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

18 CAROLYN JEWEL, *et al.*,

19 Plaintiffs,

20 v.

21 NATIONAL SECURITY AGENCY,
22 *et al.*,

23 Defendants.

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

) **THE GOVERNMENT DEFENDANTS'**
) **NOTICE OF SUBMISSION**
) **OF THEIR CLASSIFIED AND**
) **UNCLASSIFIED RESPONSES TO**
) **THE COURT'S MAY 22, 2017 ORDER**

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

1 The Government Defendants respectfully submit this notice of their submission of their
2 classified and unclassified response to the Court's May 22, 2017, Civil Minute Order, ECF
3 No. 356 (the "Court's Order"). The Court's Order permitted Plaintiffs to serve revised discovery
4 requests, limited to the information necessary to establish their standing, and ordered the
5 Government Defendants to respond to those requests, including by noting "whether some
6 responses would be classified." *Id.* The Court further required the Government Defendants "to
7 marshal all evidence" pertaining to Plaintiffs' standing to bring their statutory claims, consistent
8 with the Court's oral order at the May 19, 2017, case management conference. *Id.* Any
9 unclassified responses to the Plaintiffs' revised discovery requests were to be submitted on the
10 public record, *id.*, while classified materials responsive either to the Plaintiffs' revised discovery
11 requests or to the Court's requirement that the Government Defendants marshal all evidence
12 pertaining to standing were to be submitted *ex parte* and *in camera*. *Id.*

13 On June 19, 2017, the Plaintiffs' served on the Government Defendants 160 discovery
14 requests on the issue of standing, consisting of 40 interrogatories, 63 requests for admission, and
15 57 requests for production of documents. After meeting and conferring with the Government
16 Defendants, the Plaintiffs served a revised set of their discovery requests on July 11, 2017.

17 Submitted herewith, as Appendix A, are the Government Defendants' unclassified
18 objections and responses to Plaintiffs' revised discovery requests.

19 The Government Defendants' classified responses to the Plaintiffs' revised discovery
20 requests are set forth in the Classified Declaration of Admiral Michael S. Rogers, Director of the
21 National Security Agency ("NSA") ("Classified NSA Declaration"). The Classified NSA
22 Declaration incorporates classified responses to the Plaintiffs' interrogatories and requests for
23 admission, and is accompanied by classified documents and information responsive to the
24 Plaintiffs' requests for production of documents. The Classified NSA declaration and the
25 classified documents responsive to Plaintiffs' requests for production have been lodged with the
26 Court Information Security Officer, and will be made available to the Court for its *ex parte*, *in*
27 *camera* review subject to necessary and appropriate arrangements to ensure their proper
28 handling, and protect against their unauthorized disclosure. The Government Defendants will

1 prepare a publicly releasable, unclassified version of the Classified NSA Declaration, and will
2 file that version on the public record of this case as soon as practicable.

3 Consistent with the Court's January 19, 2018 Order, the Government Defendants also
4 will supplement their classified *ex parte, in camera* submission by April 1, 2018 with the results
5 of the remaining searches of preserved communications data that could not be completed by
6 February 16, 2018. *See* ECF No. 387 at 5.¹

7 Also filed herewith, as Appendix B, is the Public Declaration of Susan M. Gordon,
8 Principal Deputy Director of National Intelligence ("PDDNI") and Acting Director of National
9 Intelligence ("DNI"), dated February 16, 2018 ("Public PDDNI Declaration"). For the reasons
10 explained in the Public PDDNI Declaration and the Classified NSA Declaration, the PDDNI, in
11 her capacity as Acting DNI, asserts the state secrets privilege, and the statutory privilege under
12 50 U.S.C. § 3024(i)(1), over the classified documents and information being made available to
13 the Court in response to Plaintiffs' revised discovery requests, whether as part of the instant
14 submission, or as the Government Defendants may later submit in further response to Plaintiffs'
15 requests. For the same reasons, the Director of the NSA also asserts the NSA's statutory
16 privilege under section 6 of the National Security Agency Act of 1959, 50 U.S.C. § 3605(a), over
17 the aforesaid documents and information. As explained by the PDDNI and the Director of the
18 NSA, these materials are protected by the state secrets privilege and the statutory privileges
19 under 50 U.S.C. § 3024(i)(1) and § 3605(a) because they concern classified sources, methods,
20 and operational details of NSA foreign-intelligence gathering activities that cannot be publicly
21 disclosed without risk of exceptionally grave damage to the national security of the United
22 States.

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26 ¹ As the Government Defendants noted in the parties' January 18, 2018, stipulation, most,
27 but not all, of the searches of preserved communications data using identifiers (such as e-mail
28 addresses and telephone numbers) associated with Plaintiffs' communications could be
completed by February 16, 2018. *See* ECF No. 386 at 1–2. The Government Defendants
anticipated that any remaining searches not completed by February 16 would be completed by
April 1. *See id.* at 2.

1 Dated: February 16, 2018
2

3 Respectfully submitted,

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