

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CAROLYN JEWEL *et al.*,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY *et al.*,

Defendants

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

Chief Judge Vaughn R. Walker

~~PROPOSED~~ ORDER

Upon consideration of the parties' joint motion for entry of an order regarding the preservation of evidence and good cause appearing, the Court hereby ENTERS the following order based on the Court's prior Order of November 6, 2007, in 06-cv-1791-VRW (Dkt. 393).

A. The Court reminds all parties of their duty to preserve evidence that may be relevant to this action. The duty extends to documents, data and tangible things in the possession, custody and control of the parties to this action, and any employees, agents, contractors, carriers, bailees or other non-parties who possess materials reasonably anticipated to be subject to discovery in this action. Counsel are under an obligation to exercise efforts to identify and notify such non-parties, including employees of corporate or institutional parties.

B. "Documents, data and tangible things" is to be interpreted broadly to include writings, records, files, correspondence, reports, memoranda, calendars, diaries, minutes, electronic messages, voicemail, e-mail, telephone message records or logs, computer and network activity logs, hard drives, backup data, removable computer storage media such as tapes, disks and cards, printouts, document image files, web pages, databases, spreadsheets, software, books, ledgers, journals, orders, invoices, bills, vouchers, checks, statements, worksheets,

1 summaries, compilations, computations, charts, diagrams, graphic presentations, drawings, films,
2 digital or chemical process photographs, video, phonographic, tape or digital recordings or
3 transcripts thereof, drafts, jottings and notes. Information that serves to identify, locate, or link
4 such material, such as file inventories, file folders, indices and metadata, is also included
5 in this definition.

6 C. "Preservation" is to be interpreted broadly to accomplish the goal of maintaining the
7 integrity of all documents, data and tangible things reasonably anticipated to be subject to
8 discovery under FRCP 26, 45 and 56(e) in this action. Preservation includes taking reasonable
9 steps to prevent the partial or full destruction, alteration, testing, deletion, shredding,
10 incineration, wiping, relocation, migration, theft, or mutation of such material, as well as
11 negligent or intentional handling that would make material incomplete or inaccessible.

12 D. Counsel are directed to inquire of their respective clients if the business or
13 government practices of any party involve the routine destruction, recycling, relocation, or
14 mutation of such materials and, if so, direct the party, to the extent practicable for the pendency
15 of this order, either to

- 16 (1) halt such business or government practices;
 - 17 (2) sequester or remove such material from the business or government practices; or
 - 18 (3) arrange for the preservation of complete and accurate duplicates or copies of such
- 19 material, suitable for later discovery if requested.

20 Counsel representing each party shall, not later than December 15, 2009, submit to the
21 Court under seal and pursuant to FRCP 11, a statement that the directive in paragraph D, above,
22 has been carried out.

23 IT IS SO ORDERED.

24 Dated: Nov. 13, 2009.

25
26 The Honorable
United States District Judge

