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Via E-mail, Facsimile and U.S. Mail

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Washington, D.C. 20535-0001

Mr. John Parker
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Mr. Wilbur M. "Jay" Gregory, Jr.
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Dallas, Texas 75220-5220

Re: Gamal Abdel-Hafiz v. ABC, Inc., et al.

Dear John and Jay:

This is to follow up on the recent deposition of FBI Special Agent Gamal Abdel-Hafiz who has sued my clients (various media defendants) as well as current and former FBI special agents. If Mr. Abdel-Hafiz's testimony is to be believed it is apparent that there are many documents which have not been produced by your agencies and which go to the heart of the plaintiff's claims and my clients' defenses. The following list is without prejudice to a request for further documents when, and if, we become aware of them. It is also not meant to absolve the DOJ and the FBI from its continuing discovery obligations pursuant to the subpoena which was served by the media defendants.

Austin

Dallas

Fort Worth

Houston

Richardson

San Angelo

San Antonio

As you know, the defendants are not seeking any affirmative relief and are merely responding to the allegations made by one of your agents relating directly to his duties with the FBI. If there is

any intrusion on the work of the agency and the department it is not of our making but rather the result of actions taken by a current special agent. Here are the documents we seek:

1. **POLICY OF THE DALLAS OFFICE REGARDING CONSENSUAL RECORDING OF TERRORISM SUSPECTS.**

By consensual recording I mean a recording where the agent is taping the conversation but the subject is unaware of the taping. Mr. Abdel-Hafiz testified that in the Dallas office international terrorism unit it was the policy not to do consensual monitoring on international terrorism suspects as late as 1999 (and perhaps even today). As Mr. Abdel-Hafiz put it, "we don't do consensual monitoring on international terrorism squad." (P. 58)¹. When further inquiry was made at the deposition, Mr. Abdel-Hafiz attributed this policy to his superior Ron Patton. (P. 60). It is of course highly relevant to this lawsuit if the Dallas office FBI international terrorism unit had a policy not to do consensual recording of ANY terrorism suspects, not just Muslims. If that were true, one element of Mr. Abdel-Hafiz's claims in this case might be advanced because his refusal to secretly tape Muslim suspects would be the product of FBI policy. If there was such a policy, FBI regulations would require it to be reduced to writing. Either the policy or the absence of it go to the heart of the claims and defenses in this case. We ask that you provide all documents relating to this policy or confirm that no such policy existed.

2. **DOCUMENTS RELATING TO MR. ABDEL-HAFIZ'S REFUSAL TO TAPE INTERNATIONAL TERRORISM SUSPECT AND NOW CRIMINAL DEFENDANT SAMI AL-ARIAN.**

The case agent on the Al-Arian investigation, Barry Carmody, has publicly stated that Mr. Abdel-Hafiz refused to consensually record a terrorism suspect, which I am certain is Mr. Al-Arian, when requested by Mr. Carmody. I have reason to believe that Mr. Abdel-Hafiz's refusal was documented by Mr. Carmody by Airtel or Teletype, sent to FBI Headquarters, and to the Dallas, Tampa and possibly Chicago offices of the FBI in 1998 and again in 2000. Mr. Abdel-Hafiz claims to have documented this incident as well. In his deposition, he said that "I did the paperwork" (P. 58) on the Carmody request. He says that his supervisor refused to authorize the taping. He says that decision was later reversed and "I did the paperwork all over again." (P. 59). He says that Mr. Garrity signed the paperwork. He also says that he "wrote a communication to Mr. Carmody, and I sent him a copy of the tape (of Al-Arian's secretary)." (P. 59). Mr. Abdel-Hafiz says that, contrary to Mr. Carmody's accusations, he was always willing to secretly tape Sami Al-Arian although he admits that he "never got a call back" from Mr. Al-Arian after leaving a message with the secretary and never pursued

¹ All page cites are to the rough draft of Mr. Hafiz's deposition which we enclose herewith.

the interview. (P. 61). Obviously, there seems to be a substantial number of documents which Mr. Abdel-Hafiz claims predate the June 30, 1998 Form 302 which you produced for us and which was introduced into evidence as Exhibit 2 to the Abdel-Hafiz deposition. There also seem to be documents after that date. The Carmody complaint about Abdel-Hafiz may have pre-dated the 302 although it may have post-dated it. As you can tell from the pleadings I have previously furnished you in connection with the deposition, these documents go to the heart of the claims and defenses in this case. Would you kindly produce them?

3. DOCUMENTS RELATING TO MR. ABDEL-HAFIZ'S REFUSAL TO TAPE INTERNATIONAL TERRORISM SUSPECT IN THE VULGAR BETRAYAL INVESTIGATION.

I am advised that Assistant Attorney General Mark Flessner, along with as many as two other AUSA's, sent a communication to FBI Headquarters as well as the Dallas and Chicago FBI offices complaining of Mr. Abdel-Hafiz's refusal to tape Muslim suspects in this terrorism investigation. Mr. Abdel-Hafiz counters by saying at his deposition that "I was ordered not to wear the recording device". (P. 79). We have not seen either this order or the communication from the AUSAs in the Northern District of Illinois complaining about Mr. Abdel-Hafiz's refusal to obey their order. Please produce all the documents.

4. MR. ABDEL-HAFIZ'S REFUSAL, UNDER INSTRUCTION, TO ANSWER THE QUESTION WHETHER HE HAS EVER SECRETLY RECORDED A MUSLIM SUSPECT.

Mr. Abdel-Hafiz testified, without objection, that "Let me add that and please permit me to say that working international terrorism, all my subjects were Muslims." (P. 96). Yet when I attempted to ask whether Mr. Abdel-Hafiz has ever secretly taped (consensually monitored) a Muslim suspect you refused to let him answer. (P. 45-46). If all his suspects are Muslims then how many of them prior to the dates of the media broadcasts had he secretly taped, who were they and under what circumstances? I do not speak for agents Wright and former agent Vincent but as you know they are contesting jurisdiction and have not engaged in merits discovery. They are the ones who made the accusation that Mr. Abdel-Hafiz refused to record a fellow Muslim. As such, they may have to negate the Plaintiff's claim of falsity of the underlying statement. If the FBI/DOJ refuses this critical evidence it seems as if the agency is choosing one agent (the plaintiff) over the other (the defendants). I have reviewed your regulations and find no support for this apparent conflict. Please advise whether you will reconsider and permit Mr. Abdel-Hafiz to answer these questions.

5. MR. ABDEL-HAFIZ'S FAILED OR INCONCLUSIVE POLYGRAPH EXAMINATIONS AND THE NAMES OF THE OPERATORS.

As you know, Mr. Abdel-Hafiz revealed that he has failed one FBI polygraph examination (about his insurance fraud situation) and failed to pass (inconclusive) two others. He blames the failed exam on an operator who, he says, "set him up for failure" by intentionally raising his blood pressure prior to the test. The two inconclusive exams were cited by your agency as an excuse for the failed exam and were used to justify reinstatement following Mr. Hafiz's termination for insurance fraud. This whole incident is critical to our case for two reasons. First, the insurance fraud allegation and subsequent action by the FBI (calling Mr. Abdel-Hafiz home from Saudi Arabia and then terminating him) is important to the Plaintiff's claim of damage to his reputation allegedly caused by the media broadcasts. It is also important because the Plaintiff is claiming that his wife fabricated these allegations, the FBI accepted the accusations, and then made it look like he was being recalled and then terminated related to the Muslims don't tape Muslims allegation and not the insurance fraud allegation. Please produce these documents.

6. MR. ABDEL-HAFIZ'S REFUSAL TO ANSWER QUESTIONS ABOUT HIS "LONG TIME FRIEND" ABBAS EBRAHIM AND EXHIBITS 10-12.

As you may recall, I asked Mr. Abdel-Hafiz several questions about Mr. Ebrahim who I believe is quoted and referred to in Exhibit 10, a document produced to us by the FBI/DOJ (P. 104-106). This document is one of the documents relating to the refusal to tape a Muslim in the Vulgar Betrayal Investigation. He was not permitted to answer questions as to whether Mr. Ebrahim and another Muslim, Solomon Bihieri, were suspects of the investigation, whether he was asked to tape them and whether he refused. Despite stating that he knows the contents of the redacted portions of the documents, he was either instructed or chose not to reveal the contents. An example of the lack of fairness to the defendants occurs at P. 124 where the document seems to suggest that Mr. Abdel-Hafiz alone made the decision not to secretly tape the Muslim terrorism suspect. I ask him, quoting the document: Q: So this was your decision alone? A. No, it was not my decision. Q. That's what it (the document Ex 11) says, though. A. No, no, no. No, no, no. I have to explain this." Mr. Abdel-Hafiz goes on to provide his explanation without objection. It is not fair to deprive the defendants from access to the complete document and allow the Plaintiff to interpret the document from his claimed superior knowledge whenever the document as redacted seems to support the defendants' position. Please produce all your documents in unredacted form.

7. DOCUMENTS FROM MR. ABDEL-HAFIZ ADVISING THE FBI THAT HIS LONG TIME FRIEND WHO WAS EMPLOYED BY A TARGET,

SUSPECTED TERRORIST ORGANIZATION WAS APPLYING FOR A POSITION WITH THE FBI.

Mr. Abdel-Hafiz testified that he knew his long time friend, who I believe to be Mr. Ebrahim, was employed by a target terrorist organization and had a pending application for employment with the FBI. Mr. Abdel-Hafiz says he warned the FBI of this fact "on several occasions". (P. 142). We have not been provided any of these documents if they exist.

8. FOURTH AGENT ALLEGEDLY CLAIMING THAT MR. ABDEL-HAFIZ REFUSED TO SECRETLY RECORD A MUSLIM.

Mr. Abdel-Hafiz testified that a fourth agent may have claimed that he (Abdel-Hafiz) refused to secretly record a Muslim, but that this was investigated by the EEO officer who obtained a sworn statement from the agent. Mr. Abdel-Hafiz refused to name this agent and you have not provided the document if it exists. (P. 154). Please provide the name of the agent as well as the document.

9. ALLEGATIONS OF RACISM OR ETHNIC HATRED DIRECTED BY SPECIAL AGENT WRIGHT.

When asked to recite the evidence to support Plaintiff's contention that Special Agent Wright made his allegations about Mr. Abdel-Hafiz because Agent Wright was "motivated solely by racism or by ethnic hatred" Mr. Abdel-Hafiz responded that "I cannot give you the evidence." (P. 155). We ask that he be permitted to list the evidence in detail.

10. ATTACHMENT TO EXHIBIT 17.

We asked for the attachment to Exhibit 17 which is Mr. Abdel-Hafiz's statement to ABC which he drafted, but which he says he was not permitted to send. We asked for a copy of that and there did not seem to be an objection so we would request a search and response. (P. 173).

11. INFORMATION FROM THE PRESS OFFICE TO ABC.

Mr. Abdel-Hafiz admits that the statement sent to ABC was false and that his reason for refusing to record the Muslim suspect was NOT because it was to take place in a mosque. (P. 180). He claims that the release had already been sent to ABC by the time he informed the press office that the release was inaccurate. We would like documents from the press office relating to this topic.

12. DOCUMENTS RELATING TO PRESSURE FROM ABC OR FOX TO THE FBI TO TERMINATE MR. ABDEL-HAFIZ.

I don't think you will find any documents from ABC or Fox pressuring the FBI to terminate Mr. Abdel-Hafiz. But, if there are any, I would like them. If there aren't, I would like confirmation of that. Mr. Abdel-Hafiz testified that there are some and pressure was exerted and that Mike Kortan would be able to provide the information. (P. 194). In advance of his deposition, I would like the documents or a representation of the absence of them.

13. MR. ABDEL-HAFIZ'S JOB PERFORMANCE AND ELIGIBILITY FOR PROMOTION.

Mr. Abdel-Hafiz says that "you can contact the FBI and they would find out who will provide evidence". His theory seems to be that but for the ABC and Fox broadcasts that he would be making more money at the FBI and would have a more senior and responsible position. Would you suggest a witness to either support, refute or comment on that claim? (P. 201-202).

14. LETTERS OF COMMENDATION. POSITIVE EMPLOYMENT EVALUATIONS.

There are a number of documents you have produced like Exhibit 27. It praises Mr. Abdel-Hafiz in connection with a "highly sensitive intelligence matter." When I attempted to discuss the details of this matter you blocked any questioning. I understand your rationale, but it would be unfair to the defendants to allow the plaintiff to claim that he was a highly decorated agent and then block all inquiry into the circumstances of those alleged positive reviews. Would FBI/DOJ reconsider on this point?

Thank you for considering these issues and I want to make it clear that both Bob Latham and I appreciate your professionalism and courtesy in dealing with, I am sure, a very difficult issue for your clients. I know you appreciate that we are only trying to properly defend our clients while at the same time accommodating as many of your concerns as possible.

Finally, I would ask you (your clients really) to consider that openness is truly in the best interest of the FBI. Consider that there are allegations here (made almost entirely by Mr. Abdel-Hafiz) that (i) an FBI agent in the Chicago office sent anonymous material to Mr. Abdel-Hafiz helpful to his case and detrimental to the case of a fellow Chicago agent; (P. 81). (ii) that an FBI supervisor advocated in writing that Mr. Abdel-Hafiz sue a fellow agent; (P. 187). (iii) that your Dallas office had a policy of not allowing its agents to secretly record terrorism suspects in the years prior to 9-11-01 and perhaps beyond; (P. 58). (iv) that the FBI recalled Mr. Abdel-Hafiz from Saudi Arabia and allowed the impression to be created that it was because of the Muslim allegations as opposed to the insurance fraud issue; (P. 208, 261-62). (v) that the FBI knowingly gave ABC false information as to Mr. Abdel-Hafiz's reason for not recording the suspected

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Muslim terrorist (the mosque issue); (P. 181). (vi) that there were documented disagreements between Chicago and Tampa on the one hand and Dallas on the other about the appropriateness of secretly recording terrorism suspects including the now indicted and tried Sami Al-Arian; (P. 56-60). (vii) that an FBI polygraph operator set Mr. Abdel-Hafiz up to cause him to fail his exam on the insurance fraud issue and two other operators were unable to get a positive result from a Abdel-Hafiz exam; (P. 28). (viii) that the FBI reinstatement order listed the supposedly uncorroborated testimony of Mr. Abdel-Hafiz's ex-wife when her testimony was corroborated by physical evidence, i.e., the allegedly stolen items; (P. 259) and (ix) the admission by Mr. Abdel-Hafiz that he received \$13,000.00 of the insurance proceeds from a claim he now believes to be fraudulent, but that he has no present plans to return the money with interest to the defrauded insurance company. (P. 255). Only complete candor and transparency on the part of the Bureau and DOJ can possibly answer these allegations made by a current special agent and allow us to defend this case properly.

Thank you again for your continued cooperation. We will be in touch soon about FBI witnesses we would like to depose.

Very truly yours,



Charles L. Babcock

clb/cp