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6 **UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
7 **SAN FRANCISCO DIVISION**

8 IN RE NATIONAL SECURITY AGENCY )  
TELECOMMUNICATIONS RECORDS )  
9 LITIGATION (M:06-cv-1791) )

Case No. 07-cv-00693-JSW

10 This Document Relates to: )  
11 VIRGINIA SHUBERT, NOHA ARAFA, )  
SARAH DRANOFF and HILARY )  
12 BOTEIN, individually and on behalf of all )  
others similarly situated, )  
13 Plaintiffs, )

**UNOPPOSED MOTION FOR  
CLARIFICATION OF JULY 8, 2013  
ORDER (DOC. #95)**

14 -against - )  
15 BARACK OBAMA, et al., )  
16 Defendants. )  
17

No Hearing Requested  
Courtroom 11, 9<sup>th</sup> Floor  
The Honorable Jeffrey S. White

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1 **NOTICE OF MOTION AND MOTION**

2 PLEASE TAKE NOTICE that plaintiffs Virginia Shubert, Nohan Arafa, Sarah Dranoff and  
3 Hilary Botein will and hereby do move the Court, pursuant to Civil Local Rule 7-11 and Federal  
4 Rule of Civil Procedure 60(a), for clarification of the Court’s Order of July 8, 2013 (“the Order”)  
5 (Dkt. #95). The government defendants do not oppose this motion. Plaintiffs respectfully seek to  
6 have the Court clarify one issue:

7 The introduction and conclusion of the Order state that all of Plaintiffs’ statutory claims are  
8 dismissed, appearing to include those against the personal-capacity defendants. Dkt. # 95, 2:24-25  
9 and 24:8-10. However, the claims against the individual defendants in their personal capacities  
10 were not dismissed. Plaintiffs respectfully request that the introduction and conclusion of the  
11 Order be modified to reflect this fact.

12 Plaintiffs seek this clarification based on this Notice of Motion and Motion and the  
13 Memorandum of Points and Authorities below.

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 Federal Rule of Civil Procedure 60(a) allows a court to correct a clerical mistake or a  
16 mistake arising from oversight or omission whenever one is found in a judgment, order, or other  
17 part of the record. Plaintiffs seek clarification of one issue in the court’s order of July 8, 2013.

18 Plaintiffs’ complaint states claims against three classes of defendants: the United States,  
19 government officers in their official capacities, and government officers in their personal  
20 capacities.<sup>1</sup> The personal-capacity defendants did not move to dismiss or participate in the briefing  
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22 <sup>1</sup> Keith Alexander, Michael Hayden, Alberto Gonzales, and John Ashcroft are all sued in their  
23 personal capacity. 06-md-01791 MDL Dkt. #771 (Second Amended Complaint); Dkt. #43 at 3-4  
24 (clarifying capacities of defendants in light of change of Administration); Dkt. #43-4 (DOJ  
25 counsel’s acceptance of service of complaint on behalf of Alexander, Hayden, Gonzales and  
26 Ashcroft in their individual capacities). Hayden, Gonzalez, and Ashcroft did not move to dismiss,  
27 and Alexander moved to dismiss solely in his official capacity. Dkt. #69 (Government’s Notice of  
28 Motion). The personal capacity defendants are represented by different DOJ counsel (James  
Whitman) than the counsel representing the government entities and the official-capacity  
defendants. All three of plaintiffs’ statutory claims (counts #1-3) were brought against all four  
personal capacity defendants. 06-md-01791 MDL Dkt. #771.

1 on the cross-motions for summary judgment. The Court did not grant the Government's motion to  
2 dismiss the case based on the state secrets privilege.

3 The introduction and conclusion of the Order, however, state that all of Plaintiffs' statutory  
4 claims are dismissed, appearing to include those against the personal-capacity defendants. Dkt.  
5 #95, 2:24-25 and 24:8-10. Plaintiffs respectfully request that the introduction and conclusion of the  
6 Order be modified to reflect that the claims against the individual defendants in their personal  
7 capacities (Alexander, Hayden, Gonzales and Ashcroft) have not been dismissed. The claims  
8 against the personal-capacity defendants are count 2 (Wiretap Act) and count 3 (Stored  
9 Communications Act) in their entirety, and the claims against individual defendants in their  
10 personal capacities that are part of count 1 (FISA).

11 Dated: July 16, 2013

12  
13 EMERY CELLI BRINCKERHOFF  
& ABADY LLP

14  
15 By: s/ Ilann M. Maazel  
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# Exhibit A

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Case No. 07-cv-00693-JSW

10 This Document Relates to: )

**[PLAINTIFFS' PROPOSED] ORDER**  
**CLARIFYING JULY 8, 2013 ORDER**  
**(Dkt. #95)**

11 VIRGINIA SHUBERT, NOHA ARAFA, )  
SARAH DRANOFF and HILARY )  
12 BOTEIN, individually and on behalf of all )  
others similarly situated, )

13 Plaintiffs, )

14 -against - )

15 BARACK OBAMA, et al., )

16 Defendants. )  
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**[PLAINTIFFS' PROPOSED] ORDER**

Having considered the pleadings and arguments in this matter, and good cause appearing, this Court hereby Orders:

1) The introduction and conclusion of the July 8, 2013 Order (Dkt. #95) be modified to reflect that counts 1, 2, and 3 have not been dismissed.

2) The introduction and conclusion of the July 8, 2013 Order (Dkt. #95) be modified to reflect that the claims against the individual defendants in their personal capacities have not been dismissed. These are counts 2 and 3 in their entirety, and count 1 to the extent it states claims against individual defendants in their personal capacities.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Hon. Jeffrey S. White  
United States District Judge