

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

**NATIONAL VETERANS LEGAL
SERVICES, et al.,**

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No. 16-745 (ESH)

SCHEDULING ORDER

Based on the parties' Joint Motion for Adoption of a Phased Schedule to Govern Further Proceedings (ECF No. 18), it is hereby ORDERED:

Phase I:

1. Discovery and the need to confer further pursuant to Fed. R. Civ. P 26(f) and LCvR 16.3 shall be stayed until after this Court's ruling on the pending Motion for Class Certification (ECF No. 8) and Motion To Dismiss Or, In The Alternative, For Summary Judgment (ECF No. 11). Defendant's Motion to Stay Discovery (ECF No. 14) is denied as moot.

2. The Administrative Office of the United States Courts shall ensure that an appropriate litigation hold is in place.

3. If the Motion to Dismiss is granted, the Motion for Class Certification will be moot and proceedings in the district court shall be concluded.

4. If the Motion to Dismiss is denied and the Motion for Class Certification is denied, the parties will meet and confer within 15 days of the Court's latter ruling, and propose a

schedule(s) for the balance of the case.

Phase II:

5. If the Motion to Dismiss is denied, and the Court grants certification of a class, in whole or in part, under Fed. R. Civ. P. 23(b)(3), Plaintiffs will provide notice to class members within 90 days of the Court's ruling. The parties will attempt to agree on the form and manner of notice (subject to the Court's approval) and will confer in an attempt to resolve what information, if any, should be shared to ensure reasonable notice to the class. Any disputes will be promptly brought to the Court's attention.

6. During the notice period, the parties will enter into a stipulation and/or permit limited document discovery in an effort to establish 1) what portion of PACER fee revenue during the class period was in excess of the amount necessary to fund PACER services, 2) what portion of the PACER fee revenue supported CM/ECF and other Administrative Office initiatives and programs, and 3) what the average per-page PACER fee was during the class period.

7. After the notice period ends, plaintiffs will move for summary judgment solely on the issue of liability — i.e., whether the fees charged to access records through PACER violate the E-Government Act of 2002, Pub. L. No. 107-347, § 205(e), 116 Stat. 2899, 2915 (Dec. 17, 2002) (28 U.S.C. § 1913 note).

8. The parties shall defer the issue of damages, if any, until after a ruling on the motion for summary judgment and any cross-motion Defendant may file.

Phase III:

9. Within 15 days of the Court's ruling on summary judgment, the parties will meet and confer and, based on the Court's ruling, propose a schedule(s) for the balance of the case, including any additional discovery.

IT IS SO ORDERED.

/s/ Ellen Segal Huvelle
ELLEN SEGAL HUVELLE
United States District Judge

Date: August 16, 2016