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May 6, 2009

By ECF

The Hon. Vaughn R. Walker
United States District Chief Judge
United States District Court
for the Northern District of California
450 Golden Gate Avenue, 16th Floor, Room 1111
San Francisco, CA 94102

Re: MDL No. 06-1791 (VRW), *Shubert v. Bush*

Dear Judge Walker:

We represent plaintiffs in *Shubert v. Bush* (Case No. 07-00693). The government moved to dismiss the entire case on state secrets grounds in May 25, 2007 and oral argument on the motion took place on August 30, 2007.

We write to alert the Court to recent, pertinent 9th Circuit authority, *Mohamed v. Jeppesen Dataplan, Inc.*, No. 08-15693, 2009 WL 1119516 (9th Cir. April 28, 2009), which rejected precisely the sort of blanket assertion of the state secrets privilege the government makes here. For the reasons set forth in Your Honor's decision in *In re National Security Agency Telecommunications Records Litigation*, 564 F.Supp.2d 1109, 1115 (N.D.Cal. 2008), FISA preempts the state secrets privilege and the government's motion should be denied. In addition, even if FISA did not preempt the state secrets privilege, the government's motion should be denied for the reasons set forth in *Mohamed v. Jeppesen*.

Respectfully submitted,


Ilann M. Maazel