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

17 CAROLYN JEWEL, TASH HEPTING,)
 18 GREGORY HICKS, ERIK KNUTZEN, and)
 JOICE WALTON,)
 19 *Plaintiffs,*)
 20 v.)
 21 NATIONAL SECURITY AGENCY (“NSA”);)
 22 KEITH B. ALEXANDER, Director of the NSA;)
 UNITED STATES OF AMERICA;)
 23 BARACK OBAMA, President of the United)
 States; UNITED STATES DEPARTMENT OF)
 24 JUSTICE; ERIC HOLDER, Attorney General)
 of the United States; DENNIS C. BLAIR,)
 25 Director of National Intelligence.)
 26 *Government Defendants*)
 27 *Sued in Their Official Capacity.*)

Case No. C:08-cv-4373-VRW

**NOTICE OF ORDER BY
 COURT OF APPEALS GRANTING
 REHEARING EN BANC IN
 MOHAMED V. JEPPESEN
 DATAPLAN, INC.**

Chief Judge Vaughn R. Walker

28 **Notice of Order by Court of Appeals Granting Rehearing En Banc in Mohamed v. Jeppesen Dataplan, Inc.
 Jewel et al. v. National Security Agency et al., Case No. 08-cv-4373-VRW**

1 **NOTICE OF ORDER BY COURT OF APPEALS GRANTING REHEARING *EN BANC***
2 **IN *MOHAMED V. JEPPESEN DATAPLAN, INC.***

3 Government Defendants hereby give notice of the attached Order, Ex.1, issued yesterday by
4 the United States Court of Appeals for the Ninth Circuit, that the case of *Mohamed v. Jeppesen*
5 *Dataplan, Inc.*, 579 F.3d 943 (9th Cir. amended Aug. 31, 2009), is to be reheard *en banc* by that
6 Court during the week of December 14, 2009, Ex.2. Plaintiffs in this action relied on the panel's
7 decision in *Jeppesen* in opposing the Government Defendants' pending Motion to Dismiss and
8 for Summary Judgment by arguing, among other things, that *Jeppesen* foreclosed this Court from
9 dismissing the action or granting summary judgment to the Government at this juncture. (*See*
10 Dkt. 29 at 18-23). In light of this decision to rehear the case *en banc*, however, the panel opinion
11 in *Jeppesen* is not precedent to any district court of the Ninth Circuit. *See* Ex.1; Ninth Cir. R.
12 35-3 advisory committee's note; Ninth Cir. Gen. Order 5.5(d).

13 October 28, 2009

Respectfully Submitted,

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