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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION - LOS ANGELES

PAUL SNITKO, et al.,)	Case No. CV 21-4405-RGK (MARx)
)	
Plaintiffs,)	Los Angeles, California
)	Wednesday, March 30, 2022
v.)	11:07 A.M. to 11:45 A.M.
)	
UNITED STATES OF AMERICA,)	
et al.,)	
)	
Defendants.)	
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MARGO A. ROCCONI
UNITED STATES MAGISTRATE JUDGE

Appearances:	See Page 2
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1 LOS ANGELES, CALIFORNIA, WEDNESDAY, MARCH 30, 2022, 11:07 A.M.

2 (Call to Order of the Court.)

3 THE CLERK: Calling case No. 2:21-CV-04405,
4 *Paul Snitko, et al. v. United States of America, et al.*

5 Counsel, starting with plaintiff, please state your
6 appearances for the record.

7 ROBERT F. FROMMER: Hello. My name is
8 Robert Frommer, attorney for Institute for Justice and
9 counsel for plaintiffs.

10 THE COURT: Good morning.

11 ROBERT E. JOHNSON: My name is Robert Johnson, also
12 appearing for plaintiffs.

13 THE COURT: Good morning.

14 VICTOR A. RODGERS, JR.: Good morning. My name is
15 AUSA Victor Rodgers (inaudible) on behalf of the defendants.

16 THE COURT: All right. Good morning.

17 All right. I've read your papers and I -- it's an
18 interesting issue, especially with respect to the protective
19 order. So let's start with that, and I'll go with
20 plaintiffs' counsel to sort of -- so preliminarily I'll say
21 we have an agreement that there's good cause for a protective
22 order; correct?

23 MR. FROMMER: Yes, that is correct, Your Honor. We
24 --

25 THE COURT: So it's just a matter of what this --

1 the parameters of the protective order are. So let's dive
2 into that.

3 MR. FROMMER: Yes, Your Honor.

4 As you know, plaintiffs in this Fourth Amendment
5 challenge represent class members who've all had their
6 property returned by the defendants, and plaintiffs really
7 just wish to show class members the inventory for their
8 specific box to check its accuracy, and we further propose a
9 narrow modification so a class member could then take that
10 inventory and share it with the Government for the purpose of
11 pursuing a claim for lost property, and this poses no risk of
12 revealing third-party information since the class member put
13 that information in their box and would simply be returning
14 the inventory to the very entity who created it.

15 So in this situation, we're asking for a narrow
16 modification that allows us to share with class members but
17 not -- the inventories, which, again, are just inventories of
18 the items contained in their own box and then for them to be
19 able to use that should they decide to pursue a claim for
20 lost or misplaced property against the Government.

21 And our proposed order conserves judicial resources
22 and advances justice. The defendants' position whereby each
23 person would have to individually come to court would prevent
24 class members from filing meritorious claims since the cost
25 of hiring a lawyer and coming before this Court to get

1 permission to use the inventory would often outstrip the
2 value of the missing property. So we think it's appropriate
3 for this Court to enter that protective order here.

4 And then, lastly, Your Honor, we would ask that
5 defendants produce all outstanding discovery without delay.
6 When defendants requested an extension in December, it was to
7 prepare their responses and objections, but we're now four
8 months later and defendants are proposing weeks, if not
9 months, of more delay even though Judge Klausner set opening
10 briefs in this matter to be due June 21st. No meaningful --
11 at all -- discovery has been provided to this date, and the
12 additional delay the defendants are proposing would severely
13 prejudice plaintiffs' ability to make their case.

14 THE COURT: Okay. And you haven't mentioned
15 anything that I've read a couple of times in your papers
16 about how the requirement -- the Exhibit A requirement that
17 the nonparty class members provide the defendants with a
18 signed copy of Exhibit A would somehow give defendants
19 insight into your investigative and other legal strategy. I
20 don't -- honestly, the Court does not understand what insight
21 that would be.

22 MR. FROMMER: Well, it would tell the Government --
23 if we have to -- and it's interesting, Your Honor, because
24 the Exhibit A that we're talking about -- for every other
25 class of person identified in the protective order, there's

1 no requirement that it be turned over to the Government
2 before any information is shared, and the threat here is that
3 by us having to give the Government signed exhibits saying
4 who we're speaking to and -- about the veracity and accuracy
5 of the inventories, that gives the defendants direct insight
6 into our litigation strategies, which is -- that -- and that
7 is impermissible under FRCP 26.

8 THE COURT: Can I -- let me just interrupt and say
9 I'm not sure what that exact strategy is. You're -- the --
10 it's not attorney-client privileged information. It's not
11 some sort of communication. It's -- what is the -- I don't
12 understand what the work product is exactly that would be
13 revealed. Presumably -- let me ask you this: You -- do you
14 know the identity of each and every nonparty class member?

15 MR. FROMMER: No, Your Honor, because that has not
16 -- never been provided to us in discovery even after five
17 months.

18 THE COURT: Okay. Okay. So basically they would
19 know who your -- who is being identified to you? Is that the
20 --

21 MR. FROMMER: No. The defendant --

22 THE COURT: Is that what you don't want them to
23 know? Who's talking to you?

24 MR. FROMMER: Well, what we -- they need -- the
25 defendants need to provide us a list of all the class members

1 in this action. That was one of our requests for discovery.
2 What we're talking about here is something a little bit
3 different. We're talking that once we get that list and we
4 have the inventories for each box, we want to be able to
5 reach out to specific class members and to verify -- "Can you
6 look at this inventory? Can you tell me is this is an
7 accurate and complete inventory?" But us having to sign --
8 send in the Exhibit A to defendants every single time before
9 we begin that conversation gives the defendants direct
10 insight as to who we're speaking with and what -- and that,
11 in turn, reveals sort of our legal strategies, our legal
12 tactics in this case, and so I think that --

13 THE COURT: That's what's vague to me but -- it's
14 simply the identification of a class member.

15 MR. FROMMER: That -- well, not just a class
16 member, Your Honor. It's a specific class member with whom
17 we have talked about the inventory and the accuracy of the
18 inventory, and class members could well be wary -- even
19 beyond the work product issues, class members could well be
20 wary to talk with us knowing that the defendants are going to
21 get a signed copy identifying them as somebody who's working
22 with us, especially if --

23 THE COURT: Okay. There was some allegation of
24 harassment by the Government, but it's not as if the
25 Fifth Amendment is an -- at issue here, any kind of

1 self-incrimination in light of self-identification, right,
2 that the Government would start investigating or harassing
3 them? I mean, we're beyond that issue from the other
4 litigation that's going on; correct?

5 MR. FROMMER: I don't believe so, Your Honor. The
6 Government has said that they need to police this -- police
7 these releases and they need to police the protective order,
8 and we've seen repeated instances, when people have
9 identified themselves, the Government has responded by -- and
10 sort of poked their head up -- the Government has responded
11 by investigating them, by putting -- you know, investigatory
12 resources behind that, and that leads to a situation where
13 class members would feel chilled, feel that they can't come
14 forward and talk with us, lest the Government --

15 THE COURT: Okay. Let me talk to Mr. Rodgers.

16 Is -- and I really -- the Court really appreciates
17 it when people just tell -- just tell me what your
18 motivations are. Is that motivation that plaintiff counsel
19 is ascribing to you -- is that an actual motivation? To
20 investigate these people?

21 MR. RODGERS: Absolutely not. It's completely
22 incorrect. We already know the identity of these
23 individuals, and if we're going to criminally investigate
24 them, it is not going to be because they provided an
25 Exhibit A to us. We've already determined who will be

1 criminally investigated and who will not.

2 THE COURT: And can I ask you -- and I'll let you
3 make your own argument in a second, but is there any reason
4 why you can't immediately just turn over the list of all of
5 these people who have come forward and who have already
6 claimed their property?

7 MR. RODGERS: Once we have a protective order in
8 place -- and this is why I wanted to get the protective order
9 in place -- we can do a lot of things. We can provide the
10 list of the people who we believe are owners of the box, and
11 we can also provide information concerning supervisors who
12 were involved in the searches of the particular boxes at
13 issue. So we can do that, but, you know, I'm dealing with
14 discovery units within the FBI who need the protective order,
15 and I'll get to the terms of the protective order --

16 THE COURT: Okay. Just a moment. I want to finish
17 with plaintiff, but I appreciate that --

18 MR. RODGERS: Okay.

19 THE COURT: -- and I feel that I -- you know, we --
20 the Court and everyone should take you at your word. You
21 know who these people are -- or at least you think you have
22 them -- that information. Who knows at this point how
23 accurate the actual owners are, right, but if they've come
24 forward to claim their property, then I guess you do know who
25 they are.

1 All right. So let me get back to Mr. Frommer,
2 then. Is there anything further you want to say about the
3 protective order?

4 MR. FROMMER: Well, Your Honor, I think that the --
5 like I said, we are happy to enter into the protective order,
6 but I think the defendants are using the protective order
7 issue as a shield to sort of gloss over their failure to
8 provide discovery. Like, simply the identity of their own
9 agents and who participated in the raid wouldn't be covered
10 -- would have any Privacy Act implications, but yet it's five
11 months now and we still haven't seen that. We haven't seen a
12 list of our own class members. We've seen no discovery in
13 this case whatsoever even though in about 2 1/2 months we
14 need to file briefs with Judge Klausner, and our window to
15 conduct discovery is fading very rapidly, largely because of
16 the protective order issue dragging on and -- throughout this
17 litigation.

18 THE COURT: Okay. Well, Mr. Rodgers, I'll hold you
19 to that, that you can get, at a minimum, a list of those who
20 have come forward to claim their property to the plaintiffs'
21 counsel as soon as a protective order is entered, and I'm not
22 making that an order, but it seems like -- it seems like the
23 right thing to do and the minimum that you could do.

24 All right. Let me hear from you, then,
25 Mr. Rodgers, on your side of this protective order issue.

1 MR. RODGERS: With respect to the protective order
2 -- and some of this is already in our papers -- we used the
3 Court's website order, and in connection with that website
4 order, we included the provision that any person who receives
5 confidential information can use it solely for purposes of
6 prosecuting, defending, or settling the action. That's the
7 case with respect to anyone who receives confidential
8 information under a protective order, and that was the
9 objection that the plaintiffs made to the protective order
10 that the Government submitted, which, you know, with respect
11 to this lawsuit, that is a key phrase and that is a key term.

12 Now, what the plaintiffs mistakenly argue is that
13 they say, "Oh, this is all items that the boxholders already
14 have. It is their property, and the boxholders already had
15 their property back." I've raised the issue with respect to
16 one case that we found a bunch of passports containing PII.
17 I'm not saying that the person who received the passports
18 back now could go to the press and say, "Here's a passport
19 that shows somebody else's name and date of birth." That's
20 not the issue.

21 The issue is they want us to produce these tapes.
22 I can't have somebody going to the press with still
23 photographs of the video which reflects the PII of a third
24 party. That's -- that would be a violation of the
25 Privacy Act for me to do that, and it's not merely the class

1 member who is the boxholder. It's that third party who has
2 the PII. If I just -- if I do not have a protective order in
3 place that prohibits the other side from using the documents
4 we produce, as opposed to what they have received back, then
5 there's going to be a violation of Privacy Act.

6 And so the argument that the plaintiffs already
7 know -- or these boxholders already know what was in their
8 box is simply not relevant. If they want to disclose --

9 THE COURT: Let me just interrupt you there and
10 ask: Do you know -- you -- so you -- so I understand from the
11 pleadings that you don't have an omnibus list of all the
12 contents of each box; is that correct?

13 MR. RODGERS: Correct.

14 THE COURT: But do you have it -- are you able --
15 do you have it specifically notated enough that you would
16 know whether a box contained third-party information?

17 MR. RODGERS: No. The only way you can figure that
18 out is to review all the tapes, and that is a time-consuming
19 and an impossible situation to do because there are something
20 like -- if I am -- my best guestimate is that there are
21 something like 420 class members, and probably 50 percent of
22 those may have tapes, all of which may be 20 or 30 minutes
23 long.

24 And if you look at, for example, the declaration of
25 Ben Gluck that was submitted -- Benjamin Gluck, who is an

1 attorney in another case -- if you look at the still
2 photographs from the video in that case, you will see that
3 the still photographs have -- practically every single
4 photograph has redactions. For the Government to go through
5 all of those tapes and redact all of the potential personal
6 -- PII information, and most importantly the information that
7 is protected by the Privacy Act because all of those tapes
8 come within the purview of the Privacy Act -- it would be
9 impossible to produce all of that material --

10 THE COURT: Okay. So there would be no way to sort
11 of excise out these boxes that contain third-party
12 information?

13 MR. RODGERS: Correct. It would be --

14 THE COURT: As not -- as like -- as -- that we
15 would have to do the Exhibit A for -- there's no way to
16 segment this, basically, is what you're arguing?

17 MR. RODGERS: Correct. Correct. It is impossible
18 to do so, which is why we indicated in this protective order
19 that, you know, it would be deemed confidential information
20 and if it was received by an absent class member -- by that,
21 I mean somebody who is not a named party -- that they would
22 have to sign this Exhibit A.

23 And one other statement that counsel made
24 concerning their version of Exhibit A -- counsel indicated
25 that their version of -- excuse me -- their version of a

1 protective order would provide that these inventory could be
2 shared with the Government, but their version of the
3 protective order goes further than that. It says that these
4 inventories could be utilized to seek relief from the federal
5 Government, meaning that a lawsuit could be filed, somebody
6 could attach those still photographs from the inventory --
7 not, you know, subject to any protective order, they could
8 just file that document, and by doing so, they could reveal
9 information -- third-party information publicly.

10 It's not simply to give the person who submits a
11 claim for lost property. The manner in which these claims
12 come up with respect to anyone who contends that the
13 Government lost property during the course of the search,
14 somebody would have to submit an administrative tort claim to
15 the FBI for monetary relief. That is the first step. Once
16 that is done, the FBI looks at that claim, makes a
17 determination as to whether it has merit or not, sometimes
18 asks for additional information from the boxholder who says
19 particular property is lost and seeking monetary relief. In
20 conjunction with that, I indicated to counsel that the
21 boxholder in that potential future case could argue, "I need
22 to talk about the inventory in connection with my claim. Can
23 I do so?"

24 The FBI reviews that, goes through the process,
25 determines whether the case can be settled or not, determines

1 whether the case can be resolved or not by providing monetary
2 relief for the lost property, and once that process is over,
3 which is known as exhausting the administrative remedy, in
4 order to recover monetary damages in federal court, then
5 somebody can file a federal court lawsuit from the lost
6 property for monetary damages in connection with the property
7 they allege that was lost. Now, if they do that, then
8 submitting this inventory potentially -- video inventory that
9 contains PII information needs to have some protection.

10 But what I argue is that the one case that they
11 cite for that purpose, for purposes of allowing third parties
12 to make some argument concerning the protective order is when
13 a third party has filed a collateral lawsuit separate and
14 apart from the lawsuit in which the protective order was
15 entered and in that collateral lawsuit that third party
16 argues, "I need to obtain documents that were produced in the
17 first lawsuit under the protective order."

18 But what the plaintiffs are trying to do here by
19 taking out the provisions that indicate that a class member
20 -- boxholder -- can only use inventory for purposes of
21 prosecuting the current litigation is they're trying to
22 anticipate future lawsuits with respect to potential
23 inventories that somebody might seek, and my argument is it
24 doesn't make any sense to do that because a third party, in
25 the event they want to use this confidential information, as

1 the plaintiffs' case culled, can make an argument in the next
2 case, but that's not what is involved here. This is -- this
3 lawsuit --

4 THE COURT: So -- right. And I appreciate all
5 those points. So basically -- and I -- the Court has a lot
6 of prior experience in the protective order area. I mean,
7 basically protective orders are to secure information in a
8 confidential way for that litigation.

9 Do you see any way -- and plaintiffs' counsel can
10 answer this later as well. Do you see any way that there
11 could be a -- so in keeping the privacy interests of these
12 potential third -parties in mind, is there any way that we
13 should -- or the Court could or should say something to the
14 extent of, you know, "When using confidential documents
15 secured from this litigation and collateral litigation, the
16 parties shall maintain the documents confidentiality"? Would
17 that cure your problem, Mr. Rodgers?

18 MR. RODGERS: If these third-party absent class
19 members agree to be bound by the terms of the standard
20 protective order, I think that's all I've been asking for.

21 THE COURT: Mr. Frommer, you're --

22 MR. FROMMER: Your --

23 THE COURT: -- you're shaking your head.

24 MR. FROMMER: Yeah, Your Honor. I'm sorry, but
25 that's a bit of a dodge by my opposing counsel saying that

1 the protective order -- the current protective order that
2 defendants are proposing wouldn't allow those people to use
3 those materials whatsoever. So it's not really an answer to
4 your question. Like, would a modification that just allowed
5 -- that told them, "If you're going to use this in collateral
6 litigation, you need to keep it confidential," that's not
7 really a response to your question.

8 But I do believe that there is an easy way to deal
9 with this hypothetical situation where someone after having
10 exhausted administrative remedies needs to file a case in
11 court, and that's simply just -- in can be a simple addendum
12 to this protective order telling those people that in that
13 situation you can file your action -- you can file your
14 action in that court, and then you can seek to include those
15 materials under seal, you can ask the court for permission to
16 file that under seal so as to maintain the confidentiality.

17 That seems to be an easy way of resolving the
18 concern that the Court had and -- while still allowing people
19 to have a route to access to justice, where they're -- found
20 that they have lost or misplaced property and they want to
21 pursue it. Defendants' approach would take a lot of those
22 claims and make them impossible to pursue whatsoever because
23 they would -- it would quickly -- in most instances -- in a
24 good number of instances, the cost of just seeking a
25 modification so as to use the inventory would outstrip the

1 value of the item under dispute, and that's why we think it's
2 better to do this in one fell swoop because that way the
3 class members have a very clear picture from the beginning of
4 what their rights are and how -- also what their obligations
5 are.

6 THE COURT: Okay. Mr. Rodgers, do you want to
7 respond to that?

8 MR. RODGERS: Yeah. I get -- this is not a class
9 action for monetary damages for people who say that they've
10 lost or misplaced property. The Government indicated in its
11 papers that it's a very simple process to submit an
12 administrative tort claim. You just simply go to a website,
13 find a standard form 95, which is a -- about a two-page
14 document. They can do that now. They wouldn't have to wait
15 until this law -- our lawsuit proceeds in order to determine
16 to do that. They can do that now and submit a claim -- an
17 administrative tort claim. They do not have to, as counsel
18 says, go out and hire a lawyer. And most people do not with
19 respect to an administrative tort claim that is submitted.
20 They don't have to go out and hire a lawyer in order to do
21 that.

22 The idea of trying to anticipate what somebody may
23 want to do and what might occur in the future is why counsel
24 decided not a single case without this thing. This is a case
25 that does not seek -- this class action -- it doesn't seek

1 monetary relief. It's not a class action for lost or
2 misplaced property. There is another lawsuit that was filed
3 where somebody claimed that they lost or misplaced property
4 -- I -- we discussed that in our papers -- called the *Mellein*
5 case -- where they wanted the inventory. No one has to hire
6 a lawyer to do that, and quite frankly, if they did hire a
7 lawyer, we would argue, as we did in the other case, that you
8 have to exhaust your administrative remedy.

9 There are too many circumstances that could occur
10 in the future with respect to needing to use the inventory.
11 If for some reason somebody submits an administrative tort
12 claim and says, "I need this inventory to show that I've lost
13 property" -- and let me back up for just a moment.

14 The plaintiffs have already said everybody knows
15 what's already in their box, and so these inventories are not
16 going to aid anyone, in my view, to make it -- to conclude
17 that there are some additional items out there. The
18 inventory doesn't do anything as to that. All the inventory
19 will say is "cash," "miscellaneous coins" -- the written
20 inventory, that is. It's not going to provide any additional
21 details, but if somebody truly thinks that they need those
22 additional details to submit this administrative tort claim,
23 they can deal with the FBI, and the FBI can say either yes or
24 no, and if they say no and deny the claim, they can file a
25 lawsuit a year down the road.

1 But to try and anticipate with respect to 400 class
2 members, we do not know -- at most, to date 2 have asserted a
3 claim for lost property. You know, those people, again,
4 already know if property has been lost or not because they've
5 already had items returned to them, but to try and anticipate
6 in the future what those class members should do, other than
7 what's already required by this protective order, is going to
8 be very difficult to do.

9 MR. FROMMER: Your Honor, if I may --

10 THE COURT: Okay. I appreciate it.

11 You can respond to that. I do have another hearing
12 on calendar but -- and I have a couple more questions for
13 both of you.

14 MR. FROMMER: Just very briefly, Your Honor, I'm --
15 sorry. I'll keep this very short.

16 But in that situation when -- I expressly asked
17 opposing counsel in that situation where someone files an
18 administrative claim for lost property and they seek the
19 inventory -- I just asked would he commit -- would the
20 defendants commit to providing those to property owners? If
21 they had said yes -- to the class members. If they had said
22 yes, we wouldn't be here today, but they refused to say that.
23 And so if they -- if those class members don't get the --
24 that inventory and then they have to come into court to try
25 to seek it after the FBI says no, that's the very kind of

1 harm that I'm talking about, where a lot of people are just
2 going to give up, and that's what we're trying to forestall.

3 He's right that we aren't bringing a case for lost
4 or damaged property, but we are class counsel, and these are
5 our -- we have a fiduciary relationship with class members,
6 and we can't put them in an untenable position, which is why
7 we're here today.

8 THE COURT: Do you have a response to that,
9 Mr. Rodgers?

10 MR. RODGERS: Yeah, there's no untenable position.
11 They already have -- they'll have the inventory as part of
12 the production in this case. So I don't -- not understand
13 counsel's argument that the Government didn't say, "Yes,
14 we'll produce the inventory in connection with the future
15 administrative tort claims." All I said was -- in
16 conjunction with that was will we allow -- counsel asked,
17 "Will you allow the class member" -- in this future
18 administrative tort claim -- "to argue about the inventory as
19 part of that claim?" and I said to him, "I don't know if they
20 would allow that or not."

21 I mean, there are 400 class (inaudible). I can't
22 say what will occur in the future case, but the class members
23 already will have the inventory. So it's not a question of
24 whether they can -- whether they'll have the inventory or
25 not. It's a question of whether they need to, for purposes

1 of the protective order, take some future step. I think in
2 most situations the answer will be no, and the FBI will look
3 at, you know, Claim No. 245 for three missing coins worth
4 \$500, and the class member says, "Can I use the inventory
5 that you've already produced?" The answer will probably be
6 yes, but I can't say that in advance because I'd have to
7 evaluate 400 cases. And I would do so if this was a class
8 action involving monetary relief, but it's not. That's not
9 the purpose of this case.

10 THE COURT: All right. Well, let me -- I want to
11 ask both of you about the Ninth Circuit case *Foltz v.*
12 *State Farm*. So they explain in that case that to use
13 protected materials in a collateral litigation that
14 collateral litigant must request a modification of the
15 protective order from the issuing court and make a showing of
16 relevance. I'm a little stuck on that case -- I need to
17 follow the Ninth Circuit -- because we are talking about
18 future collateral litigation. It doesn't seem to be
19 contemplated when courts enter protective orders in the
20 litigation currently in front of them.

21 So can you address that, Mr. Frommer.

22 MR. FROMMER: Yes. I believe in that situation
23 they're saying under that test the document needs to be
24 relevant to the litigation, and here in any claim for --

25 THE COURT: But how can it be -- how can it -- if

1 there's no collateral litigation currently, wouldn't that be
2 -- I mean, then -- if the collateral litigation was actually
3 happening and in process, then they could come in -- then the
4 litigants could come in and ask for a modification based upon
5 relevance grounds, but we don't have that situation here.

6 MR. FROMMER: I don't think that's -- I don't think
7 that's a dispositive difference, Your Honor, because in this
8 situation what we're talking about is a broad -- we know that
9 these inventories will be relevant in every case that --
10 involving lost or mislaid property and so the Court -- choice
11 of the Court is one of two things. One, we can force class
12 members to come in piecemeal, one at a time, at their own
13 expense and to seek a modification of the order, and as I
14 mentioned, in a lot of those instances, they're not going to
15 do that because the cost of, you know, coming in and having
16 to hire an attorney and make that motion is more than the --
17 more than the value of the property.

18 But since we know they're relevant in every given
19 instance, it seems it's a far more efficient use of not only
20 this Court -- of this Court's resources to deal with this at
21 one point by saying that these class members can use it --
22 and, again, not, like my opposing counsel said, to send it to
23 the press or take it to the world but for just the very
24 limited instance of sharing it with the very entity that
25 created that inventory sheet -- the Government -- as part of

1 it's administrative -- their attempting to pursue a claim for
2 loss or -- or lost or misplaced property. So --

3 THE COURT: Okay. Would you -- I appreciate that
4 answer.

5 Mr. Rodgers, do you want to talk about *Foltz*. I
6 just have a couple more questions.

7 MR. RODGERS: Yeah. I think *Foltz* is -- you know,
8 it's collateral litigation. It's clear. We also cited a
9 district court case that dealt with that. It's -- you have
10 to have a collateral litigation in place, and there's no
11 collateral litigation here.

12 THE COURT: Okay. So presumably -- as we know, the
13 class is limited to people who have received their -- the
14 property has been returned to them from their safety deposit
15 box. Presumably, in returning that property to them, they
16 were given an inventory -- it seems like that would be a
17 reasonable thing -- or were they just given the property?

18 MR. RODGERS: They were given a receipt, and as
19 counsel's papers indicate, the receipt there is the
20 inventory. So they know -- they have the inventory, in
21 essence.

22 THE COURT: So they have -- the receipt is an
23 inventory basically?

24 MR. RODGERS: Correct.

25 THE COURT: Okay.

1 MR. RODGERS: Correct. In substance.

2 THE COURT: All right. I -- the Court's going to
3 give a ruling really pretty quickly -- maybe today, tomorrow
4 -- on this issue.

5 And I want to turn quickly to the motion to compel
6 and just ask plaintiffs' counsel: Mr. Frommer, was there an
7 adequate meet-and-confer here regarding that three-day
8 deadline? I -- it just doesn't seem that there was but --

9 MR. FROMMER: I'm sorry. I don't -- I'm not sure I
10 quite understand, Your Honor. The meet-and-confer with
11 regards to the motion to compel? We met with them --
12 immediately we scheduled a call with them and had a meet-and-
13 confer to talk through all the objections and -- that were
14 listed in their January 10th responses, all of which are
15 boilerplate, and at that meeting, as our letter indicated,
16 the defendants' counsel walked away from all those
17 substantive objections and said, "No. We're willing to
18 produce documents. We're willing to answer these
19 interrogatories. We just need to get this protective order
20 in place."

21 And that's what we're -- and so that's what we're
22 concerned about here is that following, you know, what -- the
23 resolution of this particular issue that the defendants are
24 saying they're going to take weeks, if not months, to turn
25 over documents, documents which they should have had fully

1 ready in January, and that has a prejudicial effect on our
2 ability to bring the -- to litigate this case, particularly
3 given Judge Klausner's June 21st deadline --

4 THE COURT: I understand. Okay.

5 MR. FROMMER: -- and his reluctance to extend
6 deadlines.

7 THE COURT: Thank you.

8 I'm also -- the Court is also sort of compelled by
9 the idea that this joint stipulation does not really comply
10 with the Local Rule, that it doesn't include verbatim
11 interrogatory responses, and I'm just wondering why that
12 isn't so.

13 MR. FROMMER: Why we didn't include all the
14 responses to all the interrogatories? Because they had
15 waived -- they expressly -- I asked them, "Please tell me
16 every substantive objection you wish to maintain so that we
17 can deal with this in one fell swoop in the joint
18 stipulation," and as my letter -- after January 21st
19 indicates, they walked away from those substantive objections
20 and said, "No. The only issue is that concerning the
21 protective order."

22 THE COURT: All right.

23 MR. FROMMER: So that --

24 THE COURT: Mr. Rodgers, have all the rules been
25 complied with here with respect to the motion to compel?

1 MR. RODGERS: No, the rules haven't been complied
2 with at all, and quite to the contrary, the Government
3 indicated that it was maintaining their objections because we
4 had to resolve the protective order. It is clear that they
5 haven't complied with the Local Rule. Had they done so, we
6 would have dealt with every single interrogatory and every
7 single document request. That wasn't done.

8 This issue of three days was never discussed in any
9 meet-and-confer. We had a meet-and-confer after we submitted
10 to plaintiffs' counsel the final protective order, in our
11 view, and the idea of three days was never discussed. Had it
12 been discussed, I would have reiterated problems that I have
13 in conjunction with doing it in three days. As I've
14 indicated, you know, once the protective order is in place,
15 we will produce and continue to produce at all undue speed,
16 but, you know, three days is an impossibility, and that issue
17 was not discussed in any way, shape, or form at all.

18 THE COURT: Okay. Thank you.

19 The Court is -- I'm not going to give a tentative
20 right now, but if the Court should deny the motion to compel
21 based upon these grounds, obviously I would -- the Court
22 would entertain a motion on shortened notice, and we could
23 have a hearing rather quickly. I'm not saying that's exactly
24 what's going to happen here, but I just wanted to say that.

25 Is there anything further that you haven't been

1 able to say that you think the Court should know.

2 MR. FROMMER: No, Your Honor. Just that it's been
3 over a year now since the raid and over five months since we
4 promulgated discovery, and we've received nothing in this
5 case, and we'd ask that the Court help move this forward
6 quickly so that we can vindicate our clients' rights.

7 THE COURT: I think that's a reasonable request.

8 Mr. Rodgers?

9 MR. RODGERS: No, Your Honor. I will just add that
10 we have attempted and will continue to attempt to satisfy our
11 discovery obligations once the protective order is in place.
12 We'll be working to produce to counsel, and we'll give
13 counsel updates with respect to where we are.

14 THE COURT: Okay. Thank you. Thank you for your
15 arguments and your papers. They were very helpful.

16 MR. FROMMER: Thank you, Your Honor.

17 THE CLERK: Thank you. This court's in recess.

18 (Proceedings adjourned at 11:45 a.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Julie Messa
Julie Messa, CET**D-403
Transcriber

April 9, 2022
Date