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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

FIRST UNITARIAN CHURCH OF LOS
ANGELES, *et al.*,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY, *et al.*,

Defendants.

Case No. 4:13-CV-3287-JSW

**JOINT STIPULATION REGARDING
DISMISSAL**

1 WHEREAS Plaintiffs brought this action for declaratory, injunctive, and monetary relief
2 challenging the bulk collection of telephony metadata (also known as BR metadata) by Defendant
3 National Security Agency ("NSA") conducted pursuant to section 215 of the USA-PATRIOT Act,
4 Pub. L. No. 107-56, 115 Stat. 272 (2001) ("Section 215"), as contrary to Plaintiffs' constitutional
5 and statutorily protected rights;

6 WHEREAS, the Government affirms that on November 29, 2015, NSA ceased bulk
7 collection of telephony metadata under Section 215 and has not thereafter resumed such bulk
8 collection, in accordance with sections 103 and 109 of the USA FREEDOM Act, Pub. L. No. 114-
9 22, 129 Stat. 268, which prohibit the Government from obtaining telephony metadata in bulk under
10 Section 215;

11 WHEREAS, on November 24, 2015, the Government adopted procedures, approved by the
12 Attorney General, for the retention and use after November 28, 2015, of BR metadata previously
13 collected in bulk under Section 215 (*see* Attachment A, Notice Regarding Procedures for the
14 Retention and Use After November 28, 2015, of Call Detail Records Previously Produced Pursuant
15 to This Court's Orders, filed with the Foreign Intelligence Surveillance Court ("FISC") (hereinafter
16 "Procedures for Retention"));

17 WHEREAS, paragraph 3.D of the Procedures for Retention provides that the Government,
18 after November 28, 2015, may preserve and/or store such BR metadata to meet its preservation
19 obligations in this action and in *Jewel, et al. v. National Security Agency, et al.*, No. 4:08-cv-4373-
20 JSW (N.D. Cal.) ("*Jewel*");

21 WHEREAS, paragraph 3.E of the Procedures for Retention provides that, with exceptions
22 stated therein, all such BR metadata will be destroyed as expeditiously as possible after resolution of
23 the preservation issues raised in this case and *Jewel*;

24 WHEREAS, on November 24, 2015, the FISC issued an Opinion and Order (Attachment B)
25 finding that the aforesaid procedures satisfied applicable legal requirements and directing that the
26 Government follow those procedures following November 28, 2015;

27 WHEREAS, the litigation in *Jewel* is now terminated, and the Government's preservation
28 obligations under orders issued by the Court in that case are no longer extant;

1 WHEREAS, the Government is seeking without need of further litigation to resolve two
 2 other cases, *Shubert v. Biden*, No. 4:07-cv-00693-JSW, and *Smith v. Biden*, No. 2:13-cv-00257-
 3 BLW (D. Idaho), and to resolve as expeditiously as possible a third case, *Castellanos v. United*
 4 *States*, No. 5:22-cv-00440 (E.D.N.C.), all of which raise (or potentially raise) preservation issues
 5 concerning BR metadata collected under Section 215; and

6 WHEREAS, it is the Government's intention, as ordered by the FISC and affirmed by the
 7 NSA below, to destroy all remaining BR metadata collected under Section 215 in accordance with,
 8 and with the exceptions stated in, paragraph 3.E of the Procedures for Retention;

9 WHEREAS, paragraph 3.E of the Procedures for Retention provides that "disseminations of
 10 BR metadata that NSA disseminated in accordance with approved minimization procedures, query
 11 results of the BR metadata that form the basis of such disseminations, and summary reports prepared
 12 by NSA technical personnel for the technical purposes described in subparagraph C may be
 13 retained," the Government affirms that although the disseminations and summary reports cannot be
 14 catalogued in this document because of their classified nature, some sense of the magnitude¹ of the
 15 disseminations can be gleaned from the Office of the Director of National Intelligence transparency
 16 reports for calendar years 2013,² 2014,³ and 2015.⁴ The Government further affirms that regarding
 17 retention, disseminations, as with other SIGINT reports, are retained permanently. However, per
 18 DoD Manual S-5240.01-A (effective January 7, 2021) (relevant portions annexed as Attachment C),
 19 U.S. person information must be minimized prior to dissemination and dissemination of any U.S.
 20 Identity must be justified by need and requires approval from the appropriate authority, and the
 21

22 ¹ The number of U.S. persons who were subject to queries does not necessarily translate one-for-
 23 one to the number of disseminations.

24 ² https://icontherecord.tumblr.com/transparency/odni_transparencyreport_cy2013. According to
 this report, in 2013, 248 known or presumed U.S. persons were the subject of queries of information
 collected in bulk or who were subject to a business records application.

25 ³ https://icontherecord.tumblr.com/transparency/odni_transparencyreport_cy2014. According to
 26 this report, in 2014, 227 known or presumed U.S. persons were the subject of queries of information
 collected in bulk or who were subject to a business records application.

27 ⁴ https://icontherecord.tumblr.com/transparency/odni_transparencyreport_cy2015. According to
 28 this report, in 2015, 183 known or presumed U.S. persons were the subject of queries of information
 collected in bulk prior to the effective date of the relevant amendments to section 215 in the USA
 Freedom Act, or who were subject to a business records application at any time.

1 underlying U.S. person information in a SIGINT report, including query results, must be deleted
2 after 5 years, unless an exception applies.⁵

3 IT IS HEREBY STIPULATED by all parties hereto, as follows:

4 1. The parties respectfully request that the Court vacate its prior preservation order in this
5 action, ECF No. 103, to the extent it requires the Government to preserve BR metadata; relieve the
6 Government of any further obligation in this action to preserve BR metadata; and order that, so far as
7 this action is concerned, the Government is free to destroy such data. (A proposed form of order is
8 submitted herewith.)

9 2. Effective upon the Government filing a notice on the docket of this action affirming that it
10 has “destroyed all remaining BR metadata collected under Section 215 in accordance with, and with
11 the exceptions stated in, paragraph 3.E” of the Procedures for Retention (Attachment A):

12 (a) pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, all claims in this
13 case against the Government Defendants⁶ are hereby DISMISSED, with prejudice, all parties to bear
14 their own fees and costs; and

15 (b) pursuant to Rule 41(a)(1)(A)(i), Plaintiffs DISMISS all claims in this case against the
16 Defendants named in their individual capacities⁷, with prejudice, all parties to bear their own fees
17 and costs.

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22 ⁵ An unclassified version of the current manual is available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/S-524001-A.PDF?ver=SPh6FZicXc8uH192MI8o3w%3D%3D×tamp=1610651794685>.

23
24 ⁶ The Government Defendants are the National Security Agency (“NSA”); Paul M. Nakasone,
25 Director of the NSA, in his official capacity; the United States Department of Justice; Merrick B.
26 Garland, Attorney General of the United States, in his official capacity; Assistant Attorney General
for National Security Matthew G. Olsen, in his official capacity; the Federal Bureau of Investigation
27 (“FBI”); Christopher Wray, Director of the FBI, in his official capacity; and Avril Haines, Director
of National Intelligence, in her official capacity.

28 ⁷ The individual-capacity Defendants are former NSA Director Adm. Michael S. Rogers; Eric H.
Holder, former Attorney General of the United States; John P. Carlin, former Acting Assistant
Attorney General for National Security; James B. Comey, former Director of the FBI; and James R.
Clapper, former Director of National Intelligence.

Respectfully submitted,

By:

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As to the Government's intention, stated above,
to destroy all remaining BR metadata collected
under Section 215 in accordance with, and with
the exceptions stated in, paragraph 3.E of the
aforesaid procedures (Attachment A):



MARV JOHNSON

Chief of Operations Mission Integration
Directorate of Operations
National Security Agency