

Berman, R.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION and
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY, OFFICE OF
THE DIRECTOR OF NATIONAL
INTELLIGENCE, DEPARTMENT OF JUSTICE,
and CENTRAL INTELLIGENCE AGENCY,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 12/11/17

No. 16 Civ. 8936 (RMB)

**STIPULATION AND ORDER OF
SETTLEMENT AND DISMISSAL**

WHEREAS, plaintiffs American Civil Liberties Union and American Civil Liberties Union Foundation (“Plaintiffs”) brought a Freedom of Information Act (“FOIA”) action, on or about November 17, 2016, to compel defendants National Security Agency (“NSA”), Office of the Director of National Intelligence (“ODNI”), Central Intelligence Agency (“CIA”), and Department of Justice (“DOJ”) (specifically, its components the Federal Bureau of Investigation (“FBI”), the National Security Division (“NSD”), the Office of Information Policy, the Office of the Attorney General, the Office of the Deputy Attorney General, and the Office of the Inspector General) (collectively “Defendants”) to search for and produce documents responsive to a FOIA request (the “Request”) submitted by Plaintiffs on September 14, 2016 [Dkt. No. 1];

WHEREAS, Defendants possessing documents they deemed responsive to the Request produced such documents, or portions thereof, that they determined to be non-exempt under the FOIA during the pendency of this litigation;

WHEREAS, the parties agree that the only remaining issue in this matter concerns Plaintiffs' claim of entitlement to attorney's fees and litigation costs reasonably incurred in this case pursuant to 5 U.S.C. § 552(a)(4)(E); and

WHEREAS, the parties wish to resolve Plaintiffs' claim for attorney's fees and litigation costs consensually without further litigation,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the parties, as follows:

1. Pursuant to 5 U.S.C. § 552(a)(4)(E), as soon as reasonably practicable after the Court has endorsed and docketed this Stipulation and Order, NSA shall pay to Plaintiffs the sum of \$11,000, CIA shall pay to Plaintiffs the sum of \$6500, NSD shall pay to Plaintiffs the sum of \$6500, FBI shall pay to Plaintiffs the sum of \$6500, and ODNI shall pay to Plaintiffs the sum of \$4500 (collectively, the "Settlement Amounts").

2. Defendants shall make their best effort to make payment to Plaintiffs within 90 days following the dismissal of this Action and will submit appropriate requests for payment within 14 days of the entry of the Stipulation and Order.

3. Plaintiffs agree to accept the Settlement Amounts in full satisfaction of any possible claim, demand or entitlement for attorney's fees and costs Plaintiffs have incurred or will incur in this action for services performed up to the date of this Stipulation and Order. Any subsequent claim for attorney's fees and costs in connection with this matter will be limited to a claim for fees and/or costs in connection with any future application to enforce the Stipulation and Order.

4. This action is hereby dismissed with prejudice, provided that the Court shall retain jurisdiction over any issues that may arise relating to this Stipulation and Order.

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5. Effective upon payment of the Settlement Amounts set forth in Paragraph 1, Plaintiffs release the United States, its agencies, departments, officers, employees, servants, and agents, including Defendants, from any claims for attorney's fees, costs, and expenses of any kind, and however denominated, relating to services performed in connection with this instant action, except as set forth in Paragraph 3.

6. Nothing in this Stipulation and Order shall constitute an admission by United States of America or its agencies, including Defendants, that Plaintiffs or their counsel are eligible for or entitled to attorney's fees and costs under 5 U.S.C. § 552(a)(4)(E) in this action.

7. Nothing in this Stipulation and Order shall constitute an admission by United States of America or its agencies, including Defendants, that Plaintiffs or their counsel would be entitled to attorney's fees and costs under 5 U.S.C. § 552(a)(4)(E) in connection with any subsequent application by Plaintiffs to enforce this Stipulation and Order. Defendants reserve all defenses associated with any such future claim of entitlement to attorney's fees and costs.

8. Nothing in this Stipulation and Order shall constitute an admission by Plaintiffs or their counsel that Defendants' searches were adequate or their withholdings were proper under the FOIA.

9. The parties understand and agree that this Stipulation and Order contains the entire agreement between them. No statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

10. This stipulation may be executed in counterparts. Facsimile or PDF signatures shall have the same force and effect as original signatures.

Dated: New York, New York
December 8, 2017

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

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Dated: New York, New York
December 8, 2017

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SO ORDERED. *clerk to close the case*

Dated: New York, New York
December 11, 2017

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HONORABLE RICHARD M. BERMAN
United States District Judge

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