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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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

Plaintiffs,

v.

NATIONAL SECURITY AGENCY, *et al.*,

Defendants.

Case No. 13-cv-3287-JSW

**JOINT CASE MANAGEMENT STATEMENT AND [PROPOSED] ORDER**

Date: November 8, 2013  
Time: 1:30 p.m.  
Place: Courtroom 11, 19<sup>th</sup> Floor  
Judge: Hon. Jeffrey S. White

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2 **JOINT CASE MANAGEMENT STATEMENT**

3 **1. Jurisdiction and Service**

4 Plaintiffs allege the Court has subject matter jurisdiction over the claims in this  
5 case pursuant to 28 U.S.C. § 1331. The government entity and official capacity  
6 defendants have been served with the Summons and Complaint. ECF No. 11. The  
7 individual capacity defendants have not yet been served, but Plaintiffs will serve them on  
8 or before February 7, 2014. Although the government entity and official capacity  
9 defendants do not contest personal jurisdiction or venue, the Government will argue that  
10 the Court lacks subject matter jurisdiction to hear some or all of these claims.

11 **2. Facts**

12 **PLAINTIFFS' STATEMENT:**

13 Plaintiffs are organizations that represent and advocate a wide range of religious,  
14 political, and social viewpoints. They bring this action challenging the government's  
15 admitted, ongoing bulk collection of the telephone calling records of them, their members  
16 and staff, and every other American who uses a telephone.

17 As the Court is aware, there have been significant public disclosures and  
18 declassifications by the government recently regarding the NSA's bulk collection of  
19 telecommunications data, including a program under which NSA collects and analyzes  
20 large amounts of transactional data obtained from telecommunications service providers  
21 in the United States. These disclosures include the FISA Court orders purporting to  
22 authorize the bulk collection of telephone calling records of many millions of domestic  
23 telephone calls each day. *See* FISC Primary Order of October 11, 2013, *available at*  
24 <http://www.uscourts.gov/uscourts/courts/fisc/br13-158-memo-131018.pdf>.

25 Plaintiffs do not allege they were the targets of surveillance, and proof of who the  
26 government targeted for surveillance is not an element of their claims. Plaintiffs' claims  
27 instead are based on the unlawful bulk collection of communications records that occurs  
28

1 before the government begins selecting out the communications and records it targets for  
2 further examination.

3 **DEFENDANTS' STATEMENT:**

4 Plaintiffs seek to enjoin the Government's bulk collection of telephony metadata,  
5 pursuant to Section 215 of the USA PATRIOT Act, Pub. L. No. 107-56, 115 Stat. 272  
6 (2001) (codified at 50 U.S.C. § 1861). This program is an important element of the  
7 Government's ongoing efforts to defend the Nation and its people from continuing threats  
8 of terrorist attack. The metadata are business records created by (and belonging to)  
9 telecommunications service providers and are comprised of non-content based  
10 information such as the time and duration of calls made and the numbers dialed.

11 Fifteen different Article III judges on the Foreign Intelligence Surveillance Court  
12 (FISC) have authorized the collection of these business records on thirty-five separate  
13 occasions. Finding that the collection of these records is lawful, the FISC has repeatedly  
14 authorized National Security Agency (NSA) analysts to conduct targeted electronic  
15 searches of the bulk telephony metadata to identify unknown terrorist operatives, who  
16 may be located in the United States, in an effort to prevent terrorist attacks. Plaintiffs'  
17 claims that the challenged collection of telephony metadata is not authorized under 50  
18 U.S.C. § 1861 and violates their constitutional rights are baseless. For these and other  
19 reasons, their request for declaratory and injunctive relief should be denied.

20 **3. Legal Issues**

21 Plaintiffs allege that defendants' bulk collection of telephone calling records  
22 violates the First, Fourth, and Fifth Amendments and 50 U.S.C. § 1861, and entitles them  
23 to relief under those authorities as well as under Federal Rule of Criminal Procedure  
24 41(g). Defendants contend that their bulk collection of telephony metadata is authorized  
25 by, and is in compliance with, governing statutes and is lawful under the Constitution.  
26 For these reasons, including jurisdictional bars to some or all of Plaintiffs' claims,  
27 Plaintiffs' complaint should be dismissed.

1 **4. Motions**

2 Plaintiffs intend to bring an early motion for partial summary judgment on their  
3 statutory and First Amendment claims. Defendants intend to bring a cross-motion to  
4 dismiss the complaint in its entirety.

5 The parties agree on, and submit for the Court's approval, the following briefing  
6 schedule:

7 Plaintiffs' motion for partial summary judgment: Nov. 6, 2013

8 Defendants' opposition to plaintiffs' motion and  
9 defendants' cross-motion to dismiss Dec. 6, 2013

10 Plaintiffs' reply in support of their motion  
11 for partial summary judgment and plaintiffs'  
12 opposition to defendants' motion to dismiss Jan. 10, 2014

13 Defendants' reply in support of their motion  
14 to dismiss Jan. 24, 2014

15 Hearing Feb. 7, 2014

16 Given the complexity and nature of the claims presented in this case, the parties  
17 jointly ask the Court for an exception to Local Rule 7-4 and this Court's Civil Standing  
18 Orders with regard to page limits on the briefs set forth above. The parties request the  
19 following page limitations: 25 pages for Plaintiffs' memorandum in support of their  
20 motion for partial summary judgment; 40 pages for Defendants' joint opposition to that  
21 motion and cross motion to dismiss; 40 pages for Plaintiffs' joint reply in support of their  
22 partial summary judgment motion and opposition to Defendants' motion to dismiss; and  
23 25 pages for Defendants' reply in support of their motion to dismiss.

24  
25 **5. Amendment of Pleadings**

26 Plaintiffs filed a first amended complaint on September 10, 2013. Although  
27 Defendants' deadline for filing a responsive pleading to the first amended complaint is  
28

1 November 12, 2013, the parties have agreed to the briefing schedule set forth above in  
2 lieu of Defendants' responsive pleading deadline.

3 Plaintiffs are pursuing the notice procedures for presenting a claim under 18  
4 U.S.C. § 2712 and expect they will move to amend the first amended complaint to state a  
5 claim under § 2712 once the claim procedure is completed. Defendants reserve their  
6 rights to move to dismiss or otherwise seek to dispose of this forthcoming damages claim  
7 at the appropriate time.

8 **6. Evidence Preservation**

9 The parties are aware of, and are complying with, their respective preservation  
10 obligations. The parties have also reviewed the Guidelines Relating to the Discovery of  
11 Electronically Stored Information and expect to engage in subsequent meet and confer  
12 discussions with respect to this issue as appropriate.

13 **7. Disclosures**

14 The parties met and conferred on October 24, 2013, pursuant to Rule 26.  
15 Plaintiffs propose that the parties make mutual and simultaneous Rule 26(a)(1)  
16 disclosures in 120 days. Defendants propose that the parties' Rule 26(a)(1) disclosures  
17 be postponed until 45 days after the Court rules on the dispositive motions discussed  
18 above.

19 **8. Discovery**

20 No discovery has been taken to date. Plaintiffs anticipate that they will be able to  
21 prove their case with publicly available information. Defendants propose that all matters  
22 relating to discovery be postponed until after the Court resolves the motions discussed  
23 above.

24 **9. Class Actions**

25 This is not a class action.

26 **10. Related Cases**

27 The Court has related this case to *Jewel et al. v. National Security Agency et al.*,  
28

1 No. 08-cv-4273-JSW.

2 **11. Relief**

3 Plaintiffs seek to enjoin Defendants' unlawful bulk acquisition of  
4 communications records, to require the inventory and destruction of those that have  
5 already been seized, and seek corresponding declaratory relief. Defendants deny that  
6 bulk collection of telephony metadata under 50 U.S.C. § 1861 is unlawful and that  
7 Plaintiffs are entitled to any of the relief they seek in their first amended complaint, or to  
8 any relief whatsoever.

9 **12. Settlement and ADR**

10 No settlement discussions have taken place. The parties do not believe that ADR  
11 would be productive, given the nature of the claims raised and the relief sought by  
12 Plaintiffs. The parties have a telephone conference with the Court's ADR Unit scheduled  
13 for November 6, 2014.

14 **13. Consent to Magistrate Judge for All Purposes**

15 The parties do not consent to have a magistrate judge conduct all further  
16 proceedings including trial and entry of judgment.

17 **14. Other References**

18 The parties agree that this case is not suitable for reference to binding arbitration  
19 or a special master.

20 **15. Narrowing of Issues**

21 Plaintiffs expect that the disputed issues between the parties will turn out for the  
22 most part to be legal rather than factual ones, that the facts will be largely undisputed, and  
23 that the disputed legal issues can be narrowed or resolved on summary judgment.  
24 Defendants expect that this case should be resolved completely as a matter of law by their  
25 motion to dismiss.

26 **16. Expedited Trial Procedure**

27 The parties agree that this is not the type of case that can be handled under the  
28



1 Expedited Trial Procedure of General Order No. 64 Attachment A.

2  
3 **17. Scheduling**

4 Plaintiffs propose the following case schedule:

5 Expert designation date: September 5, 2014

6 Fact discovery cut-off: November 3, 2014

7 Expert discovery cut-off: December 5, 2014

8 Last day for filing dispositive motions: February 7, 2015

9 Trial: April 27, 2015

10 Defendants maintain that it is premature to propose dates for these events prior to  
11 the resolution of the forthcoming dispositive motions.

12 **18. Trial**

13 Plaintiffs have demanded a trial by jury of all issues so triable. Plaintiffs  
14 anticipate that a full trial, if necessary, will take approximately two weeks. Plaintiffs also  
15 anticipate, however, that it will be possible to resolve many issues on summary judgment.  
16 Defendants expect that this case should be resolved completely as a matter of law by their  
17 motion to dismiss such that no trial will be necessary. In the event that a trial is  
18 necessary, Defendants' position is that none of the claims Plaintiffs assert are triable by  
19 jury.

20 **19. Disclosure of Nonparty Interested Entities or Persons**

21 Plaintiffs have filed a Certification of Interested Entities or Persons required by  
22 Civil Local Rule 3-16. Plaintiffs hereby restate the contents of their prior certification  
23 and state that, to their knowledge, no entities other than the parties themselves have  
24 either: (i) a financial interest (of any kind) in the subject matter in controversy or in a  
25 party to the proceeding; or (ii) any other kind of interest that could be substantially  
26 affected by the outcome of the proceeding.

27 Defendants are not required to file a Certification of Interested Entities or Persons  
28 either under Federal Rule of Civil Procedure 7.1 or under Local Civil Rule 3-16.

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**20. Other Issues**

None.

Dated: October 31, 2013

By:

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s/ Richard R. Wiebe

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**CASE MANAGEMENT ORDER**

IT IS SO ORDERED.

Dated: \_\_\_\_\_

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HON. JEFFREY S. WHITE

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**CIVIL L.R. 5.1 CERTIFICATION**

I attest that I have obtained the concurrence of Cindy Cohn (counsel for Plaintiffs) in the filing of this document.

*/s/ Marcia Berman*  
\_\_\_\_\_

Marcia Berman