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

15 JEWEL, et al.

16 Plaintiffs,

17 v.

18 NATIONAL SECURITY AGENCY, et al.,

19 Defendants.

No. 08-cv-4373-VRW

**DEFENDANTS' UNOPPOSED
ADMINISTRATIVE MOTION FOR AN
EXTENSION OF TIME TO ANSWER
OR OTHERWISE TO RESPOND TO
COMPLAINT**

(CORRECTED VERSION)

[CIVIL L.R. 7-11 AND 6-3]

Honorable Vaughn R. Walker

22 Pursuant to Local Rule 6-3, all defendants hereby administratively move and respectfully
23 request that the Court grant a 60-day extension of time to answer or otherwise respond to the
24 complaint filed in this matter. Counsel for the defendants have consulted with counsel for the
25 plaintiffs and plaintiffs do not oppose this motion.

1 On September 18, 2008, plaintiffs filed a complaint alleging violations of the
2 Constitution and federal statutes arising out of alleged warrantless surveillance and raising
3 claims against the National Security Agency (“NSA”) and Government officials in their official
4 and individual capacities. *See* Dkt. 1 in 08-cv-4373 (Sept. 18, 2008). Plaintiffs moved
5 unopposed to relate this case to *Hepting, et al. v. AT&T Corp. et al.*, 06-cv-0672-VRW, *see* Dkt. 7
6 in 08-cv-4373, which is consolidated with other actions before the Court by Order of the Judicial
7 Panel on Multidistrict Litigation, *see* Dkt. 1 in 06-m-1791. The Court granted plaintiffs’ motion
8 on October 28, 2008, *see* Dkt. 9 in 08-cv-4373. A response to the complaint by the NSA and
9 Government defendants sued in their official capacity was initially due December 8, 2008.
10 Pursuant to Local Rule 6-1(a), the parties stipulated and agreed that a response to the complaint
11 by the Government defendants sued in their official capacities would be due no later than
12 February 2, 2009. *See* Dkt. 11 in 08-cv-4373 (Nov. 26, 2008). A response to the complaint by
13 the individual capacity defendants is also currently due February 2, 2009, based on the date
14 plaintiffs effected service on those defendants. *See* Fed. R. Civ. P. 12(a)(3).¹ The defendants
15 request that they be afforded an additional 60 days, or until April 3, 2009,² to answer or
16 otherwise respond to the complaint filed in this matter and that the hearing date set for March 26,
17 2009 be reset for a later date after the parties have conferred on a schedule and submitted a joint
18 proposal or respective proposals.

19 The defendants request an extension of time to respond to the complaint so that
20 additional time is available for consultation with incoming Administration officials who have yet
21 to be confirmed or take office and who, once in office, will require additional time to become
22 familiar with the case. Since this is the first filing in this case, and nothing else is pending, the
23 defendants submit that the additional time is appropriate under the circumstances. A proposed

24
25 ¹ By joining this motion, the individual capacity defendants do not waive, and expressly
26 reserve, all defenses available to them relating to all aspects of this action.

27 ² Our initial motion incorrectly calculated the new proposed due date of defendants
28 response from the date of this motion, rather than the current due date of February 2, 2009. To
be clear, we seek the 60-day extension from the current due date of February 2, 2009, in other
words up to and including April 3, 2009.

1 order granting the defendants' unopposed motion is attached.

2 DATED: January 26, 2009

Respectfully Submitted,

3 MICHAEL F. HERTZ
4 Acting Assistant Attorney General, Civil Division
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12 By: /s/ Alexander K. Haas
13 Alexander K. Haas

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19 *Michael B. Mukasey, Alberto R. Gonzales, and John*
20 *D. Ashcroft, in Their Individual Capacity*

DECLARATION OF PAUL G. FREEBORNE

I, PAUL G. FREEBORNE, hereby declare that:

1. I am a Trial Attorney in the Civil Division of the Department of Justice, and one of the attorneys assigned to this case.
2. I called counsel for the plaintiffs, Jennifer Granick, on January 22, 2009 to seek plaintiffs' consent to a 60-day extension of time for the defendants' response to the complaint filed in this matter.
3. Counsel for the plaintiffs has stated by phone and electronic mail that plaintiffs would not oppose the defendants' motion.
4. As set forth in the accompanying administrative motion, the defendants request the additional time to respond to the complaint so that proper consultation with Administration officials who have yet to take office, and others who have not yet been confirmed, can take place. Since this is the first filing in this case, and nothing else is pending, the defendants believe that the additional time is appropriate under the circumstances.
5. If the motion is granted, the defendants' obligation to answer or otherwise respond to the complaint would be on or before April 3, 2009. And if the motion is granted, the defendants propose that the parties be permitted an opportunity to agree upon a briefing schedule for appropriate motions and for a hearing upon any motions that are filed.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Executed on January 26, 2009, in the City of Washington, District of Columbia.

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By: s/ Paul G. Freeborne
Paul G. Freeborne

Attorneys for the Government Defendants

~~PROPOSED~~ ORDER

It is hereby ORDERED the defendants' Unopposed Administrative Motion for an Extension of Time to Answer or Otherwise Respond to the Complaint is hereby granted, and all defendants shall answer or otherwise respond to the complaint on or before April 3, 2009. It is further ORDERED that the Court's order setting a hearing for March 26, 2009 is vacated, and that the parties shall meet and confer and propose a briefing schedule for appropriate motions and a hearing date on which the Court may consider any motions that are filed.

IT IS SO ORDERED,

Dated: January 30, 2009

