order, Ex.1, issued yesterday by  
4 the United States Court of Appeals for the Ninth Circuit, that the case of *Mohamed v. Jeppesen*  
5 *Dataplan, Inc.*, 579 F.3d 943 (9th Cir. amended Aug. 31, 2009), is to be reheard *en banc* by that  
6 Court during the week of December 14, 2009, Ex.2. Plaintiffs in this action relied on the panel's  
7 decision in *Jeppesen* in opposing the Government Defendants' pending Motion to Dismiss and  
8 for Summary Judgment by arguing, among other things, that *Jeppesen* foreclosed this Court from  
9 dismissing the action or granting summary judgment to the Government at this juncture. (*See*  
10 Dkt. 29 at 18-23). In light of this decision to rehear the case *en banc*, however, the panel opinion  
11 in *Jeppesen* is not precedent to any district court of the Ninth Circuit. *See* Ex.1; Ninth Cir. R.  
12 35-3 advisory committee's note; Ninth Cir. Gen. Order 5.5(d).

13 October 28, 2009

Respectfully Submitted,

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