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Attorneys for the Plaintiffs

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

14 IN RE NATIONAL SECURITY AGENCY)
 15 TELECOMMUNICATIONS RECORDS)
 16 LITIGATION)
 17 _____)
 18 This Document Relates Solely To:)
 19 *Shubert, et al. v. United States of America, et al.*)
 (Case No. 07-cv-00693-VRW))
 20 _____)

No. M:06-cv-01791-VRW
JOINT REQUEST FOR A CASE
MANAGEMENT CONFERENCE

21 The Plaintiffs and the Government Defendants submit the following joint request for a
 22 Case Management Conference in the above-captioned action.

23 **BACKGROUND**

24 1. This action is one of the remaining cases in this multi-district litigation
 25 proceeding brought against the United States of America and government officials. Plaintiffs'
 26 complaint alleges, *inter alia*, that the Government engaged in warrantless surveillance authorized
 27 after the 9/11 terrorist attacks. *See Shubert* Amended Compl. ¶¶ 1-2 (Dkt. 284 in 06-cv-1791-
 28 VRW).

2. On May 25, 2007, the Government Defendants filed a motion to dismiss or, in the

1 alternative, for summary judgment seeking dismissal or summary judgment in their favor based
2 on the Government's assertion of the state secrets and related statutory privileges. *See* Dkt. 29.
3 This motion was fully briefed in August 2007, and the Court heard oral argument on August 30,
4 2007. *See* Dkt. 368/13.

5 3. By Order dated March 31, 2008, the Court administratively terminated the
6 Government's motion after the Ninth Circuit Court of Appeals withdrew from submission a
7 pending appeal in *Hepting v. AT&T*, 439 F. Supp. 2d 974 (N.D. Cal. 2006). The Court granted
8 the Government leave to "petition the court to reopen these motions if the circumstances
9 warrant." *See* Dkt. 438.

10 4. On May 5, 2009, plaintiffs sent a letter to the Court requesting that it deny the
11 Government's motion pursuant to the Ninth Circuit's decision in *Mohamed v. Jeppesen*, 563
12 F.3d 922 (9th Cir. April 28, 2009), and the Court's decision in *In re National Security Agency*
13 *Telecommunications Records Litigation*, 564 F. Supp. 2d 1109, 1115 (N.D. Cal. 2008). *See* Dkt.
14 610/25.

15 5. On May 14, 2009, the Court issued an Order noting that the Government's motion
16 had already been terminated with leave to renew. The Court also directed the Government to
17 address the *Jeppesen* decision in any petition to renew its motion. *See* Dkt. 623/26.

18 6. The Plaintiffs and Government Defendants have conferred and agree that a Case
19 Management Conference would aid in discussing the status of this case and how it should
20 proceed at this stage. We propose that a Case Management Conference be held on September
21 17, 2009 at 10:00 a.m., at which time the Court will hear from the parties in *Jewel v. National*
22 *Security Agency*, 08-cv-4373 (N.D. Cal.) – another action against government officials.

23 7. Plaintiffs' counsel requests leave to appear telephonically and the Government
24 Defendants do not object to this request.

25 8. The parties will submit a joint case management statement setting forth their
26 respective positions on further proceedings in this action no later than 10 days in advance of the
27 case management conference as required by Local Rule 16-10(d).

CONCLUSION

1
2 Accordingly, the Plaintiffs and Government Defendants, through their undersigned
3 counsel, hereby request that a Case Management Conference in this action be scheduled for
4 September 17, 2009 at 10:00 a.m., so as to coincide with the scheduled motion hearing in the
5 *Jewel* matter.

6 The Plaintiffs' counsel also requests that he be granted leave to appear telephonically.

7 Respectfully Submitted,

8 MICHAEL F. HERTZ
9 Deputy Assistant Attorney General
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21 By: /s Anthony J. Coppolino
22 Anthony J. Coppolino

23 *Attorneys for Government Defendants*
24 *in their Official Capacities*

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26
27
28
DATED: July 31, 2009

DECLARATION PURSUANT TO GENERAL ORDER 45, § X.B

I, ANTHONY J. COPPOLINO, hereby declare pursuant to General Order 45, § X.B, that I have obtained the concurrence in the filing of this document from each of the other signatories listed below. I declare under penalty of perjury that the foregoing declaration is true and correct.

Executed on July 31, 2009, in the City of Washington, District of Columbia

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Attorneys for Plaintiffs

[PROPOSED] ORDER

Pursuant to the foregoing joint request for a Case Management Conference and good cause appearing, it is hereby ORDERED that:

1. A Case Management Conference shall take place on September 17, 2009 at 10:00 a.m., in the above-captioned action so as to coincide with a motion hearing in the *Jewel* matter.

2. Plaintiffs' counsel is granted leave to appear telephonically and shall make arrangements with the courtroom staff to so appear.

3. The parties shall submit a joint case management statement setting forth their respective positions on further proceedings in this action no later than 10 days in advance of the Case Management Conference as required by Local Rule 16-10(d).

IT IS SO ORDERED.

Dated: _____, 2009.

Hon. Vaughn R. Walker
United States District Chief Judge