UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

	)
KLAYMAN et al.,	)
	)
Plaintiffs,	)
	)
v.	) Civil Action No. 13-0851 (RJL)
	)
OBAMA et al.,	)
	)
Defendants.	)

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Pursuant to Federal Rule of Civil Procedure ("FRCP") 56 and this Court's Local Rule 7, Larry Klayman, Charles Strange and Mary Ann Strange, ("Plaintiffs") move this Court for entry of an Order granting Partial Summary Judgment on their Fourth Amendment claim on the grounds that there exists no genuine dispute as to any material fact and Plaintiffs are entitled to judgment as a matter of law.

In support of this Motion, Plaintiffs are filing a Memorandum of Points and Authorities and Statement of Material Facts, along with a Proposed Order.

Dated: April 15, 2014

/s/ *Larry Klayman*
Larry Klayman, Esq.
Attorney at Law
D.C. Bar No. 334581
2020 Pennsylvania Ave. NW, Suite 345
Washington, DC 20006
Tel: (310) 595-0800
Email: leklayman@gmail.com

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FOR THE DISTRICT OF COLUMBIA

KLAYMAN et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 13-0851 (RJL)
OBAMA et al.,	)	
Defendants.	)	MEMORANDUM OF POINTS AND AUTHORITIES

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Larry Klayman, Esq.
Attorney at Law
D.C. Bar No. 334581
2020 Pennsylvania Ave. NW, Suite 345
Washington, DC 20006
Tel: (310) 595-0800
Email: leklayman@gmail.com

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INTRODUCTION

Plaintiffs respectfully request that this Court grant partial summary judgment on Plaintiffs' Fourth Amendment claim because there exists no dispute of material fact and the evidence is uncontroverted and Plaintiffs must prevail as a matter of law under Federal Rules of Civil Procedure ("FRCP") 56. Accordingly, under FRCP 65(a)(2), this Court should enter a permanent injunction at this time and proceed to discovery and trial on the damage claims.

FACTS AND PROCEDURAL HISTORY

On June 5, 2013, *The Guardian*, a British newspaper, reported the first materials leaked by former NSA contract employee Edward Snowden that revealed the existence of U.S. government intelligence collection and surveillance programs. *See* Greenwald, *NSA collecting phone records of millions of Verizon customers daily*, GUARDIAN (London), June 5, 2013; Leon Memorandum Opinion, dated Dec. 16, 2013 ("Mem. Op.") at 6. *The Guardian's* report disclosed a secret Foreign Intelligence Surveillance Court ("FISC") order, dated April 25, 2013, that required Verizon Business Network Services to produce to the NSA on "an ongoing daily basis . . . all call detail records or 'telephony metadata' create by Verizon for communications (i) between the United States and abroad; or (ii) wholly within the United States, including local telephone calls." Secondary Order, *In re Application of the [FBI] for an Order Requiring the Production of Tangible Things from Verizon Business Network Services, Inc. on Behalf of MCI Communication Services, Inc. d/b/a/ Verizon Business Services*, No. BR 13-80 at 2 (FISC Apr. 25, 2013) ("Secondary Order"); Mem. Op. at 6.

The Secondary Order "show[ed] . . . that under the Obama administration the communication records of millions of US citizens are being collected indiscriminately and in bulk—regardless of whether they are suspected of any wrongdoing." Greenwald, *supra*; Mem.

Op. at 6-7. **The Government Defendants confirmed** the authenticity of the Secondary Order as well as the existence of the Bulk Telephony Metadata Program ("Program") under which "the FBI obtains orders from the FISC pursuant to Section 215 [of the USA PATRIOT Act] directing certain telecommunications service providers to produce to the NSA on a **daily basis** electronic copies of 'call detail records.'" Govt.'s Opp'n at 8; Mem. Op. at 7. The Program is "a 'counterterrorism program' under [50 U.S.C. §] 1861[, **conducted for more than seven years**, that] collect[s], compiles, retains, and analyzes certain telephony records, which it characterizes as "business records" created by certain telecommunications companies." Mem. Op. at 15-16. The Program is "meant to detect: (1) domestic U.S. phone numbers calling outside of the United States to foreign phone numbers associated with terrorist groups; (2) foreign phone numbers associated with terrorist groups calling into the U.S. to U.S. phone numbers; and (3) 'possible terrorist –related communications' between numbers inside the U.S." Mem. Op. at 20-21.

The records collected under the Program consist of "metadata," which includes information about what phone numbers were used to make and receive calls, when the calls took place, and how long the calls lasted. Mem. Op. at 15. Through targeted searches of metadata records, the NSA "tries to discern connections between terrorist organizations and previously unknown terrorist operatives located in the United States." Mem. Op. at 16. The telephone metadata records, which "[telecommunications] companies create and maintain as part of their business of providing telecommunications services to customers[,]" have been continually produced since May 2006 under the FBI's production orders from the FISC. *See* Mem. Op. at 16. The NSA then consolidates the metadata records provided by different telecommunications companies into one database and under the FISC's orders, the NSA may retain the records for up to five entire years. Mem. Op. at 16. When an NSA intelligence analyst runs a query, the

quantity of phone numbers captured is very large, potentially and sometimes up to 1,000,000 numbers total. Mem. Op. at 18-19.

Since, the Program began in May 2006, the FISC has repeatedly issued orders directing telecommunication service providers to produce records in connection with the Program. Mem. Op. at 21. Fifteen different FISC judges have issued thirty-five orders authorizing the Program and under those orders, the Government defendants must continuously seek renewal of the authority to collect telephony records, which occurs as often as every ninety days. Mem. Op. at 21. The Government Defendants admit that they have failed to comply with the minimization procedures set forth in the orders. Mem. Op. at 21. The Honorable Reggie Walton of the FISC concluded he had no confidence that the Government was doing its utmost to comply with the court's orders. Mem. Op. at 21-22. The Honorable John Bates, Presiding Judge of the FISC, found that the Government had misrepresented the scope of its targeting of certain internet communications pursuant to 50 U.S.C. § 1881a. Mem. Op. at 22. The Government's revelations regarding NSA's acquisition of Internet transactions mark the third instance in less than three years in which he Government disclosed a substantial misrepresentation regarding the scope of a major collection program. Mem. Op. at 23.

After the public revelations of the Government Defendants' secret and unconstitutional schemes in the media, Plaintiffs filed a complaint on June 6, 2013 (*Klayman I*). *See* Mem. Op. at 8. *Klayman I* Plaintiffs Larry Klayman, Charles Strange, and Mary Ann Strange, all subscribers of Verizon Wireless, brought suit against the NSA, the Department of Justice ("DOJ"), multiple executive officials, whom include President Barack H. Obama, Attorney General Eric H. Holder, Jr., General Keith B. Alexander, Director of the NSA, and U.S. District Judge Roger Vinson, and Verizon Communications as well as its chief executive officer. Second Am. Compl. ¶¶ 9-19;

Mem. Op. at 8. As relief, Plaintiffs sought a preliminary injunction "that, during the pendency of this suit, (i) bars [d]efendants from collecting [p]laintiffs' call records under the mass call surveillance program; (ii) requires [d]efendants to destroy all of [p]laintiffs' call records already collected under the program; and (iii) prohibits [d]efendants from querying metadata obtained through the program using any phone number or other identifier associated with [p]laintiffs . . . and such other relief as may be found just and proper." Mem. Op. at 2-3.

The Court found that it had authority to evaluate Plaintiffs' constitutional challenges to the NSA's conduct. Mem. Op. at 5. After careful analysis of the facts, the Court ruled that the NSA's bulk telephony metadata collection and analysis violates a reasonable expectation of privacy, Mem. Op. at 47, and thus, the NSA's bulk collection program is an unreasonable search under the Fourth Amendment. Mem. Op. at 62. To determine whether the Court should grant Plaintiffs' request for a preliminary injunction, the Court concluded that "Plaintiffs have standing to challenge the constitutionality of the Government's bulk collection and querying of phone record metadata,[1] that they have demonstrated a substantial likelihood of success on the merits of their Fourth Amendment claim, and that they will suffer irreparable harm absent preliminary injunctive relief." Mem. Op. at 5. The Court also concluded that the public interest weighs heavily in favor of granting an injunction. Mem. Op. at 65. Accordingly, the Court granted the Motion for Preliminary Injunction in *Klayman I*. Mem. Op. at 5. The Court determined that he would stay his order pending appeal. Mem. Op. at 6.

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[1] Plaintiffs have standing to challenge both of the NSA's Bulk Telephony Metadata Program's searches: (1) the bulk collection of metadata and (2) the analysis of that data through the NSA's querying process. Mem. Op. at 36.

ARGUMENT

I. THE COURT SHOULD GRANT PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' FOURTH AMENDMENT CLAIM BECAUSE THE UNDISPUTED AND ALREADY LITIGATED FACTS ESTABLISH THAT THE GOVERNMENT DEFENDANTS CONDUCTED AN UNREASONABLE SEARCH WHEN IT INDISCRIMINATELY COLLECTED PLAINTIFFS' AND OTHER CITIZENS' TELEPHONY METADATA.

A. Summary Judgment Standard

FRCP 56 states, in relevant part, that "[a] party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought." Fed. R. Civ. P. 56. The court must grant summary judgment if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law . . . ." *Id.*

A party may move for partial summary judgment for the purposes of streamlining the case and saving judicial resources.[2] A summary judgment motion will not survive if a dispute about a material fact is "genuine," that is, "if the evidence is such that a reasonable jury could

[2] Partial summary judgment is of assistance to a court because it streamlines litigation. *See* J. Bradford McCullough, *The Ten Commandments of Summary Judgment Practice*, 19 Pretrial Prac. & Discovery at *2-3 (Winter/Spring 2011), available at http://www.lerchearly.com/files/10commandmentsofsummaryjudgment.pdf; *see also* Schwarzer et al., *The Analysis and Decision of Summary Judgment Motions: A Monograph on Rule 56 of the Federal Rules of Civil Procedure*, 139 F.R.D. 441, 495 (1992) ("[T]here can be no doubt that summary judgment should be regarded as a helpful device in appropriate cases for the just, speedy, and inexpensive resolution of litigation."); *Adjustacam, LLC v. Amazon.com, Inc.*, No. 6:10-CV-329, at *2 (E.D. Tex. Apr. 27, 2011) ("[T]he Court will consider an early summary judgment motion on [certain] issues [of damages to 'streamline and potentially lead to an early resolution of the dispute.'"). Rule 56 permits courts to grant 'partial summary judgment' resolving certain issues or claims while leaving others for trial . . . . Partial adjudications under Rule[] 56 . . . can be valuable devices for defining, narrowing, and focusing the issues to be litigated, thus conserving judicial resources." *Id.* at 146. "Absent the lessee's summary judgment motion, and the availability of a partial disposition under Rule 56[] [in *Leasing Service Corp. v. Graham,*] a long and complicated-and largely unnecessary-trial would have ensued." *See* 646 F. Supp. 1410 (S.D.N.Y. 1986); Schwarzer, *supra* at 497.

return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 242 (1986). However, the presence of a factual dispute does not mean that a summary judgment motion is inappropriate; "the requirement is that there be no genuine issue of material fact." *See id.* at 248. Generally, "the inquiry is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 243. Evidence may be presented in the form of pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits. *See id.* at 247.

B. Plaintiffs' Fourth Amendment Claim

The Fourth Amendment to the U.S. Constitution states that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." U.S. Const. amend IV. "No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." *Id.*

The purpose of the Fourth Amendment, "as recognized in countless decisions [by the Supreme Court], is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *Camara v. Mun. Court*, 387 U.S. 523, 528 (1967) ("The Fourth Amendment [ ] gives concrete expression to a right of the people which 'is basic to a free society.'"). **As "our law holds the property of every man so sacred . . . [even where] he does no damage at all[,] if he will tread upon his neighbor's ground, he must justify it by law.**" *See United States v. Jones*, 132 S. Ct. 945, 949 (2012) (quoting *Entick v. Carrington,* 95 Eng. Rep. 807, 817 (C.P. 1765)).

To determine if the Government has unlawfully treaded upon the grounds of its citizens, the court must determine whether the individual manifested a subjective expectation of privacy

in the searched object and whether society is willing to recognize that expectation as reasonable. *See Kyllo v. United States*, 533 U.S. 27, 27-28 (2001); *Katz v. United States*, 389 U.S. 347, 353 (1967). In general, warrantless searches are unreasonable under the Fourth Amendment.[3] *See* City *of Ontario v. Quon*, 560 U.S. 746, 760 (2010).

Here, "[b]ecause the Government can use daily metadata collection to engage in 'repetitive, surreptitious surveillance of a citizen's private goings on,' the NSA database 'implicates the Fourth Amendment each time a government official monitors it." Mem. Op. at 40-41. As this Court held in its Memorandum Opinion, Plaintiffs had a reasonable expectation of privacy when "the Government indiscriminately collect[ed] their telephony metadata along with the metadata of hundreds of millions of other citizens without any particularized suspicion of wrongdoing, retain[ed] all of that metadata for five years, and then querie[d], analyze[d], and investigate[d] that data without prior judicial approval of the investigative targets." *See id*. at 43, 47, 58-59.

In erroneously relying on *Smith*, the Government Defendants incorrectly argued that the Program is not a Fourth Amendment search because no person can have any expectation of privacy whatsoever in the telephony metadata that telecom companies keep as business records.[4] *See United States v. Maynard*, 615 F.3d 544, 557 (D.C. Cir. 2010) (stating that the Government would have it that its citizens have "no reasonable expectation of privacy in [their] movements whatsoever, world without end[.]"); Mem. Op. at 44. As this Court correctly held, "whether the installation and use of a pen register constitutes a 'search' . . . under the circumstances addressed

[3] "An essential purpose of a warrant requirement is to protect privacy interests by assuring citizens subject to a search or seizure that such intrusions are not the random or arbitrary acts of government agents." *Skinner v. Ry. Labor Execs.' Ass'n,* 489 U.S. 602, 621-22 (1989).

[4] "When do present day circumstances . . . become so thoroughly unlike those considered by the Supreme Court thirty-four years ago that a precedent like *Smith* simply does not apply? The answer, unfortunately for the Government, is now." Mem. Op. at 45.

and contemplated in [*Smith*]—is a **far cry** from the issue in this case." Mem. Op. at 44. Judge Leon also rightfully ruled that the relationship in *Smith* between the police and the phone company, where a telephone company would provide a pen register to record the numbers dialed by the petitioner at his home, differs from the present case, where certain telecommunications service providers produce to the NSA on a ***daily basis*** telephony metadata. *See id.* at 48.

Unfortunately for the Government Defendants, no court has recognized a special need sufficient to justify "continuous, daily searches of virtually every American citizen without any particularized suspicion." Mem. Op. at 58. As the Court ruled, "the plaintiffs have a very significant expression of privacy in an aggregated collection of their telephony metadata covering the last five years, and the NSA's . . . Program significantly intrudes on that expectation." *Id.* at 58-59. While the Government Defendants allegedly attempt to rapidly identify terrorist threats in the United States, it does so at the expense of its citizens' Fourth Amendment rights, with no legitimate special need supported by controlling case law.

The Court also held that the Government Defendants have failed to cite a single instance in which analysis of the NSA's bulk metadata collection has actually stopped an imminent attack, Mem. Op. at 61, and Plaintiffs are not willing to continually hand over their most sensitive and private information for the mere possibility that the Program may be effective for its very first time in the distant future. This Court has "serious doubts about the efficacy of the . . . [P]rogram as a means of conducting time-sensitive investigations in cases involving imminent threats of terrorism." *Id.* at 62. In assuring preservation of the degree of privacy against the Government Defendants that existed when the Fourth Amendment was adopted, *Jones,* 132 S. Ct. at 950, this Court ruled that the Government Defendants must be prevented from further

engaging in warrantless searches via the Program, which surely infringes on that degree of privacy that the Founders enshrined in the Fourth Amendment. *See* Mem. Op. at 64.

In considering the combination of the undisputed facts, the Court's Memorandum Opinion, and the strength of Plaintiffs' evidence, Plaintiffs must prevail at the final hearing and trial on their Fourth Amendment claim as a matter of law.

II. UNDER FRCP 65(a)(2), THE COURT SHOULD SECURE AN EXPEDITED DECISION ON THE MERITS AND ENTER ON SUMMARY JUDGMENT A PERMANENT INJUNCTION BECAUSE THERE EXISTS NO CONFLICT OF MATERIAL FACT, THIS COURT HAS UNEQUIVOCALLY FOUND A LIKELIHOOD OF SUCCESS ON THE MERITS OF PLAINTIFFS' FOURTH AMENDMENT CLAIM, AND CONSOLIDATION OF THE HEARING AND THE TRIAL ON THE EQUITABLE CLAIMS WOULD SERVE THE INTERESTS OF JUSTICE.

FRCP 65(a)(2) states that "[b]efore or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing.[5] Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial." Fed. R. Civ. P. 65(a)(2).

FRCP 65(a)(2) provides a means of securing an expedited decision on the merits. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). In general, an expedition simply requires that the parties receive notice of the court's intent to consolidate the trial and the hearing either before the hearing commences or at a time which will still afford the parties a full opportunity to preserve their respective cases. *See id.* (citing *Pughsley v. 3750 Shore Drive*

[5] "Rule 65(a)(2) allows the district court to consolidate the hearing on a preliminary injunction with the trial on the merits. In effect this means that the preliminary hearing becomes the final trial." Arthur D. Wolf & Murry Brower, *Consolidating the Preliminary Injunction Hearing and Trial: Changing the Rules in the Middle of the Game*, 11 W. New Eng. L. Rev. 209, 216 (1989). "If consolidation is ordered, Rule 65(a)(2) allows evidence already introduced at the hearing to be incorporated in the record at the trial on the merits." *Id.* at 217.

Cooperative Bldg., 463 F.2d 1055, 1057 (7th Cir. 1972)). "Such action may be taken by stipulation, motion, or even *sua sponte*[.]" *Glacier Park Found. v. Watt*, 663 F.2d 882, 886 (9th Cir. 1981). A formal written order is not required by the rule—the term "order" only requires some form of notice to the parties that their final day in court has come. *See Nationwide Amusements, Inc. v. Nattin*, 452 F.2d 651, 652 (5th Cir. 1971).

While notice is usually required, when a preliminary hearing record discloses no conflict of material fact, the entry of final judgment is appropriate even absent express notice. *See Brotherhood of Ry. Carmen v. Pacific Fruit Express Co.*, 651 F.2d 651, 653 (9th Cir. 1981) ("We conclude that while it might have been preferable for the district court to have given notice, . . . the de facto consolidation was not reversible error [when the dispute concerns a question of law]); *U.S. ex rel. Goldman v. Meredith*, 596 F.2d 1353, 1358 (8th Cir. 1979) ("[D]isposition on the merits may be appropriate whenever the evidence presented at the preliminary hearing indicates that there is no conflict of material fact . . . ."). Accordingly, based on the record, pleadings, and affidavits, a district court judge, acting *sua sponte*, may fashion permanent relief after the close of the preliminary injunction hearing while the case is on appeal. *See Eli Lilly & Co., Inc. v. Generix Drug Sales, Inc.*, 460 F.2d 1096, 1096 (5th Cir. 1972).

"[I]f discovery has been concluded or if it is manifest that there is no occasion for discovery, consolidation may serve the interests of justice." *Pughsley*, 463 F.2d at 1057; *see also Allegheny Oil Co. v. Snyder*, 106 F. 764, 770 (6th Cir. 1900) (stating that administering final relief may be useful in avoiding expense and delay of protracted litigation, and upholding the entry of a permanent injunction after a hearing on a motion for a preliminary injunction because the facts were substantially undisputed). As such, combining a preliminary injunction hearing

with the trial on the merits is beneficial and has been encouraged.[6] *See West Pub. Co. v. Mead Data Sent., Inc.,* 799 F.2d 1219, 1229 (8th Cir. 1986) ("[C]ourts have discretion to combine the hearing on a motion for preliminary injunction with the trial on the merits[—][t]his procedure is a good one, and we wish to encourage it.") After a district court dismisses a case on the merits, if the Government Defendants subsequently allege that they were "surprised," the district court will nevertheless determine whether the Government Defendants were in fact surprised. *See Nationwide Amusements*, 452 F.2d at 652.

In the present case, the Court ultimately found that Plaintiffs made more than "a sufficient showing to merit injunctive relief on their Fourth Amendment claim." Mem. Op. at 5 n.7. In analyzing the first prong to determine the existence of a Fourth Amendment violation, the Court found that a Fourth Amendment search had occurred,[7] and "[P]laintiffs have a very significant expectation of privacy in an aggregated collection of their telephony metadata covering the last five years, and the NSA's Bulk Telephony Metadata Program significantly intrudes on that expectation." *Id.* at 58-59. In analyzing the second prong, which asks whether people have a reasonable expectation of privacy that is violated when the Government Defendants shamefully abduct their telephony metadata, the Court determined that it was significantly likely he would answer in Plaintiffs favor.[8] Accordingly, the Court found that the "[P]rogram infringes on '[the] degree of privacy' that the Founders enshrined in the Fourth

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[6] "The courts of appeals have encouraged the use of consolidation under Rule 65(a)(2) to advance the decision on the merits of the controversy and to save time and expense both at the trial and appellate levels." Wolf, *supra* note 5, at 216.

[7] "[A] search occurred in this case[.]" Mem. Op. at 56.

[8] "The question I will ultimately have to answer when I reach the merits of this case someday is whether people have a reasonable expectation of privacy that is violated when the Government, without any basis whatsoever to suspect them of any wrongdoing, collects and stores for five years their telephony metadata for purposes of subjecting it to high-tech querying and analysis without any case-by case judicial approval. . . . [I]t is significantly likely that on that day, I will answer the question in plaintiffs' favor." *Id.* at 56.

Amendment," *id.* at 64, and he subsequently "grant[ed] Larry Klayman's and Charles Strange's requests for a[ ] [preliminary] injunction[.]" *Id.* at 67.

The Court's unequivocal findings coupled with the lack of disputed material facts requires an entry of final judgment for the purpose of serving the interests of justice. *See* U.S. ex rel. *Goldman*, 596 F.2d at 1358; *see also Eli Lilly*, 460 F.2d at 1096 (finding that a judge may grant permanent relief after the close of the preliminary injunction hearing while the case is on appeal based on the record, pleadings, and affidavits). By administering final relief, the parties can avoid the unnecessary expenses and delays of litigation. *See Allegheny Oil*, 106 F. at 770. Due to the strength of the undisputed facts here, adequate notice is not required of the Court's decision to consolidate the hearing and the trial. *See Brotherhood of Ry.*, 651 F.2d at 653. In consideration of these circumstances, including the expenses and delays in furthering unnecessary litigation, which should be avoided, as well as the Government Defendants' consistent attempts to avoid discovery, delay litigation, and not comply with court orders, which the Court is well aware of,[9] Plaintiffs respectfully request this Court to enter partial summary judgment on Plaintiffs' Fourth Amendment claim and proceed to discovery and trial on damages for the legal claims. In addition, the case must proceed to discovery with regard to Plaintiffs' Third Amended Complaint's other constitutional claims under the First and Fifth Amendments.

CONCLUSION

For the aforementioned reasons, Plaintiffs respectfully request that this Court enter partial summary judgment in favor of Plaintiffs on their Fourth Amendment claim.

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[9] *See* Mem. Op. at 68 ("[R]equesting further time to comply with this order months from now **will not** be well received and could result in collateral sanctions [against the Government Defendants]."); *see also* Mar. 2, 2009 Order, 2009 WL 9150913, at *2-3, 9 (concluding that the NSA had engaged in "systematic noncompliance" with FISC-ordered minimization procedures and that the Government was not doing its utmost to comply with court orders).

Plaintiffs sought consent from the Defendants before filing this motion. Counsel for Defendants has indicated that they do not consent to this motion.

Dated: April 15, 2014

Respectfully submitted,

/s/ Larry Klayman

Larry Klayman, Esq.
Attorney at Law
D.C. Bar No. 334581
2020 Pennsylvania Ave. NW, Suite 345
Washington, DC 20006
Tel: (310) 595-0800
Email: leklayman@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of April, 2014 a true and correct copy of the foregoing Plaintiffs' Motion for Partial Summary Judgment was filed electronically via CM/ECF to the United States Court District Court for the District of Columbia. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Respectfully submitted,

/s/ *Larry Klayman*

Larry Klayman, Esq.
Attorney at Law
D.C. Bar No. 334581
2020 Pennsylvania Ave. NW, Suite 345
Washington, DC 20006
Tel: (310) 595-0800
Email: leklayman@gmail.com