

1 STUART F. DELERY
 Assistant Attorney General
 2 JOSEPH H. HUNT
 Director, Federal Programs Branch
 3 ANTHONY J. COPPOLINO
 Deputy Branch Director
 4 JAMES J. GILLIGAN
 Special Litigation Counsel
 5 MARCIA BERMAN
 Senior Trial Counsel
 6 BRYAN DEARINGER
 Trial Attorney
 7 RODNEY PATTON
 Trial Attorney
 8 JULIA BERMAN
 Trial Attorney
 9 U.S. Department of Justice, Civil Division
 20 Massachusetts Avenue, NW, Rm. 7346
 10 Washington, D.C. 20001
 Phone: (202) 514-4782; Fax: (202) 616-8470

11 *Attorneys for the Government Defendants*

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

15 CAROLYN JEWEL, *et al.*,
 16 Plaintiffs,
 17 v.
 18 NATIONAL SECURITY AGENCY, *et al.*,
 19 Defendants.

Case No. C-08-4373-JSW

20 VIRGINIA SHUBERT, *et al.*,
 21 Plaintiffs,
 22 v.
 23 BARACK OBAMA, President of the
 24 United States, *et al.*,
 25 Defendants.

Case No. C-07-0693-JSW

DECLARATION OF ANTHONY J. COPPOLINO

No Hearing Scheduled
 Courtroom 5, 2nd Floor
 Judge Jeffrey S. White

1 I, Anthony J. Coppolino, do hereby declare as follows:

2 **Background**

- 3 1. I am a Deputy Director in the Federal Programs Branch of the Civil Division, U.S.
4 Department of Justice (“DOJ” or “Department”), and I have held this position since
5 February 22, 2013. Prior to becoming Deputy Director, I was Special Litigation Counsel
6 for the Federal Programs Branch and counsel of record for the Government Defendants in
7 the above-captioned *Shubert* action since first appearing in that case on March 20, 2007,
8 and in the *Jewel* action since first appearing in that case on April 3, 2009. I was also
9 counsel of record in the related multi-district litigation, *In re National Security Agency*
10 *Telecommunication Records Litigation*, 3:06-m-01791 (hereafter MDL-1791), beginning
11 on August 22, 2006. In my current capacity I continue to exercise a supervisory role over
12 this litigation.
- 13 2. My statements herein are based upon my personal knowledge obtained from my
14 involvement in this litigation and also based upon information provided to me by my co-
15 counsel in the course of my official duties as Deputy Director of the Federal Programs
16 Branch.
- 17 3. This declaration will describe actions taken by me and other Department of Justice
18 attorneys working at my direction in order to obtain compliance with the preservation
19 orders in the *Jewel* and *Shubert* actions by the Government Defendants who have been
20 sued in their official capacities. Specifically, as described further below, this declaration
21 will describe the actions taken to comply with the *Shubert* and *Jewel* preservation orders,
22 and summarize the current status of the information preserved that may be relevant to
23 either or both actions. The preservation efforts undertaken by the National Security
24 Agency (“NSA”) in response to the Court’s preservation orders in *Jewel* and *Shubert* will
25 be addressed in a separate NSA declaration, which will be submitted concurrently with
26 this declaration. In addition, this declaration is not intended to address a separate dispute
27

1 between the parties concerning whether preservation steps in this litigation should have
2 extended to activities authorized by the Foreign Intelligence Surveillance Court (“FISC”).

3 **Issuance of Preservation Notices in MDL-1791 - *Shubert v. NSA***

- 4 4. On February 2, 2007, the *Shubert* case was transferred from the Eastern District of New
5 York, 06-cv-2282 FB-MDG, to the Northern District of California to be part of the multi-
6 district litigation, *In re National Security Agency Telecommunication Records Litigation*,
7 3:06-m-0791. On September 20, 2007, the Plaintiffs in the consolidated MDL-1791
8 litigation filed a motion for an order to preserve evidence. *See* ECF No. 373 in MDL-
9 1791. That motion was signed by coordinating counsel for the MDL plaintiffs, the
10 Electronic Frontier Foundation, which is also the lead counsel for the *Jewel* Plaintiffs.
11 The same motion was separately filed in *Shubert v. NSA*, ECF No. 14 in 07-cv-0693. The
12 Government filed an opposition on October 25, 2007. *See* ECF No. 386 in MDL-1791;
13 ECF No. 19 in 07-cv-0693. As set forth in that opposition brief, while the Government
14 recognized its preservation obligations, it could not discuss those obligations with
15 Plaintiffs due to the classified nature of the activities implicated by the factual allegations
16 in the MDL litigation and protected by the Government’s then-pending state secrets
17 privilege assertion. The Government proposed to advise the Court through a classified *in*
18 *camera, ex parte* submission how potentially discoverable information, if any, was being
19 preserved. Concurrently with its opposition to Plaintiffs’ motion, the Government lodged
20 on October 25, 2007, a classified NSA declaration with the Court for *in camera, ex parte*
21 review in which the NSA detailed its preservation efforts. *See* ECF No. 386 in MDL-
22 1791; ECF No. 20 in 07-cv-0693. The Government has since filed a redacted version of
23 that declaration, along with the redacted version of a short supplemental brief that
24 accompanied the declaration. *See Jewel v. NSA*, 08-cv-4373, ECF No. 193-1 and 193-2.
25 5. On November 6, 2007, this Court entered a preservation order in the multi-district
26 litigation of which the *Shubert* case was a part. *See In re National Security Agency*
27
28

1 *Telecommunication Records Litigation*, 3:06-m-0791, ECF No. 393. In that order for
2 MDL-1791, the Court reminded all parties of their duty to preserve evidence that may be
3 relevant to this action and required that, by December 14, 2007, the most senior lawyer or
4 lead counsel representing each party shall submit to the Court, under seal and pursuant to
5 Federal Rule of Civil Procedure 11, a statement that the directive in Part D of the order
6 has been carried out. That directive in Part D required that counsel had to inquire of their
7 clients whether their government practices involved the routine destruction, recycling,
8 relocation, or mutation of potentially relevant materials, and, if so, to direct the clients, to
9 the extent practicable for the pendency of the order, to halt those practices or to make
10 other arrangements to ensure that any relevant information be preserved.

11 6. As described further below, in response to the Court's 2007 preservation order, and in
12 particular to Part D of that order which required that a specific inquiry be made to
13 Government Defendants, the Department of Justice, Civil Division, sent the Court's order
14 and a preservation notice to several agencies whose officials were named as defendants in
15 the *Shubert* action (the National Security Agency, Executive Office of the President, and
16 the Department of Justice).¹

17 7. On the day the MDL-1791 preservation order was issued (November 6, 2007), my then
18 co-counsel in the litigation sent the Court's order to the National Security Agency, whose
19 alleged activities were centrally at issue in the litigation.² On December 11, 2007, the

20 ¹ The defendants named in the *Shubert* amended complaint dated May 5, 2007 *see* ECF
21 284 in MDL-1791, included then-President George W. Bush, former NSA Director Michael
22 Hayden, then-current NSA Director Keith B. Alexander, former Attorney General John Ashcroft,
23 and then-current Attorney General Alberto Gonzales. In addition, separate preservation notices
24 were sent to Government agencies in connection with other then-pending lawsuits in MDL-1791
25 that had been brought against Government agencies and officials in *Al-Haramain Islamic*
Foundation v. Bush, 07-cv-00109-VRW (N.D. Cal.) and *Center for Constitutional Rights v.*
Bush, 3:07-cv-01115-VRW (N.D. Cal.).

26 ² As set forth in its classified declaration of October 25, 2007, *see Shubert v. NSA*, 07-cv-
27 0693, ECF No. 19; *Jewel v. NSA*, 08-cv-4373, ECF No. 193-1, the NSA had already begun
28 preservation efforts prior to the entry of the order.

1 Department of Justice, Civil Division sent a preservation notice and copy of the order to
2 the NSA. The NSA's preservation actions for this litigation are described in the
3 declaration it submitted on October 25, 2007, and are further described in the NSA
4 declaration being submitted concurrently with this declaration.

- 5 8. The same preservation notice sent to NSA, dated December 11, 2007, was also sent,
6 along with a copy of the Court's preservation order for MDL-1791, to officials of
7 components within the Department of Justice that would be likely to possess potentially
8 relevant documents and information, including the National Security Division and certain
9 Senior Leadership Offices ("SLOs") and a Senior Management Office ("SMO"). The
10 notice was accompanied by a copy of the Court's November 6, 2007, preservation order
11 and the *Shubert* amended complaint. The notice also provided background on the
12 litigation, discussed the Court's preservation order, and explained the components' duty
13 to preserve information consistent with that order. Recipients were advised that the
14 plaintiffs in the MDL-1791 proceedings allege that the NSA, with the alleged assistance
15 of telecommunications companies ("carriers") and without judicial approval, engaged in
16 an alleged "dragnet" surveillance of the content of domestic communications and also
17 allegedly collected call records concerning domestic communications. The recipients
18 were advised that if a party to civil litigation possesses any potentially relevant records,
19 documents or information, that party must preserve and protect these materials from
20 destruction, alteration or concealment, and that this preservation requirement applies to
21 all types of documents—electronic or paper—regardless of length or form or perceived
22 importance and regardless of their location or whether those documents reside on a server
23 or have been reduced to paper. The recipients were requested to determine if they
24 possessed any information that is potentially relevant to the litigation at issue and to
25 preserve that information in accordance with the Court's order.

- 1 9. More specifically, recipients were advised that, without confirming or denying the
2 existence of any alleged classified intelligence activity,³ their organization should
3 preserve any information it may possess or control related to allegations that
4 telecommunication carriers (i) assisted the NSA in an alleged dragnet surveillance of the
5 content of domestic communications and/or (ii) provided the NSA with customer call
6 records. Recipients were also specifically requested to preserve documents and
7 information their organization may possess or control, if any, that concerns the
8 establishment of the publicly acknowledged Terrorist Surveillance Program (“TSP”) and
9 the manner in which the TSP was conducted.
- 10 10. In accord with Part D of the Court’s order, recipients also were specifically requested to
11 determine whether or not their organization possessed any potentially relevant
12 information that was stored in an electronic form and was subject to routine and/or
13 automatic destruction, recycling, relocation, or mutation practices and, if so, to the extent
14 practicable, either to halt such processes, or to sequester the potentially relevant material
15 from those processes, or to arrange for the preservation of complete and accurate
16 duplicates or copies of such materials suitable for later discovery.
- 17 11. The recipients were also informed that the component’s duty to preserve evidence
18 potentially relevant to the case would continue until the Civil Division of the Department
19 of Justice advised them otherwise. At no time has the Civil Division advised any DOJ
20 component that its preservation obligations under the *Shubert* preservation order have
21 expired. I describe below information my co-counsel have obtained from these
22 components concerning their continued preservation of information that may be relevant
23 to this litigation.

24
25 ³ To facilitate distribution, the preservation notices related to the MDL-1791 litigation
26 and the *Shubert* and *Jewel* cases were unclassified, and receipt of the notices was not meant to be
27 interpreted as a confirmation or denial of the allegations made in the lawsuits at issue or whether
28 any such documents or information even existed.

1 12. In addition to notifying the NSA and the relevant components within the Department of
2 Justice of their preservation obligations under the 2007 order, the Department of Justice,
3 Civil Division, issued a similar preservation notice to the Executive Office of the
4 President (“EOP”) on December 14, 2007, that provided background on the litigation,
5 attached and discussed the Court’s preservation order, and described the EOP’s duty to
6 preserve information consistent with that order. The notice specifically identified the
7 *Shubert* action and described the allegations in that case that the NSA engaged in
8 surveillance activities broader than the TSP—an alleged “dragnet” surveillance of the
9 content of millions of domestic communications of Americans. A copy of the *Shubert*
10 amended complaint of May 2007 accompanied the EOP notice. The notice to the EOP
11 also concerned other cases before the Court in MDL-1791 that were limited to challenges
12 to alleged surveillance under the publicly acknowledged TSP (including the *Al-Haramain*
13 and *Center for Constitutional Rights* actions, *see supra*, note 1). The EOP was asked to
14 determine if it possessed any information potentially relevant to the litigation at issue and
15 to preserve that information in accordance with the Court’s order. The EOP was
16 specifically asked to preserve:

- 17 • All documents related to the authorization and/or reauthorization of the TSP;
- 18 • All documents related to the operation of the TSP;
- 19 • All documents related to the March 2004 hospital visit to then-Attorney
20 General John Ashcroft, including the circumstances of the March 2004
21 hospital visit itself;
- 22 • All documents concerning an alleged “dragnet” surveillance by the NSA of
23 the content of domestic communications;
- 24 • All documents concerning the alleged warrantless electronic surveillance by
25 the NSA under the TSP of the named Plaintiffs, if any.

- 1 13. As in the notice to NSA and DOJ components, and in accord with Part D of the Court's
2 order, the EOP was specifically requested to determine whether or not its organization
3 possessed any potentially relevant information that was stored in an electronic form and
4 was subject to routine and/or automatic destruction, recycling, relocation, or mutation
5 practices and, if so, to the extent practicable, either halt such processes, or sequester the
6 potentially relevant material from those processes, or arrange for the preservation of
7 complete and accurate duplicates or copies of such materials suitable for later discovery.
- 8 14. The EOP was also informed that its duty to preserve evidence that was potentially
9 relevant to the litigation would continue until the Civil Division of the Department of
10 Justice advised them otherwise. At no time has the Civil Division advised the EOP that
11 its preservation obligations under the *Shubert* preservation order have expired. As
12 described below, materials subject to this preservation notice to the EOP from the
13 Administration of President George W. Bush were subsequently transferred to the
14 custody of the National Archives and Records Administration ("NARA") at the
15 conclusion of the Bush administration.

16 **Issuance of Preservation Notices in *Jewel v. NSA***

- 17 15. On September 18, 2008, the *Jewel* Plaintiffs filed suit against the Government
18 Defendants. See ECF No. 1 in 08-cv-4373-VRW. *Jewel* was assigned to former Chief
19 Judge Walker as related to *Hepting v. AT&T* (ECF No. 386 in 3:06-cv-00672-VRW).
20 *Hepting* was before then-Chief Judge Walker along with other cases consolidated in
21 MDL-1791 that challenged alleged NSA surveillance activities. The plaintiffs in the
22 *Jewel* action included plaintiffs who had previously filed suit against AT&T in the
23 *Hepting* action, and the factual allegations in *Jewel* are substantially similar to those
24 raised in *Hepting*. In light of the preservation order already entered in MDL-1791 in
25 November 2007, the parties in *Jewel* jointly moved for the entry of an order regarding
26 preservation on November 10, 2009. See *Jewel v. NSA*, 08-cv-4373, ECF No. 50. The
27
28

1 Court granted the motion and entered a preservation order on November 16, 2009, that
2 was substantially similar to the order issued in MDL-1791 and applicable to the *Shubert*
3 case. *See id.*, ECF No. 51. The *Jewel* preservation order required that, by December 15,
4 2009, counsel submit similar certifications to those made for *Shubert* (and other cases) in
5 MDL-1791 that routine destruction policies either had been halted or that alternative
6 arrangements for the preservation of relevant evidence had been made. *See id.*

7 16. On December 10, 2009, the Department of Justice, Civil Division, sent a preservation
8 notice to officials of components within the Department of Justice that would be likely to
9 possess potentially relevant documents and information, including the National Security
10 Division and certain SLOs and one SMO. The preservation notice was accompanied by a
11 copy of the preservation orders in *Jewel* and MDL-1791/*Shubert* as well as the *Jewel*
12 complaint. As described further below, the notice was substantially similar to the notice
13 sent in 2007 regarding the MDL-1791/*Shubert* preservation order. Also on December 10,
14 2009, a preservation notice was sent to the NSA and to the Office of the Director of
15 National Intelligence (“ODNI”), the latter of which had not been a named defendant in
16 the *Shubert* matter, which was substantially similar to the notices sent out previously,
17 with the same attachments. Also on December 10, 2009, a preservation notice was sent
18 to the EOP that was substantially similar to the notices sent out previously, also with the
19 same attachments.

20 17. As with the preservation notices sent in 2007 in response to the Court’s preservation
21 order applicable to MDL-1791 and *Shubert*, recipients of the *Jewel* preservation notice in
22 2009 were advised that the plaintiffs in *Jewel* allege that the NSA was authorized by
23 then-President Bush after the terrorist attacks of September 11, 2001, to engage in an
24 alleged “dragnet” surveillance of the content of domestic communications, and also
25 allegedly to collect communication records concerning domestic communications,
26 without judicial approval. The recipients were advised that if a party to civil litigation
27
28

1 possesses any potentially relevant records, documents or information, that party must
2 preserve and protect these materials from destruction, alteration or concealment, and that
3 this preservation requirement applies to all types of documents—electronic or paper—
4 regardless of length or form or perceived importance and regardless of their location or
5 whether those documents reside on a server or have been reduced to paper. Recipients of
6 the *Jewel* preservation notice were requested to determine if they possessed any
7 information that was potentially relevant to the matter and to preserve that information in
8 accordance with the Court’s order.

9 18. Again more specifically, recipients of the 2009 preservation order and notice in *Jewel*
10 were advised that, without confirming or denying the existence of any alleged classified
11 intelligence activity, their organization should preserve any information it may possess or
12 control related to allegations that (i) the NSA conducted an alleged dragnet surveillance
13 of the content of domestic communications and/or that (ii) the NSA collected large
14 quantities of customer call records. Recipients were also specifically requested to
15 preserve documents and information their organization may possess or control, if any,
16 that concerned the establishment of the publicly acknowledged TSP and the manner in
17 which the TSP was conducted.

18 19. In accord with Part D of the Court’s order, recipients of the *Jewel* preservation notice also
19 were specifically requested to determine whether or not their organization possessed any
20 potentially relevant information that was stored in an electronic form and was subject to
21 routine and/or automatic destruction, recycling, relocation, or mutation practices and, if
22 so, to the extent practicable, either to halt such processes, or to sequester the potentially
23 relevant material from those processes, or to arrange for the preservation of complete and
24 accurate duplicates or copies of such materials suitable for later discovery.

25 20. As with the 2007 preservation notices, recipients of the *Jewel* notice were also informed
26 that their duty to preserve evidence that was potentially relevant to the case would
27

1 continue until the Civil Division of the Department of Justice advised them otherwise. At
2 no time has the Civil Division advised any of the recipients of the *Jewel* preservation
3 notices that their preservation obligations under the *Jewel* preservation order have
4 expired.

5 **Status of Preserved Materials Under the Preservation Orders in *Jewel* and *Shubert***

6 21. In response to the Court's order of March 19, 2014, regarding the Government's
7 compliance with the *Jewel* preservation order, my co-counsel Bryan Dearing and
8 Rodney Patton, at my direction, made inquiries of the agencies and entities that had
9 received preservation notices for the *Shubert* and *Jewel* litigation. This section of my
10 declaration describes information obtained in this inquiry with respect to the materials
11 preserved by the EOP, the ODNI, and components within the Department of Justice.
12 (Again, the current status of the materials preserved by the NSA will be addressed
13 separately by the NSA.)

14 A. Executive Office of the President (EOP)

15 22. By way of background, in early January 2009, just before the end of President George W.
16 Bush's term in office, I took steps to determine where materials the EOP had preserved
17 relating to the NSA surveillance litigation would be stored when President Bush left
18 office. On January 8, 2009, I spoke with the then-Director of the Presidential Materials
19 Staff at NARA, and she confirmed that her office had been receiving certain national
20 security records from the outgoing administration, which included materials related to the
21 NSA surveillance litigation. In December 2009, after this Court entered the preservation
22 order in *Jewel*, I again contacted the then-Director of the Presidential Materials Staff and
23 she confirmed that materials related to the NSA surveillance litigation that NARA had
24 received from the Bush Administration EOP concerning presidentially authorized NSA
25 surveillance activities continued to be preserved at NARA, including materials obtained
26 from the Office of the Vice President. In addition, on January 7, 2010, I sent a separate
27

1 preservation notice (substantially similar to those sent previously to agencies referred to
2 above) to the then-Director of the Presidential Materials Staff at NARA, which included
3 the preservation order in *Jewel* dated November 16, 2009; the preservation order in
4 MDL-1791 dated November 6, 2007; the *Jewel* complaint; and the preservation notice
5 sent to the EOP in December 2007. I sent the same documents to the Office of the
6 General Counsel at NARA on January 25, 2010.

7 23. In response to the Court's order of March 19, 2014, regarding the Government's
8 compliance with the *Jewel* preservation order, my co-counsel Bryan Dearing and
9 Rodney Patton obtained the requisite security clearances, permissions, and approvals to
10 visit NARA and review the preserved EOP materials stored there. On May 8, 2014, Mr.
11 Dearing and Mr. Patton visited NARA and spoke with the Director of the Presidential
12 Materials Division (formerly Presidential Materials Staff) about the transfer of the
13 materials, their content, and their preservation; while at NARA, they also spent time
14 personally reviewing (under the strict supervision of the Director and an archivist) every
15 folder containing these materials. They have confirmed to me that materials concerning
16 the NSA surveillance litigation that were transmitted to NARA at the conclusion of the
17 Bush Administration continue to be preserved at NARA.

18 24. Mr. Dearing and Mr. Patton also advised me that during their visit to NARA on May
19 8, 2014, the Director of the Presidential Materials Division told them that an additional,
20 very small set of potentially relevant materials were located at the George W. Bush
21 Presidential Library, which is also a NARA facility, and that those materials at the
22 Presidential Library would continue to be preserved.

23 B. Office of the Director of National Intelligence (ODNI)

24 25. At my request, and in response to this Court's order of March 19, 2014, Mr. Dearing
25 and Mr. Patton also consulted with counsel for ODNI regarding the preservation notice
26 it received for the *Jewel* case. I have been informed that, after receiving the *Jewel*
27

1 preservation notice from the Department of Justice in 2009, counsel for ODNI instructed
2 (and then later reminded) employees at ODNI who may have had potentially relevant
3 evidence regarding their preservation obligations in the *Jewel* case. I have also been
4 informed that these ODNI employees were instructed that, if they were to be reassigned
5 (or otherwise leave their ODNI employment), they were to make appropriate
6 arrangements to preserve the records before their departure.

7 C. Department of Justice Components

8 26. Again in response to this Court's order of March 19, 2014, my co-counsel Bryan
9 Dearinger and Rodney Patton also met with the Director of the Office of Records
10 Management Policy ("ORMP") at the Department of Justice and obtained information
11 concerning how records are preserved at the components that received the preservation
12 notices, particularly now that many of the recipients of the notices are no longer
13 employed by the Department. Mr. Dearinger and Mr. Patton also spoke with the records
14 managers for the SLOs and the SMO that received the preservation notices in 2007 and
15 2009.

16 27. With regard to classified information stored electronically on computers assigned to the
17 SLOs and SMOs since the issuance of the preservation orders in *Jewel* and *Shubert*, I
18 have been informed that when former employees of those offices depart, the content of
19 their electronically stored classified information is preserved. I have also been informed
20 that none of the classified, electronically stored information that may contain potentially
21 relevant information has been accessioned to NARA.

22 28. With regard to classified documents on paper, again I have been informed that when
23 employees of SLOs leave the Department, as most of those individuals in the SLOs who
24 were affected by the *Jewel* and *Shubert* preservation orders have, their classified paper
25 documents are transferred to ORMP's Secure Compartmented Information Facility
26 ("SCIF") for storage. With regard to the one SMO that may have potentially relevant
27

1 classified paper documents, I have been informed that these documents continue to be
2 preserved and stored, both for current and former employees, at the SCIF housed within
3 that SMO. I have also been informed that none of the classified paper documents that
4 may contain potentially relevant information has been accessioned to NARA.

5 29. With regard to unclassified electronically stored information at the SLOs and SMOs, I
6 have been informed that, with the exception of personal e-mails,⁴ electronically stored
7 information of current and former employees of SLOs and SMOs are maintained
8 indefinitely and thus are preserved.

9 30. With regard to unclassified paper documents at the SLOs and SMOs, I have been
10 informed that paper records of former employees of the SLOs and SMOs are preserved
11 and stored at their respective offices in Main Justice, in ORMP storage, or at NARA's
12 Washington National Records Center facility.

13 31. With regard to the non-SLO and non-SMO Department component that received
14 preservation notices for the *Shubert* case in 2007 and for *Jewel* in 2009 (the National
15 Security Division), Mr. Dearing and Mr. Patton consulted with that component's
16 records manager about its policies and practices for the retention of records and
17 information. I am advised that all of NSD's operational records—whether classified or
18 unclassified and whether retained electronically or on paper—are considered permanent
19 records and are preserved indefinitely. When an employee of NSD leaves DOJ, the
20 electronically stored information on their classified and unclassified computer systems is
21 preserved and stored. All of the classified and unclassified paper records are also
22 preserved indefinitely and stored, except for duplicates and non-substantive drafts.

23 Conclusion

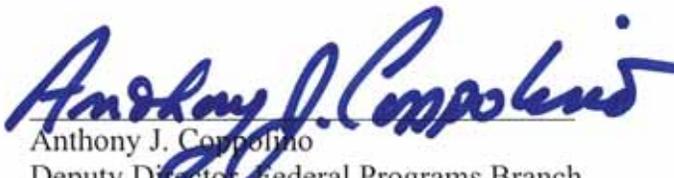
24 32. In sum, the Civil Division of the Department of Justice undertook considerable efforts to
25 comply with this Court's preservation orders in *Jewel* and *Shubert*. We identified the

26
27 ⁴ I am advised that ORMP considers "personal" emails to mean emails that would not
include evidence of official government business.

1 Government Defendant agencies likely to have information that may be potentially
2 relevant to this litigation and provided those agencies with specific notice of their
3 preservation obligations. We worked with the NSA, which was the defendant agency
4 that carried out the presidentially-authorized surveillance programs at issue in the
5 litigation, to submit a comprehensive classified declaration in 2007 and again in 2014
6 (submitted concurrently herewith) that detailed the steps the NSA has taken to comply
7 with this Court's preservation orders. We took steps to monitor the transition of
8 materials preserved by the EOP during the Administration of President George W. Bush
9 to the National Archives and to confirm that NARA obtained and continues to preserve
10 the materials it received from the EOP at the conclusion of the Bush Administration.
11 And we have ascertained the preservation policies for senior DOJ leadership and
12 management offices that would likely have materials potentially relevant to this litigation
13 for classified and non-classified paper and electronic materials. I believe the actions
14 described herein, and in the NSA's 2007 and 2014 declarations, constitute reasonable and
15 appropriate steps to comply with the preservation orders issued by this Court in *Shubert*
16 and *Jewel*.

17
18 I declare under penalty of perjury that the foregoing is true and correct.

19 Dated: May 9, 2014

20
21 
22 Anthony J. Coppolino
23 Deputy Director, Federal Programs Branch
24
25
26
27
28