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16 **UNITED STATES DISTRICT COURT**
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
18 **OAKLAND DIVISION**

19)
20) CAROLYN JEWEL, TASH HEPTING,
21) YOUNG BOON HICKS, as executrix of the
22) estate of GREGORY HICKS, ERIK KNUTZEN
23) and JOICE WALTON, on behalf of themselves
24) and all others similarly situated,
25)
26) Plaintiffs,
27)
28)
29) v.
30) NATIONAL SECURITY AGENCY, *et al.*,
31)
32) Defendants.

Case No.: 4:08-cv-4373-JSW
**PLAINTIFFS' OPPOSITION TO THE
GOVERNMENT DEFENDANTS'
EMERGENCY MOTION TO STAY THE
COURT'S MARCH 10, 2014
TEMPORARY RESTRAINING ORDER**

Courtroom 5, 2nd Floor
The Honorable Jeffrey S. White

1 Since March 10, 2014, the government has been under a Temporary Restraining Order
2 issued by this Court prohibiting any destruction of evidence by the government pending the Court's
3 resolution of the parties' dispute regarding the government's evidence preservation obligations.
4 ECF. Nos. 189, 206. The government has never sought clarification of or relief from its duties
5 under the TRO.

6 Earlier today (June 5, 2014), plaintiffs requested that the Court enforce its TRO; the basis
7 for plaintiffs' request was their discovery this week of the government's continuing destruction of
8 evidence relating to its interception of the content of Internet communications notwithstanding the
9 Court's Temporary Restraining Order prohibiting any destruction. ECF No. 235. In response to
10 plaintiffs' request, the Court today directed that the government respond by noon tomorrow (June
11 6, 2014) and reiterated that in the meantime the government remained bound by the TRO which the
12 Court issued nearly three months ago. ECF No. 236.

13 Now the government has moved for a stay of the TRO, a stay whose only purpose is to
14 permit the government to continue destroying evidence. The government frames its request as a
15 request for a stay of the Court's June 5, 2014 order (ECF No. 236), but that order merely reiterates
16 that the government remains bound by the March 10, 2014 TRO's prohibition on the destruction of
17 evidence, and confirms that the TRO includes the Section 702 materials.

18 The government's request for a stay of the TRO should be denied.

19 It is not credible that, as the government contends, simply refusing to destroy during the
20 next 18 hours the communications it has intercepted will cause "the possible suspension of the
21 Section 702 program." ECF No. 237 at 1. How can the *preservation* of these intercepted
22 communications cause a "loss of access to lawfully collected signals intelligence information"? *Id.*
23 That information will remain accessible even though it is being preserved.

24 More fundamentally, the unspoken but unmistakable foundation of the government's
25 position is a contention that it never understood before this afternoon that the Court's TRO
26 required it to preserve evidence relating to its interception of Internet communications. This, too,
27 lacks any credibility, especially in light of the extensive discussions between Court and counsel at

1 the March 19, 2014 hearing on the evidence preservation dispute. The government's disregard for
2 the past three months of its obligations under the Court's TRO should not be retroactively blessed
3 by granting a stay that permits the government to continue destroying evidence.

4
5 Dated: June 5, 2014

Respectfully submitted,

6
7 /s/ Cindy Cohn

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