

1 CHAD A. READLER
Acting Assistant Attorney General

2 ANTHONY J. COPPOLINO
3 Deputy Branch Director

4 JAMES J. GILLIGAN
Special Litigation Counsel

5 RODNEY PATTON
6 Senior Counsel

7 JULIA A. BERMAN
8 TIMOTHY A. JOHNSON
CAROLINE J. ANDERSON
9 Trial Attorneys

10 U.S. Department of Justice
Civil Division, Federal Programs Branch
11 20 Massachusetts Avenue, N.W., Room 5102
Washington, D.C. 20001
12 E-mail: julia.berman@usdoj.gov
Phone: (202) 616-8480
13 Fax: (202) 616-8470

14 *Attorneys for the Government Defendants*
15 *Sued in their Official Capacities*

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
OAKLAND DIVISION

18 CAROLYN JEWEL, *et al.*,

19 Plaintiffs,

20 v.

21 NATIONAL SECURITY AGENCY, *et al.*,

22 Defendants.

) Case No. 4:08-cv-04373-JSW

) **STIPULATION AND ~~PROPOSED~~**
) **ORDER TO RESET BRIEFING**
) **BRIEFING SCHEDULE REGARDING**
) **REQUIRED DESTRUCTION OF**
) **UPSTREAM COMMUNICATIONS**
) **PREVIOUSLY ACQUIRED BY**
) **BY DEFENDANT NSA**

) Hon. Jeffrey S. White
) Courtroom 5, 2nd Floor
) Oakland Courthouse

1 4. At the May 19, 2017, status conference, this Court ordered that if, after the parties
2 confer, the Plaintiffs object to the accelerated destruction of the raw data in the NSA's central
3 repository, on the ground that the data should be preserved for purposes of this litigation, the
4 parties should submit simultaneous briefing regarding that issue, beginning on June 9, 2017,
5 followed by submissions on June 23, 2017, and June 30, 2017. *See* Tr. of Further CMC (May
6 19, 2017), 23:22–25:24.

7 5. Additionally, Plaintiffs believe that the Court authorized them to address the
8 question of evidence preservation more generally, noting that this includes whether “factually or
9 legally that the government is properly complying with preservation orders.” *See* Tr. of Further
10 CMC (May 19, 2017), 23:5-7. The parties briefed preservation issues extensively in 2014, but
11 the Court did not rule on either this question or the question of any applicable remedies. The
12 Government does not understand the Court to have invited further briefing on the parties’
13 broader preservation dispute at this time and submits that such briefing should await the
14 resolution of the immediate preservation issue concerning Upstream Internet communications
15 and of the pending discovery issues.

16 6. The parties are conferring regarding this matter, and it is not yet certain whether
17 briefing will be necessary. However, should briefing be needed, the parties respectfully request
18 that the briefing schedule be adjusted to provide for staggered, rather than simultaneous briefing,
19 with a two business day extension for the due date for opening brief. Specifically, the parties
20 seek the following schedule:

21 Government Defendants’ opening brief: June 13

22 Plaintiffs’ opening brief: June 20

23 Government Defendants’ response: June 27

24 Plaintiffs’ response: July 3

25 7. In addition to providing the parties additional time to reach agreement regarding
26 this matter without significantly extending the briefing schedule originally ordered by the Court,
27

28 Stipulation and ~~Proposed~~ Order to Reset Briefing Schedule
Regarding Required Destruction of Upstream
Communications Previously Acquired by Defendant NSA,
Jewel v. National Security Agency (4:08-cv-04373-JSW)

1 the proposed schedule would conserve the Court's and the parties' resources, resulting in four
2 total submissions regarding this matter, rather than the six originally contemplated.

3 8. The parties have not previously requested extensions of the briefing schedule
4 discussed herein, and the modifications proposed by the parties would not otherwise affect the
5 schedule for this case.

6 **STIPULATION**

7 Pursuant to Local Rule 6-2 the parties hereby respectfully request that the Court enter the
8 following revised briefing schedule for the parties' briefs to be submitted if they cannot reach
9 agreement regarding the Government Defendants' accelerated age-off of all raw Upstream
10 Internet communications data acquired on or before March 17, 2017, that exist in NSA's central
11 repository or the more general issue of evidence preservation by the Government:

12 June 13: Government Defendants' opening brief

13 June 20: Plaintiffs' opening brief

14 June 27: Government Defendants' responsive submission

15 July 3: Plaintiffs' responsive submission

16
17 Dated: June 9, 2017

18
19 Respectfully submitted,

20 Cindy Cohn (SBN 145997)

cindy@eff.org

21 David Greene (SBN 160107)

Lee Tien (SBN 148216)

22 Kurt Opsahl (SBN 191303)

Mark Rumold (SBN 279060)

23 Andrew Crocker (SBN 291596)

Jamie L. Williams (SBN 279046)

24 James S. Tyre (SBN 083117)

ELECTRONIC FRONTIER FOUNDATION

CHAD A. READLER

Acting Assistant Attorney General

25 ANTHONY J. COPPOLINO

Deputy Branch Director

26 JAMES J. GILLIGAN

Special Litigation Counsel

27 Richard R. Wiebe (SBN 121156)

wiebe@pacbell.net

LAW OFFICE OF RICHARD R. WIEBE

RODNEY PATTON

Senior Counsel

28 Stipulation and ~~Proposed~~ Order to Reset Briefing Schedule
Regarding Required Destruction of Upstream
Communications Previously Acquired by Defendant NSA,
Jewel v. National Security Agency (4:08-cv-04373-JSW)

1 Rachael E. Meny (SBN 178514)
rmeny@keker.com
2 Michael S. Kwun (SBN 198945)
Benjamin W. Berkowitz (SBN 244441)
3 Philip J. Tassin (SBN 287787)
KEKER, VAN NEST & PETERS, LLP
4
5 Thomas E. Moore III (SBN 115107)
tmoore@rroyselaw.com
ROYSE LAW FIRM, PC
6
7 Aram Antaramian (SBN 239070)
antaramian@sonic.net
LAW OFFICE OF ARAM ANTARAMIAN

By: /s/ Julia A. Berman
JULIA A. BERMAN
TIMOTHY A. JOHNSON
CAROLINE J. ANDERSON
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W., Room 5102
Washington, D.C. 20001
E-mail: julia.berman@usdoj.gov
Phone: (202) 616-8480
Fax: (202) 616-8470
*Attorneys for the Government Defendants
Sued in their Official Capacities*

10 **DECLARATION PURSUANT TO LOCAL RULE 5-1**

11 I, Julia Berman, hereby declare pursuant to Local Rule 5-1 that I have obtained
12 Plaintiffs' concurrence in the filing of this document from Cindy Cohn, counsel for
13 Plaintiffs.
14

15 Executed on June 9, 2017, in Washington, D.C.

16 /s/ Julia A. Berman
17 JULIA A. BERMAN
18 *Counsel for the Government Defendants*

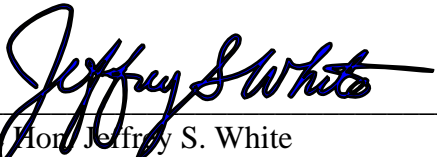
19 * * * * *

20
21
22
23
24
25
26
27
28 Stipulation and ~~Proposed~~ Order to Reset Briefing Schedule
Regarding Required Destruction of Upstream
Communications Previously Acquired by Defendant NSA,
Jewel v. National Security Agency (4:08-cv-04373-JSW)

1 PURSUANT TO STIPULATION, it is ORDERED that the briefing schedule regarding
2 preservation of Upstream Internet communications subject to destruction requirements under
3 NSA minimization procedures shall be in accordance with the parties' Stipulation. The briefing
4 schedule ordered at the May 19, 2017, case management conference is vacated.

5
6 **IT IS SO ORDERED.**

7
8 Dated: June 12, 2017


9 _____
10 The Hon. Jeffrey S. White
11 United States District Judge

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 Stipulation and ~~Proposed~~ Order to Reset Briefing Schedule
Regarding Required Destruction of Upstream
Communications Previously Acquired by Defendant NSA,
Jewel v. National Security Agency (4:08-cv-04373-JSW)