

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL VETERANS LEGAL)
SERVICES PROGRAM, et al.,)
)
Plaintiffs,)
)
v.) Civil Action No. 16-745 ESH
)
UNITED STATES OF AMERICA,)
)
Defendant.)
)
)
_____)

JOINT MOTION FOR ADOPTION OF A PHASED
SCHEDULE TO GOVERN FURTHER PROCEEDINGS

The parties have conferred regarding the Defendant's Motion to Stay Discovery and the items set forth in LCvR 16.3(c). They believe that the proceedings in this case are best managed by a phased approach. Therefore, they jointly request that the Court approve the following proposed schedule:

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 the 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).

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.

A Joint Proposed Scheduling Order is being filed contemporaneously with this Motion.

August 8, 2016

Respectfully submitted,

CHANNING D. PHILLIPS, DC Bar #415793
United States Attorney

DANIEL F. VAN HORN, DC Bar #924092
Chief, Civil Division

By: W. Mark Nebeker /s/
W. MARK NEBEKER, DC Bar #396739
Assistant United States Attorney

For Defendant

By: /s/ Deepak Gupta

Deepak Gupta (D.C. Bar No. 495451)
Jonathan E. Taylor (D.C. Bar No. 1015713)
GUPTA WESSLER PLLC
1735 20th Street, NW
Washington, D.C. 20009
Phone: (202) 888-1741
Fax: (202) 888-7792
deepak@guptawessler.com, jon@guptawessler.com

Michael T. Kirkpatrick (D.C. Bar No. 486293)
INSTITUTE FOR PUBLIC REPRESENTATION
Georgetown University Law Center
600 New Jersey Avenue, Suite 312
Washington, D.C. 20001
Phone: (202) 662-9535
Fax: (202) 662-9634
michael.kirkpatrick@law.georgetown.edu

William H. Narwold (D.C. Bar No. 502352)
MOTLEY RICE LLC
20 Church Street, 17th Floor
Hartford, CT 06103
Phone: (860) 882-1676
Fax (860) 882-1682
bnarwold@motleyrice.com

For Plaintiffs.