

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

LARRY E. KLAYMAN, CHARLES  
STRANGE, and MARY ANNE STRANGE,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

BARACK HUSSEIN OBAMA,  
ERIC HIMPTON HOLDER, JR.,  
KEITH B. ALEXANDER, LOWELL C.  
MCADAM, ROGER VINSON,  
VERIZON COMMUNICATIONS,  
NATIONAL SECURITY AGENCY, and  
U.S. DEPARTMENT OF JUSTICE,

Defendants.

No. 1:13-cv-00851-RJL

**VERIZON COMMUNICATIONS INC.'S OPPOSITION TO PLAINTIFFS'  
MOTION FOR EXTENSION OF TIME TO CERTIFY CLASS ACTION**

Defendant Verizon Communications Inc. (“Verizon”)<sup>1</sup> respectfully opposes Plaintiffs’ Motion for Extension of Time To Certify Class Action (Dkt. No. 7) to the extent the motion seeks to extend the deadline to move to certify a class with respect to the claims against Verizon. Alternatively, because Plaintiffs’ claims against Verizon are unlikely to survive threshold motions, Verizon requests that the Court direct that Plaintiffs not move for class certification until after any threshold motions are briefed and resolved.

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<sup>1</sup> There is no personal jurisdiction over Verizon Communications Inc. in this district. Verizon therefore reserves the right to challenge personal jurisdiction in its response to Plaintiffs’ amended complaint. Verizon does not, by opposing Plaintiffs’ procedural motion, concede personal jurisdiction.

## BACKGROUND

Plaintiffs filed this action against the National Security Agency (“NSA”), the Department of Justice, President Obama, Attorney General Eric H. Holder, Jr., NSA Director Keith B. Alexander, Judge Roger Vinson of the Foreign Intelligence Surveillance Court (“FISC”), and the Verizon defendants on June 6, 2013 in the wake of press reports purporting to describe certain alleged NSA activities. Plaintiffs filed an amended complaint three days later on June 9, 2013.

Plaintiffs’ amended complaint challenges an alleged government intelligence program. *See, e.g.*, Am. Compl. ¶ 2. Among other things, the amended complaint alleges that the FISC issued an order “directing Verizon to turn over, on an ongoing basis, ... [a]ll call detail records or telephony metadata created by Verizon for communications (i) between the United States and abroad; or (ii) wholly within the United States, including local telephone calls.” *Id.* (internal quotation marks omitted). Plaintiffs allege violations of the First, Fourth, and Fifth Amendments to the U.S. Constitution against the individual government defendants; state-law claims for intentional infliction of emotional distress and for “[i]ntrusion [u]pon [s]eclusion” against all defendants; and claims under the Electronic Communications Privacy Act against Verizon.

For almost four months, Plaintiffs made no attempt to serve Verizon. It was not until September 30, 2013 that Verizon received a copy of the amended complaint by certified mail.<sup>2</sup> That same day, Plaintiffs filed the instant motion for an extension of time to file a motion for class certification under Local Rule 23.1(b). It is not clear that Plaintiffs intend to seek an extension of time to move for class certification on their claims against Verizon, as opposed to just their claims against the federal government defendants. Plaintiffs challenge a purported federal intelligence program and merely contend that Verizon complied with an alleged court

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<sup>2</sup> Verizon does not concede that this mailing was sufficient to effect service of process.

order. Moreover, they did not attempt to serve Verizon with their motion, *see* Dkt. No. 7 at 4 (noting service on counsel for the federal government defendants), and, as reflected in the motion, Plaintiffs’ counsel conferred only with the federal government defendants’ counsel regarding the motion, *see id.* at ¶ 8.<sup>3</sup> To the extent Plaintiffs do seek to extend their time to seek class certification of their claims against Verizon, that motion should be denied for the reasons set forth below.

### ARGUMENT

The Court should decline to extend the deadline for Plaintiffs to seek class certification of their claims against Verizon. Local Civil Rule 23.1(b) provides that unless the Court grants an extension, any motion for class certification must be filed within 90 days of filing the complaint:

Within 90 days after the filing of a complaint in a case sought to be maintained as a class action, unless the court in the exercise of its discretion has extended this period, the plaintiff shall move for a certification under Rule 23(c)(1), Federal Rules of Civil Procedure, that the case may be so maintained.

Here, this deadline expired on September 4, 2013, 90 days after the filing of Plaintiffs’ complaint on June 6, 2013. But Plaintiffs did not file the instant motion for an extension of that deadline until September 30, 2013—over three weeks after the deadline had expired. Plaintiffs’ motion does not acknowledge the expiration of the deadline for seeking class certification, much less justify their failure to adhere to that deadline.

In conclusory fashion, Plaintiffs assert that they are “still in the process of preparing to move for class certification” because of alleged “uncertainty” and “new information that has

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<sup>3</sup> Compare L.Cv.R. 7(m) (“Before filing any nondispositive motion in a civil action, counsel shall discuss the anticipated motion with opposing counsel, either in person or by telephone, in a good-faith effort to determine whether there is any opposition to the relief sought and, if there is opposition, to narrow the areas of disagreement. The duty to confer also applies to non-incarcerated parties appearing pro se. A party shall include in its motion a statement that the required discussion occurred, and a statement as to whether the motion is opposed.”).

come to light” regarding their claims. Dkt. No. 7 at ¶ 4. Plaintiffs also note that Plaintiff Klayman has been traveling “extensively.” *Id.* ¶ 5. Yet, in the four days between publication of the June 5, 2013 article in *The Guardian* purporting to disclose the alleged FISC order Plaintiffs reference, *see* Am. Compl. ¶ 2, and the filing of their amended complaint on June 9, 2013, Plaintiffs drafted a complaint that included 11 paragraphs of class action allegations, *see id.* ¶¶ 38-48. Plaintiffs do not explain with any specificity why they could not have pursued these allegations in a timely fashion and met Local Rule 23.1(b)’s 90-day deadline, or at least sought an extension prior to the deadline. For almost four months, Plaintiffs took no steps whatsoever to prosecute their claims. One hundred and thirty days have now passed since Plaintiffs filed suit, yet they have failed to comply with Local Rule 23.1(b). They do not point to any particular new information that they contend bears on class certification that they did not possess before the September 4, 2013 deadline for seeking class certification; they do not contend that Mr. Klayman’s travel extended from early June through September; and they do not contend that no other lawyer was available to prepare the motion.

Finally, granting Plaintiffs’ untimely request to extend the time to seek class certification would unnecessarily burden Verizon. Plaintiffs’ claims against Verizon—for allegedly complying with a federal court order that purportedly “direct[ed]” the company to take certain actions, Am. Compl. ¶ 2—are squarely foreclosed by statute and are utterly baseless.<sup>4</sup> There is no justification for requiring Verizon to endure the expense of not only seeking dismissal of these meritless claims but also opposing an untimely motion for class certification.<sup>5</sup> For that reason, if the Court decides to extend the time for Plaintiffs to move for class certification, it

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<sup>4</sup> Verizon neither confirms nor denies the allegations of Plaintiffs’ amended complaint.

<sup>5</sup> The fact that class certification of Plaintiffs’ claims would be inappropriate is no basis to excuse Plaintiffs’ failure to seek certification in a timely manner.

should not permit Plaintiffs to seek class certification until after any threshold motions are briefed and resolved. *See* L.Cv.R. 23.1(b) (“In ruling upon the motion, the court ... may order that a ruling be postponed pending ... appropriate preliminary proceedings.”). Because Plaintiffs’ claims against Verizon are unlikely to survive beyond threshold motions, such an order will likely relieve Verizon of the unnecessary burden of briefing class certification.

### **CONCLUSION**

Accordingly, to the extent Plaintiffs seek an extension of the already-expired deadline for moving to certify their purported claims against Verizon, Plaintiffs’ motion for an extension should be denied. Alternatively, the Court should not permit Plaintiffs to move for class certification until after any threshold motions have been resolved.

Dated: October 14, 2013

Respectfully submitted,

/s/ Randolph D. Moss

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 14, 2013, I filed the foregoing document with the Clerk of Court for the United States District Court for the District of Columbia using the Court's CM/ECF system, which caused notice of the filing to be served upon all counsel of record.

/s/ Randolph D. Moss

Randolph D. Moss