

1 BETH S. BRINKMANN
 Deputy Assistant Attorney General
 2 DOUGLAS N. LETTER
 Terrorism Litigation Counsel
 3 JOSEPH H. HUNT
 Director, Federal Programs Branch
 4 VINCENT M. GARVEY
 Deputy Branch Director
 5 ANTHONY J. COPPOLINO
 Special Litigation Counsel
 6 MARCIA BERMAN
 Senior Trial Counsel
 7 PAUL E. AHERN
 Trial Attorney
 8 U.S. Department of Justice
 Civil Division, Federal Programs Branch
 9 20 Massachusetts Avenue, N.W.
 Washington, D.C. 20001
 10 Phone: (202) 514-4782
 Fax: (202) 616-8460

11 *Attorneys for the Government Defendants*
 12 *Sued in their Official Capacity*

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*)
Sued in Their Official Capacity.)
 27 _____)

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

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,

14 BETH S. BRINKMANN
Deputy Assistant Attorney General

15 DOUGLAS N. LETTER
Terrorism Litigation Counsel

16 JOSEPH H. HUNT
Director, Federal Programs Branch

17 VINCENT M. GARVEY
Deputy Branch Director

18 *s/ Anthony J. Coppolino*
ANTHONY J. COPPOLINO
Special Litigation Counsel

19 *s/ Paul E. Ahern*
PAUL E. AHERN
Trial Attorney

20 U.S. Department of Justice
21 Civil Division, Federal Programs Branch
22 20 Massachusetts Avenue, NW, Rm. 6102
23 Washington, D.C. 20001
24 Phone: (202) 514-4782
25 Fax: (202) 616-8460

26 *Attorneys for the Government Defendants*
27 *Sued in their Official Capacity*