

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ABUKAR HASSAN AHMED,	:	CASE NO. 2:10-cv-00342
Plaintiff,	:	Electronically Filed
	:	District Judge: George C. Smith
	:	Magistrate Judge: Mark R. Abel
v.	:	
ABDI ADEN MAGAN,	:	
Defendant.	:	

PLAINTIFF’S MOTION FOR RULE 37 SANCTIONS AGAINST DEFENDANT MAGAN

Pursuant to Federal Rule of Civil Procedure 37, Plaintiff Abukar Hassan Ahmed (“Plaintiff”) hereby moves for an order (1) entering evidentiary sanctions against Defendant Abdi Aden Magan (“Defendant”) and (2) compelling Defendant to pay the reasonable expenses Plaintiff’s counsel incurred due to Defendant’s failure to attend his scheduled deposition, in the amount of \$882.39, plus interest. Plaintiff reserves the right, pursuant to Rule 37(b)(2)(A)(vi)-(vii), to seek (1) attorney’s fees, (2) that Defendant be held in contempt of court, and/or (3) default judgment.

With respect to entering evidentiary sanctions, Plaintiff respectfully requests the following:

That the Court deem the following facts as established:

- (1) Defendant Magan was the Chief of the Department of Criminal Investigation of the National Security Service (“NSS”) from 1988 to 1990, and Mohamed Jibril Muse was his immediate superior.
- (2) As Chief of the Department of Criminal Investigation of the NSS, Defendant Magan had command authority over NSS officers and members of the Somali armed forces working in the NSS Department of Criminal Investigation.
- (3) The NSS Department of Criminal Investigation maintained a jail at its headquarters in Mogadishu. The NSS Department of Criminal Investigation conducted interrogations at the NSS headquarters in Mogadishu as well as at detention facilities throughout Somalia, including the interrogation center in Mogadishu referred to as Godka, and the Mogadishu Central Prison.
- (4) During his tenure as Chief of the Department of Criminal Investigation, Defendant Magan was aware of the prisoners brought into the detention and interrogation facilities at the NSS headquarters in Mogadishu.
- (5) Interrogations by the NSS Department of Criminal Investigation from 1988 to 1990 were conducted by NSS agents or officers operating under Defendant Magan’s command.
- (6) Interrogations at the NSS Headquarters were reported to Defendant Magan in his capacity as Chief of the Department of Criminal Investigation.
- (7) NSS interrogation procedures included the systematic abuse of prisoners, including but not limited to threats of death, beatings, sleep deprivation, food deprivation, sense deprivation (through constant exposure to light or blindfolding), tying or cuffing in stress

positions, simulated drowning through pouring large quantities of water and sand into a prisoner's mouth, and sexual abuse, including squeezing a prisoner's testicles with metal instruments. This abuse was reported to Defendant Magan by NSS agents conducting interrogations under his command.

(8) NSS detentions frequently were not reported or documented to the National Security Court.

(9) The following individuals worked at the NSS under Defendant Magan's command: Abdullahi Ismail Ciro, Abdullahi Agojid, Abdirashid Yasin, Hussein Sufi Derow, Mohamoud Hagi Farah Igal, Mohamed Abdi, Antar, Deeq, and Hassan Ga'al.

That the Court draw an adverse inferences from Defendant's failure to respond or failure to supplement, under this Court's order, his responses to Plaintiff's requests for production numbered 18, 20, 21, 22, 24, 25, 26, and 27, his failure to supplement Defendant's deficient responses to Plaintiff's interrogatories numbered 5, 6, 9, 13, 15, and 16, his failure to respond at all to Plaintiff's interrogatories numbered 21-25, and Defendant's failure to attend his scheduled deposition.

That in the event that Defendant maintains that he possesses no relevant information or responsive documents or fails to altogether respond to the Court's Orders and Plaintiff's outstanding discovery requests by June 29, 2012, that Defendant be prevented from using any information or document not-yet-produced in any response he might file to Plaintiff's case-dispositive motions or at trial.

Plaintiff respectfully moves for these sanctions for the reasons set forth in the memorandum of law within.

Dated: June 19, 2012

Respectfully submitted,

/s/ Kenneth Cookson

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR
RULE 37 SANCTIONS AGAINST DEFENDANT**

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I INTRODUCTION

Despite Plaintiff's numerous good faith attempts to complete discovery in this case, Defendant has refused to comply with his discovery obligations or to cooperate with Plaintiff. He has ignored no fewer than five Court orders and, in violation of one of those orders and his discovery obligations under Federal Rules of Civil Procedure, Rule 30(g), failed to attend his deposition. He has not produced a single document to date. He has supplied incomplete responses to Plaintiff's First Set of Interrogatories. And he has refused to respond to Plaintiff's Second Set of Interrogatories. This conduct has prevented Plaintiff from effectively preparing his case and has increased the cost of litigation. Given Defendant's noncompliance with Court Orders, and his demonstrated ability to respond had he chosen to, Plaintiff respectfully requests that the Court issue evidentiary sanctions against the Defendant and order Defendant to pay costs incurred by his conduct. Plaintiff reserves the right to move for contempt and/or default judgment, which would also be appropriate in the circumstances.

II STATEMENT OF FACTS

Since the outset of this case, and prior to his alleged departure to Kenya, Defendant has failed to provide adequate responses to Plaintiff's reasonable discovery requests. Plaintiff has made numerous attempts to contact Defendant and repeatedly has sent letters explaining the meaning of Defendant's discovery obligations – to no avail. This Court has issued as many as five discovery orders and yet Defendant continues to resist compliance with his duty to disclose evidence. (Dkt. Nos. 73, 75, 76, 81, 83, 84, 85).

The following is an abbreviated list of some of the many instances of Defendant's non-compliance with Court orders and his discovery obligations. The list is non-exhaustive:

1. On December 16, 2011, the Court ordered that Defendant advise the Court and Plaintiff within 28 days on how he intended to proceed, with counsel or *pro se*. (Dkt. No. 73). Defendant filed a motion for extension on January 20, 2012 and informed the Court that he would be in Kenya. (Dkt. No. 74). Although Plaintiff had informed Defendant that there would be a case management conference on January 23, 2012, (K. Cookson letter to A. Magan, January 19, 2012, Exh. 1 to Declaration of Christina Hioureas submitted herewith in Support of Plaintiff's Motion for Rule 37 Sanctions Against Defendant Magan, hereafter "Hioureas Decl."), Defendant failed to attend and instead called into the conference number fifteen minutes late and after the conference call had ended. When Plaintiff's counsel offered to call the Magistrate Judge again, Defendant hung up the telephone. (Affidavit of C. Hioureas, Exhibit G, Dkt. No. 79). This confirmed that Defendant had, in fact, received Plaintiff's communications. That was the last time to date that Defendant has communicated with Plaintiff.
2. In light of Defendant's persistent refusal to respond to Plaintiff, this Court stated in the January 24, 2012 Status Conference Order that "while defendant Magan is representing himself, plaintiff's counsel must be able to reliably contact him and he must timely respond to communications from them." (Dkt. No. 75). The Court reiterated this order in the February 16, 2012 Scheduling Order (Dkt. No. 76), yet Defendant has continued to violate the Court's orders.
3. On another occasion, on March 29, 2012, the Court directly ordered the Defendant to confirm with Plaintiff no later than April 3, 2012 that he intended to attend his deposition, as required under the Federal Rules of Civil Procedure. (Dkt. No. 81).

Defendant did not confirm with Plaintiff that he would attend in spite of numerous attempts by Plaintiff to contact him and, ultimately, Defendant did not attend his deposition. (Attempted Deposition Transcript of A. Magan, April 10, 2012, Exh. 2 to Hioureas Decl.). Because Defendant failed to inform Plaintiff that he would not attend his deposition, Plaintiff's counsel expended considerable resources not only in preparation to take the deposition, but also to fly to Columbus, Ohio and take lodging there. (Letter from C. Hioureas to A. Magan, April 11, 2012, Exh. 3 to Hioureas Decl.). Moreover, Defendant was aware of his duties towards the Court and Plaintiff, such as attending his deposition, because he had been a party in a personal injury lawsuit, in which he attended his deposition. (Deposition of A. Magan in *Magan v. Voans Capital Park Ltd., et al.*, April 30, 2009, and Docket *Magan v. Voans Capital Park Ltd., et al.*, Exh. 4 to Hioureas Decl.).

4. Following Plaintiff's attempts to have Defendant sign a confidentiality stipulation, this Court entered a Protective Order for Plaintiff's medical records on April 27, 2012. (Dkt. No. 83). However, Defendant has so far failed to provide Plaintiff with a manner of producing sensitive records in accordance with the protective order, including expert medical and psychiatric reports. (*See Plaintiff's Motion for an Order Compelling Defendant to Acknowledge the Protective Order and to Provide Instructions for Production in Compliance Thereof*, Dkt. No. 86, pending).
5. On May 22, 2012, this Court granted Plaintiff's motion to compel Defendant to produce documents responsive to Plaintiff's requests for production numbered 18, 20, 21, 22, 24, 25, 26, and 27 and to supplement Defendant's deficient responses to Plaintiff's interrogatories numbered 5, 6, 9, 13, 15, and 16. (Dkt. No. 84). The Court

- issued a supplemental order on May 24, 2012 ordering that the Defendant comply no later than June 8, 2012. (Dkt. No. 85). To date, Defendant has not complied with the Court's Order. (Hioureas Decl. at para. 6).
6. In order to obtain information regarding facts that could not be gathered when Defendant failed to sit for his deposition, Plaintiff served upon Defendant a Second Set of Interrogatories on May 24, 2012. (Exh. 5 to Hioureas Decl.). On June 7, 2012, Plaintiff sent Defendant a letter reminding Defendant of his obligation to comply with this Court's Discovery Order and to respond to Plaintiff's Second Set of Interrogatories. (Exh. 6 to Hioureas Decl.). To date, Defendant has failed to respond. (Hioureas Decl. at para. 6).
 7. On a number of occasions, Plaintiff has notified Defendant – both via mail and e-mail – of Plaintiff's intention to seek sanctions against him for non-compliance with these obligations. For example, on April 11, 2012, Plaintiff wrote to Defendant regarding his failure to attend his deposition and put Defendant on notice that Plaintiff reserved the right to request sanctions, including default judgment. (Letter from C. Hioureas to A. Magan, April 11, 2012, Exh. 3 to Hioureas Decl.).
 8. Then, following the Court's May 22, 2012 Order to compel production of discovery (Dkt. No. 84, 85), Plaintiff wrote to Defendant explaining the meaning of the Discovery Order and notifying Defendant that Plaintiff may opt to seek sanctions if Defendant fails to comply with the Court Order. (Letter from C. Hioureas to A. Magan, May 23, 2012, Exh. 7 to Hioureas Decl.).

Defendant's actions in other civil matters demonstrated his understanding of his obligations in civil litigation and his ability to meaningfully participate his cases and respond to similar discovery requests. Although Defendant failed to attend his deposition in this case, he was actively involved in a personal injury suit before this Court where he submitted to a deposition on April 30, 2009, (*Magan v. Voans Capital Park Ltd., et al*, Exh. 4 to Hioureas Decl.), and in a worker's compensation claim "from when he worked with the Limited." (Defendant's Responses to Plaintiff's First Set of Interrogatories, No. 18). Moreover, Defendant was willing and able to communicate to his counsel in the prosecution of his personal injury suit during his stay in Kenya in November 2011, when the two sides negotiated and eventually reached a settlement on that case, while at the same time was unresponsive in this case. (*Id.*)

Even though Plaintiff has repeatedly notified Defendant of his duties to comply with each Court Order and informed him of his potential for sanctions due to non-compliance (Dkt. Nos. 73, 75, 76, 81, 83, 84, 85), Defendant has persisted in his defiance of this Court's authority and his discovery obligations. Defendant's non-compliance has precluded Plaintiff's access to evidence and made litigation more costly than it would have been had Defendant cooperated in good faith.

III ARGUMENT

Defendant's repeated violations of Court orders and the Federal Rules of Civil Procedure have needlessly delayed the discovery process and hindered Plaintiff's preparation of his case. The appropriate remedy for Defendant's actions is evidentiary sanctions pursuant to Rule 37(a)-(d) of the Federal Rules. In addition, Defendant should bear the reasonable expenses caused by his actions. Plaintiff reserves the right, pursuant to Rule 37(b)(2)(A)(vi)-(vii), to seek (1) attorneys fees, (2) that the Defendant be held in contempt of court and/or (3) default judgment.

As Plaintiff has previously highlighted, Plaintiff resides in a foreign country and occasionally travels to Africa. This has not impeded his ability to participate in his case and comply with his discovery obligations. (Dkt. 72). Additionally, it is not consistent with the interest of justice or judicial efficiency to permit a defendant to avoid his discovery obligations and excuse compliance with Court orders whenever a defendant chooses to travel abroad in the midst of a pending lawsuit. (*Id.*). If that were permitted, a defendant could use foreign travel strategically to prolong the case, disrupt the schedule and generally prevent the timely and just resolution of this action.

A. Evidentiary Sanctions Are Warranted To Address Defendant's Disregard For Discovery Obligations

Federal Rules of Civil Procedure, Rules 30, 33, and 34 provide that a litigant must attend his duly noticed deposition, answer interrogatories, and answer requests for production properly propounded by the opposing party. Rule 26(e) provides the circumstances under which a litigant must supplement his responses, including when required to do so by a court order. Failure to comply with these obligations exposes a party to sanctions under Rule 37. *See* CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *Federal Practice and Procedure* § 2460 (3d. ed. 2008).

1. *Facts Within the Scope of Unanswered Discovery Requests Should be Deemed Established, and Defendant Should be Precluded From Introducing These Matters in Evidence*

Federal Rule of Civil Procedure, Rule 37(b)(2)(A)(i)-(ii) provides:

(A) If a party . . . fails to obey an order to provide or permit discovery . . . the court where the action is pending may issue further just orders. They may include the following:

(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence

Under Rule 37(d)(1):

[T]he court where the action is pending may, on motion, order sanctions if (i) a party . . . fails, after being served with proper notice, to appear for [her] deposition; or (ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.¹

Rule 37(d)(3) provides that “[s]anctions may include any of the orders listed in Rule 37(b)(2)(A)(i)–(vi).” Similarly, under Rule 37(c)(1)(C), if a party fails to supplement its disclosures or responses, “the court, on motion and after giving an opportunity to be heard . . . may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)–(vi).”

a. Deeming Facts Within The Scope Of The Unanswered Discovery Requests is Proper in this Case

The Supreme Court has emphasized that the sanctions under Rule 37 “must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.” *NHL v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 643 (1976).

In considering whether to impose Rule 37(b) sanctions, the Sixth Circuit has identified four factors a district court should consider: (1) whether the party’s failure to cooperate with

¹ A motion for sanctions under Rule 37(d) must be accompanied by the movant’s certification that it “has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.” Fed. R. Civ. P. 37(d)(2). Plaintiff has made numerous good faith attempts to confer with Defendant regarding the discovery issues addressed in this motion, as described above and in the Declaration of Christina Georgia Hioureas in Support of Plaintiff’s Motion for Rule 37 Sanctions Against Defendant Magan.

discovery is due to willfulness, bad faith, or fault; (2) whether the moving party was prejudiced by the failure to provide the requested discovery; (3) whether the disobedient party was aware of the potential for sanctions; and (4) whether less drastic sanctions should be imposed. *Reg'l Refuse Sys., Inc. v. Inland Reclamation Co.*, 842 F.2d 150, 154-55 (6th Cir. 1988); *Bass v. Jostens*, 71 F.3d 237, 241 (6th Cir. 1995).

i. Defendant's failure to cooperate with discovery is due to willfulness, bad faith, or fault

A party acts sufficiently willfully for sanctions when it “has the ability to comply with a discovery order and does not.” *Taylor v. Medtronics*, 861 F.2d 980, 985 (6th Cir. 1988) (citing *Reg'l Refuse Sys. Inc.*, 842 F.2d at 154). In *Taylor*, the plaintiff failed to make an expert witness available for deposition even though the witness had indicated his availability. The district court sanctioned the plaintiff by striking the affidavit of the expert witness. *Id.* at 986. The Sixth Circuit ruled that the district court did not abuse its discretion in imposing sanctions because the “plaintiffs had the ability to comply with the court’s discovery orders, but failed to do so.” *Id.* at 987.

Here, Defendant’s failure to cooperate with discovery is similarly willful. Defendant has refused to comply with at least five Court orders to provide, permit, or otherwise participate in discovery. Defendant has disregarded these obligations despite a clear ability to cooperate as demonstrated by his filing of his January 20, 2012 Motion for Extension of Time and Notice of Intent to Represent Self as well as Defendant’s call to Plaintiff’s counsel after the January 23, 2012 Case Management Conference. In accordance with the standard identified in *Taylor*, Defendant’s failure to comply with the Court’s discovery orders is sufficiently willful to justify sanctions. *See id.* at 987.

ii. Plaintiff was prejudiced by Defendant's failure to provide the requested discovery

Plaintiff has been prejudiced by Defendant's failure to cooperate in discovery. In *Taylor*, the court found the moving party's inability to engage in further discovery and incurrence of additional legal expenses to constitute material prejudice justifying sanctions. *Id.* at 986. Here, as in *Taylor*, Plaintiff has been unable to establish through discovery, information needed to prepare his case. Additionally, Defendant's conduct has significantly increased the cost of litigation for Plaintiff.

iii. Defendant was aware of the potential for sanctions

Plaintiff has notified Defendant numerous times that Plaintiff will seek sanctions against Defendant for his failure to cooperate (Exhs. 3, 6-7 to Hioureas Decl.).² Additionally, the Court notified Defendant in its March 29, 2012 Order of the possibility of imposing sanctions, including default judgment. (Dkt. 81). All communications to Defendant were sent via mail to his US address and via e-mail, which Defendant's counsel assured this Court is "the most reliable method to get documents to [Defendant] in a timely manner." (Dkt. 70).

iv. The requested sanctions are proportional to Defendant's misconduct

The Supreme Court has recognized that the requested sanctions are proper against a party that fails to comply with discovery orders. *Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 709 (1982). In *Insurance Corp.*, the sanctioned party disregarded repeated court orders to comply with discovery requests. *Id.* at 707. The Court held that a

² Plaintiff warned Defendant that if he failed to respond to Plaintiff's Second Set of Interrogatories, Plaintiff would seek court order to compel him to do so. (C. Hioureas letter to A. Magan, June 7, 2012, Exh. 6 to Hioureas Decl.). Plaintiff now realizes that an additional order would be a waste of judicial resources since Defendant so far has ignored all discovery requests and Court orders to comply with the same since he began representing himself. The potential for sanctions could not have been made clearer to Defendant.

party's "failure to supply the requested information . . . supports the presumption that the refusal to produce evidence . . . was but an admission of the want of merit in the asserted defense." *Id.* at 709 (citing *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 351 (1909)). It, therefore, took as established the facts that the moving party sought to establish through discovery. *Id.*

The Sixth Circuit recently held that a district court did not abuse its discretion in imposing such evidentiary sanctions on defendants who had disobeyed three discovery requests and a discovery order. *Fencorp, Co. v. Ohio Kty Oil Corp.*, 675 F.3d 933, 942 (6th Cir. 2012). The Northern District of Ohio explained that "the defendants failed to even investigate the existence of documents that would have been responsive to discovery requests. The Court does not impose sanctions lightly. The underlying misconduct, however, warrants it." *Id.* at 938. The district court sanctioned the defendants by finding, as a matter of law, facts that rendered their defense void. *Id.* The Sixth Circuit affirmed that the defendants' failure to comply with a court order warranted the sanction of deeming facts established, even though the sanction would impede the defendants' defense. *Id.* at 942.

Here, Defendant's conduct has been more egregious than that of the sanctioned defendants in *Fencorp*. For nearly two years, Plaintiffs have sought Defendant's cooperation in discovery, first through letters, emails, and phone calls, and finally through formal motions before this Court. (Hioureas Decl.). Defendant has chosen to ignore this Court's orders compelling discovery, including not only a refusal to be deposed but a refusal to inform Plaintiff that he would not attend his deposition, also in defiance of this Court's order.

Overall, the circumstances of this case amply satisfy the factors identified by the Sixth Circuit for levying Rule 37(b) sanctions. *See Reg'l Refuse Sys., Inc.*, 842 F.2d at 154-55.

Therefore, Plaintiff respectfully asks this Court to deem matters within the scope of the unanswered discovery requests established, as detailed below.

b. Facts To Be Deemed Established

Plaintiff's unanswered or deficiently answered interrogatories pertain to the following subjects:

- Defendant's role in National Security Service (hereinafter, "NSS") detentions and interrogations (Interrogatory No. 5);
- Operations and reporting procedures related to NSS Department of Investigations detentions (Interrogatory No. 5);
- Individuals under Defendant's command authority (Interrogatory No. 6);
- The NSS Department of Investigation's treatment of its detainees (Interrogatory No. 9);
- NSS investigation procedures (Interrogatory No. 13)
- NSS rules and procedure for detaining civilians (Interrogatory No. 15);
- The function of the National Security Court and its relationship to the NSS (Interrogatory No. 16); and
- Defendant's knowledge of specific NSS personnel working under Defendant's command (Interrogatory No. 25).

These questions also would have been put to Defendant had he attended his deposition.

Plaintiff now asks this Court to direct that the following designated facts be taken as established for the purposes of the action and that Defendant may not oppose them or introduce evidence to oppose them in response to any future dispositive motion from Plaintiff or at trial:

- i. Defendant Magan was the Chief of the Department of Criminal Investigation of the NSS from 1988 to 1990, and Mohamed Jibril Muse was his immediate superior. See Defendant's Response to Plaintiff's Interrogatories Nos. 2; 13.***

Defendant responded to Interrogatory No. 2 that he worked for the Department of Criminal Investigation at the NSS and that Mohamed Jibril Muse, the Commander of the NSS, was his immediate superior, but he failed to provide his title in this response. However, in response to Interrogatory No. 13, Defendant stated that he served as Chief of the Department of Criminal Investigations from 1988 to 1990. It is fair for the Court to deem established the allegations of paragraphs 7-8, 17, 31, 57-59 of the Complaint that Defendant Magan was the Chief of the Department of Criminal Investigation of the NSS from 1988 to 1990, and Mohamed Jibril Muse was his immediate superior. (Dkt. 1).

- ii. As Chief of the Department of Criminal Investigation of the NSS, Defendant Magan had command authority over NSS officers and members of the Somali armed forces working in the NSS Department of Criminal Investigation. See Defendant's Response to Plaintiff's Interrogatories Nos. 6, 13.***

Defendant failed adequately to respond to Interrogatory No. 6, asking for a list of persons that worked under Defendant during his tenure as Chief of the Department of Criminal Investigations. However, in response to Interrogatory No. 13, Defendant described his immediate superior as having the power to order investigations, and he described himself as having the power to refuse the detention of a man named Osman Hassan Ali Atto by the Department of Criminal Investigation. It is fair for the Court to deem established the allegations of paragraphs 8-9, 31, 35, 36-37, 57-63, 74-76, 81, 83, 85, 91-92 of the Complaint that Defendant's position within the chain of command was one step below the head of the NSS and above NSS officers or other members of the Somali armed forces working in the NSS Department of Criminal Investigations, having command authority over them. (Dkt. 1).

iii. The NSS Department of Criminal Investigation maintained a jail at its headquarters in Mogadishu. The NSS Department of Criminal Investigation conducted interrogations at the NSS headquarters in Mogadishu as well as at detention facilities throughout Somalia, including the interrogation center in Mogadishu referred to as “Godka,” and the Mogadishu Central Prison. See Defendant’s Response to Plaintiff’s Interrogatories Nos. 5, 9.

Defendant inadequately responded to Plaintiff’s Interrogatory No. 5, regarding Defendant’s responsibilities relating to the NSS prison and the types of detainees held in the NSS headquarters, however Defendant acknowledged in his response that the NSS Department of Criminal Investigations maintained a jail at its headquarters. Defendant further responded that he did not work at the other interrogation centers or detention facilities but that agents of the Department of Criminal Investigations would question people at the central jail “temporarily similar to a law enforcement station.” Defendant inadequately responded to Plaintiff’s Interrogatory No. 9 regarding the treatment of detainees at the NSS Prison. In response, Defendant acknowledged that there were interrogation rooms in the headquarters of the NSS Department of Criminal Investigation. It is fair for the Court to deem established the allegations of paragraphs 33, 35-36, 74 of the Complaint that the NSS Department of Criminal Investigation interrogated people at these facilities, including the one housed at its headquarters. (Dkt. 1).

iv. During his tenure as Chief of the Department of Criminal Investigation, Defendant Magan was aware of the prisoners brought into the detention and interrogation facilities at the NSS headquarters in Mogadishu. See Defendant’s Response to Plaintiff’s Interrogatories Nos. 9, 15.

Defendant failed to respond adequately to Interrogatory No. 15, which asked for the documentation and reporting procedure for civilians detained by NSS forces and brought into the interrogation facilities at the NSS headquarters in Mogadishu. Defendant also failed to respond to how NSS officers in the interrogation facilities would report information about detainees to the Defendant in his capacity as Chief of the NSS Department of Investigations. Moreover,

Defendant claimed in his response that there were only six interrogation rooms in the NSS Investigation headquarters. It is fair for the Court to deem established the allegations of paragraphs 8-9, 31, 35-37, 57-63, 74-76, 81, 83, 85, 91-92 of the Complaint that as Chief of the NSS Department of Investigations, Defendant was aware of the individuals detained in the NSS investigation headquarters in Mogadishu. (Dkt. 1).

v. Interrogations by the NSS Department of Criminal Investigation from 1988 to 1990 were conducted by NSS agents or officers operating under Defendant Magan's command. See Defendant's Response to Plaintiff's Interrogatories Nos. 2, 5, 6, 9, 13.

Defendant has admitted to being Chief of the NSS Department of Criminal Investigation at the NSS. (Def. Response to Plaintiff's Interrogatory No. 13). However, Defendant failed to respond to questions regarding his role in operating the interrogation facilities held within the headquarters of the NSS department he was in charge of and refused to provide a list of individuals working under his command. *See* Def. Response to Interrogatory Nos. 5, 6, and 9. Defendant further refused to supplement his response to Interrogatory No. 13 requesting a list of individuals with authority to order an investigation. Instead, Defendant claimed incompletely that the Commander of the NSS, General Mohamed Jibril, had the authority to order an investigation. However, Defendant states that he had the authority to prevent detentions by the NSS. *See* Def. Response to Plaintiff's Interrogatory No. 13. It is fair for the Court to deem established the allegations of paragraphs 8-9, 31, 35-37, 57-63, 74-76, 81, 83, 85, 91-92 of the Complaint that Defendant's position within the chain of command was one step below the head of the NSS and above NSS officers or other members of the Somali armed forces working in the NSS Department of Criminal Investigations, having command authority over them, including over their interrogations. (Dkt. 1).

vi. Interrogations at the NSS Headquarters were reported to Defendant Magan in his capacity as Chief of the Department of Criminal Investigation. See Defendant's Response to Plaintiff's Interrogatories No. 9.

Plaintiff's Interrogatory No. 9 requested information on how often information obtained from questioning was reported to Defendant in his capacity as Chief of the NSS Department of Investigations. Defendant failed to provide information on how information was reported to him. Defendant's failure to attend his deposition further denied Plaintiff the opportunity to examine Defendant in detail about this inquiry. It is fair for the Court to infer from Defendant's silence on the point that these interrogations were indeed reported to Defendant, as alleged in paragraphs 8-9, 31, 35-37, 57-63, 74-76, 81, 83, 85, 91-92 of the Complaint. (Dkt. 1).

vii. NSS interrogation procedures included the systematic abuse of prisoners, including but not limited to threats of death, beatings, sleep deprivation, food deprivation, sense deprivation (through constant exposure to light or blindfolding), tying or cuffing in stress positions, simulated drowning through pouring large quantities of water and sand into a prisoner's mouth, and sexual abuse, including squeezing a prisoner's testicles with metal instruments. This abuse was reported to Defendant Magan by NSS agents conducting interrogations under his command. See Defendant's Responses to Plaintiff's Interrogatories Nos. 2, 5, 9, 13.

Plaintiff sought information on NSS interrogation techniques and reporting procedures through Interrogatories Nos. 2, 5, 9, and 13. Defendant failed to provide information on his role and responsibility within the NSS and did not provide information on the NSS units under his authority. Defendant also failed to provide information on interrogation techniques, how often individuals were questioned, and how information was reported to him. In addition, Defendant failed to include information on NSS investigation procedures, documentation and reporting procedures. Defendant's failure to attend his deposition further denied Plaintiff the opportunity to examine Defendant in detail about these matters. It is fair for the Court to infer from Defendant's silence on these points that the procedures Plaintiff alleges were used against him in interrogations were indeed used by NSS agents under Defendant's command and that these

interrogations were reported to Defendant, as alleged in paragraphs 34-40, 72-78, 81-87, 90-94 of the Complaint. (Dkt. 1).

viii. NSS detentions frequently were not reported or documented to the National Security Court. See Defendant's Responses to Plaintiff's Interrogatories Nos. 15, 16.

Plaintiff Interrogatory No. 15 requested all facts regarding the NSS procedure for detaining a civilian for security related offenses in the NSS prison. Plaintiff Interrogatory No. 16 requested all facts known about the National Security Court, including information related to collaboration between the NSS prison and the National Security Court. Defendant's response was inadequate, stating only that the court had the authority to order continued detention and that the National Security Court issued warrants for arrest and prosecuted defendants. Defendant failed to provide information on documenting and reporting detentions and on the collaboration between the NSS and the National Security Court. Defendant's failure to attend his deposition further denied Plaintiff the opportunity to examine Defendant in detail about these matters. It is, therefore, fair for the Court to deem established the allegations of paragraphs 57-63, 73-76, 81-85, 90-92 of the Complaint that such reports to the National Security Court were frequently omitted. (Dkt. 1).

ix. The following individuals worked at the NSS under Defendant Magan's command: Abdullahi Ismail Ciro, Abdullahi Agojid, Abdirashid Yasin, Hussein Sufi Derow, Mohamoud Hagi Farah Igal, Mohamed Abdi, Antar, Deeq, and Hassan Ga'al. See Defendant's Response to Plaintiff's Interrogatories No.2, 5-8, 21-25.

Plaintiff's Interrogatory No. 2 requested Defendant to identify his immediate subordinates. Defendant's response failed to provide any information on his immediate subordinates for any position. In response to Plaintiff Interrogatory No. 6, specifically requesting the identify of NSS officers who worked under Defendant's authority within the NSS

prison, Defendant stated that Abdullahi Ismail Ciro, Colonel Abdullahi Agojid, and Colonel Abdirashid Yasin worked at the Department of Criminal Investigation.

Defendant also failed to respond adequately to Plaintiff's Interrogatory Nos. 7 and 8, providing none of the information requested on the relationship between Defendant and Hussein Sufi Derow and Defendant and Mohamoud Haji Farah Igal. However, Defendant did state in his response to Plaintiff's Interrogatory No. 7 that Hussein Sufi Derow was a Lieutenant and member of the NSS who was "training to be an investigator in approximately 1988" Therefore, it is fair for the Court to deem established that Defendant exercised command responsibility over Hussein Sufi Derow.

Additionally, in his response to Plaintiff's Interrogatory No. 8, Defendant stated that Mohamed Haji Farah Igal reported to Colonel Abdirashid Yasin: "Mohamed Haji Farah Igal was a Lieutenant and a member of the National Security Service. He was a case investigator. His superior was Col. Abdirishid Yasin." Therefore, it is fair for the Court to deem established that Defendant exercised command responsibility over both Colonel Yasin and Lieutenant Mohamed Haji Farah Igal.

Moreover, Plaintiff's Interrogatories Nos. 21-25 requested all facts known about Mohamed Abdi, Antar, Deeq, and Hassan Ga'al. Defendant has failed to respond to these interrogatories entirely. Defendant's failure to attend his deposition further denied Plaintiff the opportunity to examine Defendant in detail about these matters. It is fair for the Court to deem established the allegations of paragraphs 8-9, 31, 35-37, 57-63, 74-76, 81, 83, 85, 91-92 of the Complaint that these individuals were Defendant's subordinates. (Dkt. 1).

In accordance with Rule 37(b)(2)(A)(ii), Defendant also should be precluded from introducing witnesses or evidence opposing these facts.

c. Adverse Inferences May Be Drawn From Defendant's Failure To Participate In Discovery

Each of the facts Plaintiff asks the Court to deem established represents a reasonable and fair inference from Plaintiffs' unanswered requests and Defendant's inadequate, unsupplemented, or nonexistent responses. The Supreme Court has held that "the failure of a defendant in a civil case to testify or offer other evidence within his ability to produce and which would explain or rebut a case made by the other side, may, in a proper case, be considered as a circumstance against him and may raise a presumption that the evidence would not be favorable to his position." *United States v. Roberson*, 233 F.2d 517, 519 (5th Cir. 1956) (citing *Local 167 Int'l Brotherhood of Teamsters v. United States*, 291 U.S. 293 (1934)).

The Sixth Circuit has also supported such sanction in a case where it found that the party's "egregious failure to comply with discovery orders supports a powerful adverse inference about the strength of plaintiffs' case." *Tech. Recycling Corp. v. City of Taylor*, 186 F. App'x 624, 638 (6th Cir. 2006). This Court has found that "[a]bsent exceptional circumstances, courts generally do not . . . permit an adverse inference without consideration of whether the party acted in bad faith." *Owner-Operator Indep. Drivers Ass'n v. Comerica Bank*, No. 05-CV-0056, 2012 WL 936208, at *20 (S.D. Ohio Mar. 20, 2012) (citing *In re Nat'l Century Fin. Enters., Inc. Fin. Inv. Litg.*, No. 2:03-md-1565, 2009 U.S. Dist. LEXIS 68379 (S.D. Ohio July 16, 2009)).

Here, Defendant's bad faith is revealed by his persistently defiant conduct. Although he was aware of the pending procedure and his duty to communicate and cooperate with Plaintiff during discovery, Defendant has failed to participate in discovery in any way since January 2012. The Court should, therefore, draw adverse inferences (as above) from Defendant's failure to respond or failure to supplement, under this Court's order, his responses to Plaintiff's requests for production numbered 18, 20, 21, 22, 24, 25, 26, and 27, his failure to supplement Defendant's

deficient responses to Plaintiff's interrogatories numbered 5, 6, 9, 13, 15, and 16, his failure to respond at all to Plaintiff's interrogatories numbered 21-25, and Defendant's failure to attend his scheduled deposition.

2. *Non-Disclosed Evidence Must Be Excluded*

a. Exclusion Is Mandatory

Federal Rule of Civil Procedure, Rule 26(e) provides:

(1) A party who . . . has responded to an interrogatory, request for production, or request for admission—must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

According to Rule 37(c)(1), “[i]f a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.”

The preclusion of evidence not disclosed in a timely manner or when ordered by the court is mandatory. *Vance v. United States*, No. 98-5488, 1999 WL 455435, at *4 (6th Cir. June 25, 1999); *Dickenson v. Cardiac & Thoracic Surgery of E. Tenn.*, 388 F.3d 976, 983 (6th Cir. 2005); *see also Bowe v. CONRAIL*, No. 99-4091, 2000 WL 1434584, at *2-4 (6th Cir. Sept. 19, 2000). In *Vance*, the plaintiff failed to file a supplemental affidavit until five months after the deadline. The court concluded that the plaintiff's deliberate disobedience of discovery deadlines and the defendant's inability to obtain the information could not be considered harmless. *Id.* at *5. Therefore, the court ruled that the District Court did not abuse its discretion in excluding the

plaintiff's supplemental evidence, noting that Rule 37(c)(1) contemplates strict adherence to discovery requirements and harsh sanctions for breaches of this rule. *Id.* at *4, *6.

Here, Defendant similarly has demonstrated deliberate and unjustifiable disregard for his discovery obligations. He has failed to supplement his responses to Plaintiff's First Set of Interrogatories and Plaintiff's Document Requests, comply with the Court Order compelling him to supplement his responses, or respond to Plaintiff's Second Set of Interrogatories. As in *Vance*, Defendant's conduct cannot be considered harmless as the absence of this information has hindered Plaintiff's ability to prepare his case.

Defendant has failed to supplement responses to interrogatories and requests for production as ordered by this Court on May 22, 2012, in violation of Rule 26(e)(1)(B). As set out above, Defendant's failure was willful, unjustified, and has resulted in harm to Plaintiff.

Therefore, the Court should order that Defendant be precluded from introducing any evidence or witness Defendant did not produce in response to Plaintiff's requests to supplement, as detailed below.

b. Evidence To Be Excluded

Because Defendant has failed to identify or produce any documents responsive to Plaintiff's Requests for Production (Nos. 18, 20, 21, 22, 24, 25, 26, and 27) in accordance with this Court's order, he must be precluded from using any documents responsive to these requests in support of a motion, at hearing, or at trial. Fed. R. Civ. P. 37(c)(1).

In addition, because Defendant has failed to supplement his responses to Plaintiffs' First Set of Interrogatories (Nos. 5, 6, 9, 13, 15, and 16) and Plaintiff's Second Set of Interrogatories (Nos. 21-25), Defendant must be precluded from using information or witnesses to supply evidence on a motion, at hearing, or at trial responsive to these requests to the extent not already provided.

3. An Evidentiary Hearing Is Not Required

This Court has held that “the court can consider such questions [of discovery sanctions] on written submissions as well as on oral hearings.” *JPMorgan Chase Bank, N.A. v. Neovi, Inc.*, No. 2:06-cv-0095, 2007 WL 1875928, at *6 (S.D. Ohio June 20, 2007); *see also* Local Rule 7.1(a). It is indeed clearly established that Defendant is not entitled to an evidentiary hearing before the Court awards sanctions, as long as Defendant is given an opportunity to submit briefs and affidavit to the Court. *Johnson v. Cleveland Heights/University Heights School Dist. Bd. Of Ed.*, No. 94-3523, 1995 WL 527365, at *3 (6th Cir. Sept. 6, 1995); *Big Rapids Mall Assocs. v. Mut. Trust Life Ins. Co.*, 98 F.3d 926, 929 (6th Cir. 1996); *see also* *Paladin Assocs. v. Mont. Power Co.*, 328 F.3d 1145, 1164 (9th Cir. 2003); *Langley ex rel. Langley v. Union Elec. Co.*, 107 F.3d 510, 515 (7th Cir. 1997).

Therefore, in light of Defendant’s stubbornly rebellious conduct and the costs already incurred by Plaintiff’s *pro bono* counsel in travelling to Ohio for the deposition Defendant did not attend, and given that no fact will be elicited in a hearing that could not be established in a brief, Plaintiff respectfully requests that this Court does not hold an evidentiary hearing, but instead give Defendant the opportunity to submit a brief in opposition to this Motion for Sanctions.

B. Monetary Sanctions Are Warranted Against Defendant

Federal Rule of Civil Procedure, Rule 37(b)(2)(C) requires payment by the disobedient party of the reasonable expenses caused by the failure to comply with a court order, unless the failure was substantially justified or the award of expenses would be unjust. Similarly, Rule 37(d)(3) requires the payment of the expenses due to a party’s failure to attend his deposition, unless the failure was substantially justified or the award of expenses would be unjust.

Additionally, Rule 37(c) provides for payment of the reasonable expenses for failure to provide information or identify a witness as required by Rule 26(e).

The Sixth Circuit held that a court must look at the record to verify that the disobedient party's failure to obey was "substantially justified" "or that a fee award would [not] be unjust." *Tech. Recycling Corp.*, 186 F. App'x at 638.

The record in this case supports an order for fees and expenses. Defendant's contumacious conduct has caused Plaintiff's counsel to issue four discovery motions to compel his cooperation. (Motion to Compel Defendant to Confirm his Attendance at His Deposition, Dkt. 81; Motion for Protective Order, Motion to Compel Defendant to Supplement His Responses to Plaintiff's First Set Interrogatories and Document Requests, Dkt. Nos. 84, 85; and Plaintiff's Motion for an Order Compelling Defendant to Acknowledge the Protective Order and to Provide Instructions for Production in Compliance Thereof, Dkt. No. 86, pending). Plaintiff's counsel also incurred travel and lodging expenses in travelling to Ohio for Defendant's scheduled deposition, which Defendant unjustifiably failed to attend.

Defendant's failure to comply is not justified because Defendant was aware of and had the capacity to comply with the Court's orders. It is the duty of a *pro se* defendant to know the procedural rules to which he is subject. *Family Resorts of Am., Inc. v. Zimmerman*, No. 91-4127, 1992 WL 174539, at *3 (6th Cir. July 24, 1992) ("mere *pro se* status will not excuse a failure to respond properly to discovery requests") (see *Bank One of Cleveland v. Abbe*, 916 F.2d 1067, 1069 (6th Cir. 1990); see also *Ward v. Am. Pizza Co.*, No. 2:11-cv-575, 2012 WL 1034177, at *7 (S.D. Ohio Mar. 22, 2012) ("[W]hile *pro se* litigants may be entitled to some latitude when dealing with sophisticated legal issues, acknowledging their lack of formal training, there is no

cause for extending this margin to straightforward procedural requirements that a layperson can comprehend as easily as a lawyer.”) (citing *Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991)).

Indeed, Defendant was aware of his obligation to comply with Court Orders because he had been represented by counsel in the past. Moreover, Defendant was aware of his duties towards the Court and Plaintiff, such as attending his deposition, because he had been a party in a worker’s compensation suit in which he attended his deposition. (Exh. 4 to Hioureas Decl.). Defendant had the capacity to comply with the court orders, as demonstrated by his motion to stay the proceedings in January 20, 2012 and his call to Plaintiff on January 23, 2012. (Hioureas Decl.).

Further, an award of fees and expenses would not be unfair. Defendant was warned on numerous occasions that sanctions could be awarded against him if he persisted in not cooperating. *See e.g.* March 29 Discovery Order, Exhs. 3, 6-7.

Therefore, in accordance with Rule 37 as well as the Court’s inherent powers to sanction the bad faith of a party in the conduct of discovery, Plaintiff is entitled to monetary compensation for the expenses associated with preparing four motions to compel Defendant to comply with discovery as well as preparing this Motion for Sanctions. However, due to Defendant’s refusal to participate in the discovery process, Plaintiff has been unable to obtain information regarding Defendant’s assets. Plaintiff notes that in November 2011, Defendant did settle the personal injury claim he prosecuted. Because Plaintiff does not have information on Defendant’s financial condition, as a gesture of conciliation, Plaintiff only requests that the Court order Defendant to pay the transportation and lodging costs Plaintiff’s *pro bono* counsel incurred out of pocket in attending the deposition Defendant failed to attend in Columbus, Ohio, amounting to \$882.39. (Exh. 8 to Hioureas Decl.). Plaintiff reserves the right to request

attorney's fees (and damages) once Plaintiff has obtained further information regarding Defendant's assets. Accordingly, Plaintiff's requested expenses are reasonable and should be granted as a monetary sanction against Defendant.

Plaintiff further notes that contempt sanctions would also be appropriate in these circumstances.³ The same holds true for a default judgment sanction.⁴ However, in an effort to first pursue a lesser sanction, Plaintiff instead reserves the right, pursuant to Rule 37(b)(2)(A)(vi)-(vii), to seek (1) attorneys fees, (2) that Defendant be held in contempt of court and/or (3) default judgment.

³ This Court is vested with the power to punish contempt of its authority under Fed. R. Civ. P. 37(b)(2)(A)(vii) as well as under 18 U.S.C. § 401, which provides that "[a] court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority . . . [as] (3) Disobedience or resistance to its lawful writ, process, order, rule, decree or command." *U.S. v. Conces*, 507 F.3d 1028, 1041 (6th Cir. 2007). Additionally, Civ. R. 45(E) provides that "The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii)." Here, over the course of the last six months, Defendant's overt dereliction of his duty towards this Court has been evidenced not only by his pattern of non-communication with the Court and Plaintiff but also by his failure to comply with no fewer than five Court orders and one subpoena. In the circumstances, the sanction of contempt would be justified, as Defendant has refused to comply with Court orders, which express in clearer language Defendant's obligations.

⁴ Courts have found that default judgment is an appropriate sanction for a party's failure to comply with discovery orders. *Bank One of Cleveland v. Abbe*, 916 F.2d 1067, 1079 ("if a party has the ability to comply with a discovery order and does not . . . entry of default, is not an abuse of discretion.") (citing *Reg'l Refuse Sys. v. Inland Reclamation Co.*, 842 F.2d 150, 154 (6th Cir. 1988)); see also *In re Family Resorts of Am., Inc. v. Zimmerman*, No. 91-4127, 1992 WL 174539 at *4 (6th Cir. July 24, 1992) (holding that default judgment was appropriate for a party's failure to respond to discovery requests).

IV CONCLUSION

For the reasons stated herein, in accordance with Rule 37, Plaintiff respectfully requests that the Court (1) enter evidentiary sanctions detailed above and (2) order Defendant to pay the reasonable expenses Plaintiff's counsel incurred due to Defendant's failure to attend his scheduled deposition, in the amount of \$882.39, plus interest.

Plaintiff reserves the right, pursuant to Rule 37(b)(2)(A)(vi)-(vii), to seek (1) attorneys fees, (2) that Defendant be held in contempt of court and/or (3) default judgment.

Dated: June 19, 2012

Respectfully submitted,

/s/ Kenneth Cookson
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***Attorneys for Plaintiff
Abukar Hassan Ahmed***

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June, 2012, I electronically transmitted the foregoing PLAINTIFF'S MOTION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR DISCOVERY SANCTIONS, DECLARATION OF CHRISTINA GEORGIA HIOUREAS IN SUPPORT OF MOTION FOR DISCOVERY SANCTIONS, AND A PROPOSED ORDER with the Clerk of the Court using the CMJECF system for filing and Notice of Electronic Filing of the Motion to the following CMJECF registrants:

John J. Stark
U.S. Attorney's Office
303 Marconi Blvd, Suite 200
Columbus, OH 43215

Judson O Littleton
U.S. Department of Justice
20 Massachusetts Ave N.W. #7124
Washington, DC 20520

and to the Defendant via **Email and Express Mail:**

Abdi Aden Magan
3183 Pendleton Court
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aamagan@hotmail.com

Dated: June 19, 2012

/s/ Kenneth Cookson

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Attorney for Plaintiff
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**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ABUKAR HASSAN AHMED, :

CASE NO. 2:10-cv-00342

Plaintiff,

: **Electronically Filed**

v.

: District Judge: George C. Smith
Magistrate Judge: Mark R. Abel

:

ABDI ADEN MAGAN,

: **DECLARATION OF
CHRISTINA GEORGIA HIOUREAS
IN SUPPORT OF PLAINTIFF'S
MOTION FOR RULE 37 SANCTIONS
AGAINST DEFENDANT MAGAN**

Defendant.

:

State of New York)
) :ss.:
County of New York)

Pursuant to 28 U.S.C. § 1746, I, Christina Georgia Hioureas, declare the following:

1. I am over eighteen years of age and am otherwise qualified to testify to the facts set forth below. All of the facts rendered herein are based upon my personal knowledge.
2. I am an associate with the law firm of Latham & Watkins LLP, counsel for Plaintiff, Abukar Hassan Ahmed. I submit this Declaration in Support of Plaintiff's Motion for Rule 37 Sanctions Against Defendant Abdi Aden Magan ("Defendant" or "Mr. Magan").
3. As detailed in Plaintiff's Memorandum of Law and in the documents submitted herewith, Plaintiff has met its obligations under Fed. R. Civ. Proc. 37(a)(1) and

S.D. Ohio Civ. R. 37.1 to meet and confer in an effort to resolve any outstanding discovery disputes.

4. For nearly two years, Plaintiff has sought Defendant's cooperation in discovery, first through letters, emails, and phone calls and finally through formal motions before this Court (see the accompanying Memorandum of Law submitted in Support of Plaintiff's Motion for Rule 37 Sanctions Against Defendant Magan).
5. On May 22, 2012, this Court granted Plaintiff's motion to compel Defendant to produce documents responsive to Plaintiff's requests for production numbered 18, 20, 21, 22, 24, 25, 26, and 27 and to supplement Defendant's deficient responses to Plaintiff's interrogatories numbered 5, 6, 9, 13, 15, and 16. (Dkt. No. 84). The Court issued a supplemental order on May 24, 2012 ordering that the Defendant comply no later than June 8, 2012. (Dkt. No. 85).
6. To date, Defendant has not complied with the Court's Order, and as demonstrated by Defendant's motion to stay the proceedings on January 20, 2012 (Dkt. No. 74), along with Defendant's call to Plaintiff on January 23, 2012 fifteen minutes after the case management conference had ended (detailed below), Defendant has the capacity to comply with the Court's Orders, and has failed to respond.
7. On January 23, 2012, the Court held a case management conference. Plaintiff had provided Defendant with these call-in details well in advance of the call in Plaintiff's January 19, 2012 letter to Defendant. A true and correct copy of the January 19, 2012 letter from K. Cookson to A. Magan is attached hereto as **Exhibit 1.**

8. Despite this notice and the fact that Defendant filed a motion to stay the proceedings two days prior, Defendant failed to attend the conference call. Defendant called into the attorney conference call number about fifteen minutes late and after the call had ended. The attorneys present on the call, including myself, informed Mr. Magan that the call had ended, but that we would try to get the Magistrate Judge back on the phone. Defendant then hung up the phone.
9. On March 29, 2012, the Court directly ordered the Defendant to confirm with Plaintiff no later than April 3, 2012, that he intended to attend his deposition. (Dkt. No. 81). Plaintiff made numerous attempts to contact Defendant informing him of his discovery obligation to attend his scheduled deposition. Defendant failed to respond to Plaintiff's communications, and ultimately did not attend his deposition. A true and correct copy of the April 10, 2012, Attempted Deposition Transcript of A. Magan is attached hereto as **Exhibit 2**.
10. Defendant's failure to inform Plaintiff of his absence from his scheduled deposition, regardless of the numerous attempts by Plaintiff to contact him, caused me and my employer, Latham & Watkins LLP, to expend considerable resources not only in preparation for the scheduled deposition, but also to fly to and lodge in Columbus, Ohio. Plaintiff informed Defendant of this in my April 11, 2012 letter to Defendant. I also noted in this letter that Plaintiff reserved the right to request sanctions, including default judgment, for Defendant's continued noncompliance with his discovery duties. A true and correct copy of the April 11, 2012, letter from C. Hioureas to A. Magan is attached hereto as **Exhibit 3**. The Court, in its March 29, 2012 Discovery Order (Dkt. No. 81), also put Defendant


on notice that sanctions up to and including default judgment could be entered for his failure to attend his deposition.

11. Defendant was aware of his discovery duties towards the Court and Plaintiff, including deposition attendance, because on April 30, 2009, as a party in a personal injury lawsuit, Mr. Magan succeeded in attending his deposition. Defendant was able to meaningfully participate in the prosecution of this case, as demonstrated by the parties' settlement of the case in November 2011. A true and correct copy of the April 30, 2009 Deposition of A. Magan in *Magan v. Voans Capital Park Ltd., et al* and Docket *Magan v. Voans Capital Park Ltd., et al.*, (case settlement) is attached hereto as **Exhibit 4**.
12. Since Plaintiff was unable to obtain information from Defendant regarding facts due to Defendant's lack of attendance at his scheduled deposition, Plaintiff served upon Defendant a Second Set of Interrogatories on May 24, 2012. A true and correct copy of Plaintiff's May 24, 2012 email to Defendant serving Plaintiff's Second Set of Interrogatories is attached hereto as **Exhibit 5**.
13. On June 7, 2012, Plaintiff sent Defendant a letter reminding Defendant of his obligation to comply with the Court's Discovery Order and to respond to Plaintiff's Second Set of Interrogatories. In this letter, I further provided notice to Defendant that Plaintiff would seek sanctions for Defendant's continued noncompliance with Defendant's discovery obligations. To date Defendant has failed to respond. A true and correct copy of the June 7, 2012, letter from Plaintiff to Defendant is attached hereto as **Exhibit 6**.

14. On numerous occasions Defendant was notified of the Court's Discovery Order and Defendant's obligations to comply with the Order. One such occasion was on May 23, 2012, when Plaintiff wrote to Defendant explaining the meaning of the Court's Discovery Order and notifying Defendant that Plaintiff may opt to seek sanctions if Defendant fails to comply with the Court Order. A true and correct copy of the May 23, 2012 letter from Plaintiff to Defendant is attached hereto as **Exhibit 7.**
15. Plaintiff's counsel has incurred considerable expenses due to Defendant's noncompliance with Defendant's discovery duties. These expenses include attorney time and the out of pocket transportation and lodging costs for the April 10, 2012 scheduled deposition that Defendant failed to attend, and despite multiple opportunities to do so, Defendant failed to inform Plaintiff of his absence. A true and correct copy of the transportation and lodging receipts associated with the April 10, 2012 scheduled deposition are attached hereto as **Exhibit 8.**

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of June 2012


Christina Georgia Hioureas

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ABUKAR HASSAN AHMED,	:	CASE NO. 2:10-cv-00342
Plaintiff,	:	
v.	:	Electronically Filed
	:	District Judge: George C. Smith
	:	Magistrate Judge: Mark R. Abel.
	:	
ABDI ADEN MAGAN,	:	
Defendant.	:	

**EXHIBITS IN SUPPORT OF
DECLARATION OF CHRISTINA GEORGIA HIOUREAS IN SUPPORT OF
PLAINTIFF'S MOTION FOR RULE 37 SANCTIONS AGAINST DEFENDANT MAGAN**

Exhibit 1: January 19, 2012, letter from Plaintiff to Defendant regarding case management conference scheduled for January 23, 2012.

Exhibit 2: April 10, 2012, Attempted Deposition Transcript of A. Magan in *Ahmed v. Magan*.

Exhibit 3: April 11, 2012, letter from Plaintiff to Defendant regarding Defendant's failure to attend his scheduled deposition and notice to Defendant that Plaintiff reserved the right to request sanctions, including default judgment, against Defendant.

Exhibit 4: April 30, 2009, Deposition of A. Magan in *Magan v. Voans Capital Park Ltd., et al.* and Docket *Magan v. Voans Capital Park Ltd., et al.*, (case settled).

Exhibit 5: May 24, 2012, email from Plaintiff to Defendant serving Plaintiff's Second Set of Interrogatories and letter to Defendant regarding his deficient discovery.

Exhibit 6: June 7, 2012, letter from Plaintiff to Defendant reminding Defendant of his obligation to comply with the Court's Discovery Order and to respond to Plaintiff's Second Set of Interrogatories.

Exhibit 7: May 23, 2012, letter from Plaintiff to Defendant explaining the Court's May 22, 2012 Discovery Order.

Exhibit 8: Transportation and lodging receipts for expenses incurred by Plaintiff's counsel for the April 10, 2012 scheduled deposition.

Exhibit 1: January 19, 2012 letter from Plaintiff to Defendant regarding case management conference scheduled for January 23, 2012

STEPHEN C. BARSOTTI
DANIEL J. BENNETT
MARY F. BRENNING
JOHN P. BRODY
ERIN C. CLEARY
ROBERT G. COHEN
KENNETH R. COOKSON
KACIE N. DAVIS
ERIC D. DUFFEE
CATHRYN R. ENSIGN**
BRENDAN P. FEHELEY
LAWRENCE F. FEHELEY
KATHERINE C. FERGUSON
LORIANN E. FUHRER
DONALD W. GREGORY
ALLEN L. HANDLAN
PAUL R. HESS
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CHARLES J. KEGLER
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RASHEDA Z. KHAN
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TRACI A. McGUIRE
VINITA B. MEHRA
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BRIAN C. POLIS**
JEFFREY D. PORTER
REBECCA R. PRICE
CHRISTY A. PRINCE
MARK R. REITZ
PAUL D. RITTER, JR.
JEFFREY D. ROBERTS
RICHARD W. SCHUERMANN, JR.

KEGLER BROWN
HILL & RITTER
A LEGAL PROFESSIONAL ASSOCIATION

ROBERT G. SCHULER
THOMAS J. SIGMUND
ANDREW J. SONDERMAN
S. MARTIJN STEGER
GEOFFREY STERN
JEFFREY W. STUTNER
ROGER P. SUGARMAN
KEVIN L. SYKES
JEREMIAH E. THOMAS
ERIC B. TRAVERS
STEVE TUGEND
TIMOTHY T. TULLIS
STEPHANIE P. UNION
CHRISTOPHER J. WEBER
MELVIN D. WEINSTEIN
NICHOLAS E. WILKES
MICHELLE H. WONG HALABI
MICHAEL E. ZATEZALO

OF COUNSEL
LUIS M. ALCALDE
RALPH E. BREITFELLER
ANTONIO C. FIORE
ROBERT D. MAROTTA
TED M. McKINNISS*
RANDALL W. MIKES
S. MICHAEL MILLER
ANEEZAL H. MOHAMED
DAVID M. WILSON

*Resident in Marion Office
**Resident in Cleveland Office

January 19, 2012

Via Email and U.S. Mail

Abdi Aden Magan
3183 Pendleton Court
Columbus, Ohio 43249
aamagan@hotmail.com

Re: *Ahmed v. Magan*, Case No. 2:10-cv-342

Dear Mr. Magan:

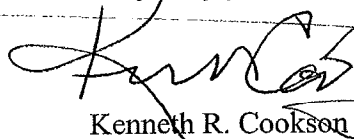
The United States District Court, through Magistrate Judge Abel has scheduled a telephone pretrial conference for Monday, January 23, 2011, at 11:00 a.m. Columbus time. To participate in this conference, please use the following telephone number:

866-664-1072
Participant Code: 6144625445#

I invite you or your new counsel to participate in this telephone pretrial conference.

Thank you very much for your attention to this matter.

Very truly yours,



Kenneth R. Cookson

KRC/ee

cc: Christine Hioureas, Esq. (Christina.Hioureas@lw.com)
Jeff Donnellon (jrd@columbuslegalhelp.com)

Capitol Square • Suite 1800 • 65 East State Street • Columbus, Ohio 43215-4294
Telephone: (614) 462-5400 • Facsimile (614) 464-2634 • www.keglerbrown.com

Exhibit 2: April 10, 2012 Attempted Deposition Transcript of A. Magan

ABDI ADEN MAGAN
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

~~~~~

ABUKAR HASSAN AHMED,

Plaintiff,

vs. Case No. 2:10-cv-342

ABDI ADEN MAGAN,

Defendant.

~~~~~

Attempted deposition of
ABDI ADEN MAGAN

April 10, 2012

9:14 a.m.

Taken at:

Kegler, Brown, Hill & Ritter, LPA
65 East State Street, Suite 1800
Columbus, Ohio

Kimberly A. Kaz, RPR, Notary Public

Job No. 48380

1 ABDI ADEN MAGAN

2 APPEARANCES:

3
4 On behalf of the Plaintiff:

5 Latham & Watkins

6 CHRISTINA G. HIOUREAS, ESQ.

7 885 Third Avenue

8 New York, New York 10022

9
10
11
12
13 Kegler, Brown, Hill & Ritter

14 KENNETH R. COOKSON, ESQ.

15 Capitol Square

16 65 East State Street

17 Columbus, Ohio 43215

18
19
20
21
22 On behalf of the Defendant:

23 (No appearance.)

24 ~ ~ ~ ~ ~

1 ABDI ADEN MAGAN

2 MS. HIOUREAS: It is now 9:14, and
3 present in the room are Ken Cookson of Kegler,
4 Brown, Hill & Ritter, counsel for the
5 Plaintiff, and myself, Christina Hioureas of
6 Lathan & Watkins, counsel for the Plaintiff.

7 The Defendant and witness today,
8 Abdi Aden Magan, is not present. His
9 deposition was noticed for 9:00 a.m. today, and
10 we're currently waiting for the Defendant to
11 show up.

12 Let's go off the record.

13 (Recess taken.)

14 MS. HIOUREAS: It is now
15 10:00 a.m., and counsel for the Plaintiff notes
16 that the Defendant and witness, Abdi Aden
17 Magan, has not shown up. On March 5th, 2012,
18 Plaintiff's counsel sent by e-mail and mail a
19 notice of deposition to the Defendant, Magan's,
20 address. This address is 3183 Pendleton Court.
21 That's P-e-n-d-l-e-t-o-n, in Columbus, Ohio,
22 and to the following e-mail address:
23 aamagan@hotmail.com. These are the addresses
24 provided to Plaintiff's counsel and to the
25 Court by Defendant's prior counsel,

1 ABDI ADEN MAGAN

2 Mr. Donnellon, D-o-n-n-e-l-l-o-n, prior to his
3 withdrawal.

4 Plaintiff's former counsel,
5 Mr. Donnellon, represented that Defendant's
6 wife currently lives at this residence and
7 would be able to convey any messages to the
8 Defendant while he is allegedly abroad.

9 To ensure that the Defendant
10 understood that his attendance at his
11 deposition is compulsory, on March 22nd, 2012,
12 Plaintiff's counsel sent by mail and e-mail a
13 subpoena and letter explaining in detail the
14 deposition process to the Defendant. Plaintiff
15 reminded the Defendant that attending his
16 deposition is compulsory.

17 On March 29, 2012, Plaintiff filed
18 a Motion to Compel the Defendant to confirm
19 whether he will attend his deposition and
20 whether he will engage new counsel or proceed
21 pro se. That same day, on March 29, 2012, the
22 Court entered a discovery order compelling the
23 Defendant to communicate with Plaintiff's
24 counsel no later than close of business on
25 April 3rd, 2012, whether he intends to attend

1 ABDI ADEN MAGAN

2 the scheduled deposition duly noticed for
3 today, April 10th, 2012, and whether he intends
4 to represent himself or engage counsel.

5 In this order, this Court warned
6 the Defendant that, quote, a party failing to
7 obey a discovery order and failure of a party
8 to attend his deposition may be subject to
9 sanctions up to and including the rendition of
10 default judgment against the disobedient party,
11 end quote.

12 On April 4th, after the Court's
13 deadline had passed, Plaintiff's counsel sent
14 another letter to the Defendant at the same
15 mailing and e-mail address reminding him of the
16 Court's order to indicate whether he was
17 planning on attending his deposition. We again
18 advised the Defendant of the consequences of
19 failing to attend his deposition.

20 Not having received a response
21 either way from the Defendant as to whether or
22 not he was planning on attending his
23 deposition, Plaintiff's counsel proceeded to
24 prepare for the deposition today and attend the
25 deposition today. The Defendant has not

1 ABDI ADEN MAGAN

2 appeared.

3 (The attempted deposition was
4 concluded at 10:03 a.m.)

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1 ABDI ADEN MAGAN

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3 REPORTER'S CERTIFICATE

4
5
6 I, Kimberly A. Kaz, RPR, do hereby
7 certify that as such Reporter I took down in
8 Stenotypy all of the proceedings had in the
9 foregoing transcript; that I have transcribed
10 my said Stenotype notes into typewritten form
11 as appears in the foregoing transcript; that
12 said transcript is the complete form of the
13 proceedings had in said cause and constitutes a
14 true and correct transcript therein.

15 Dated: 4/17/2012

16
17
18
19 _____
20 Kimberly A. Kaz, RPR, Notary Public
21 within and for the State of Ohio

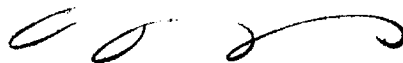
22 My commission expires March 31, 2013.
23
24
25

1 ABDI ADEN MAGAN

2
3 REPORTER'S CERTIFICATE
4

5
6 I, Kimberly A. Kaz, RPR, do hereby
7 certify that as such Reporter I took down in
8 Stenotypy all of the proceedings had in the
9 foregoing transcript; that I have transcribed
10 my said Stenotype notes into typewritten form
11 as appears in the foregoing transcript; that
12 said transcript is the complete form of the
13 proceedings had in said cause and constitutes a
14 true and correct transcript therein.

15 Dated: 4/17/2012
16

17 
18

19 Kimberly A. Kaz, RPR, Notary Public
20 within and for the State of Ohio
21

22 My commission expires March 31, 2013.
23
24
25

Exhibit 3: April 11, 2012 letter from Plaintiff to Defendant regarding Defendant's failure to attend his scheduled deposition and notice to Defendant that Plaintiff reserved the right to request sanctions, including default judgment against Defendant

LATHAM & WATKINS

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New York, NY 10022-4834
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www.lw.com

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Madrid	Tokyo
Milan	Washington, D.C.

VIA ELECTRONIC MAIL AND U.S. MAIL

Mr. Abdi Aden Magan
3183 Pendleton Court
Columbus, Ohio 43249
aamagan@hotmail.com

April 11, 2012

Re: *Ahmed v. Magan*, Case No. 2:10-cv-342: Failure to Attend Deposition; Motion for Sanctions and Default Judgment

Dear Mr. Magan:

I am writing to you regarding your deposition which we had scheduled for April 10, 2012 at 65 East State Street, Suite 1800, Columbus, Ohio at the offices of Kegler Brown Hill & Ritter at 9:00 a.m. Unfortunately, you failed to show up to this court ordered deposition and did not even notify Plaintiff's attorneys that you did not plan on attending. As previously explained to you by both Plaintiff's counsel and the Court, there may be serious consequences for your failure to attend the deposition.

Plaintiff's counsel provided a formal Notice of Deposition to you on March 5, 2012. Further to this notice, on March 22, 2012, we provided you with a formal subpoena and a letter explaining in detail that you are required, by the Federal Rules of Civil Procedure, which govern the lawsuit, to attend your deposition and give testimony. We specifically informed you that "if you fail to attend your deposition, we may seek a monetary judgment by default against you if the Court concludes that you do not plan to defend yourself in this lawsuit."

Subsequently, on March 29, 2012, the Court entered a discovery order compelling you to communicate with Plaintiff's counsel no later than the close of business on April 3, 2012 whether you intend to attend the scheduled deposition duly noticed for April 10, 2012, and whether you intend to represent yourself or to engage new counsel. Moreover, the Court also warned you that "a party failing to obey a discovery order and failure of a party to attend his deposition may be subject to sanctions up to and including the rendition of default judgment against the disobedient party." On April 3, after the deadline set by the Court had passed, we sent you yet another letter reminding you of the Court's order to attend your deposition and requesting that you inform us of your intent to defend this lawsuit. We again advised you that there may be serious consequences if you fail to attend your deposition.

As stated in our multiple notices and letters, on April 10, 2012, we were prepared to conduct your deposition at 65 East State Street, Suite 1800, Columbus, Ohio at the offices of Kegler Brown Hill & Ritter at 9:00 a.m. Plaintiff's attorney incurred costs and travel expenses for your scheduled deposition, which you failed to attend.

The court reporter noted your failure to attend the duly scheduled deposition on the record. As previously explained by both Plaintiff's counsel and the Court, your failure to attend your deposition or to in any way contact Plaintiff's counsel and express an intent to defend this lawsuit is a valid basis for monetary sanctions and may lead to a judgment against you on the merits of this case. I am writing to inform you that Plaintiff intends to file a motion with the Court to that effect in due course.

Sincerely,

/S/

Mark Beckett

cc: Christina Hioureas, Esq.
Natasha Fain, Esq.
Kenneth Cookson, Esq.
Katya Georgieva, Esq.

Exhibit 4: April 30, 2009 Deposition of A. Magan in *Magan v. Voans Capital Park Ltd., et al.*, and Docket *Magan v. Voans Capital Park Ltd., et al.* (case settlement)

1 IN THE COURT OF COMMON PLEAS

2 FRANKLIN COUNTY, OHIO

3 - - -

4 Abdi Magan, :
 :
5 Plaintiff, :
 :
6 vs. : Case No. 08CVC-05-7049
 :
7 Voans Capital Park Limited :
 Partnership, et al., :
8 :
 Defendants. :

9 - - -

10
11 DEPOSITION OF ABDI MAGAN

12 Taken at Williams & Petro Co., LLC
13 338 South High Street, Second Floor
 Columbus, Ohio 43215

14 Thursday, April 30, 2009
15 10:00 a.m.

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APPEARING ON BEHALF OF THE PLAINTIFF:

APPEARING ON BEHALF OF THE DEFENDANTS:

— — —

1 Thursday Morning Session,
2 April 30, 2009.

3 - - -

4 STIPULATIONS

5 It is stipulated by and between counsel for
6 the respective parties that the deposition of Abdi
7 Magan, Plaintiff herein, called by the Defendant under
8 the applicable Rules of Civil Procedure, may be taken at
9 this time and reduced to writing in stenotypy by the
10 Notary, whose notes thereafter may be transcribed out of
11 the presence of the witness; and that proof of the
12 official character and qualification of the Notary is
13 waived.

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INDEX TO EXHIBITS

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DEFENDANT'S EXHIBITS

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1 ABDI MAGAN

2 being by me first duly sworn, as hereinafter certified,
3 deposes and says as follows:

4 EXAMINATION

5 By Mr. Petro:

6 Q. Would you please give us your full name for
7 the record.

8 A. What record?

9 Q. Your full name.

10 A. My name is, sorry, Abdi, A-B-D-I, last name
11 Magan, M-A-G-A-N.

12 Q. And Abdi, my name is John Petro. I
13 represent the defendant in this lawsuit that you filed.
14 I'm going to take your deposition today, okay?

15 A. Okay, sir.

16 Q. Have you ever given any kind of sworn
17 testimony before?

18 A. No.

19 Q. Never appeared in court and had to answer
20 questions, anything like that?

21 A. No.

22 Q. Okay. Never been involved in a deposition
23 like this where there's a court reporter taking
24 everything down?

1 A. No, sir.

2 Q. Okay. I assume you've gone over some of
3 this stuff with your attorney. I just want to make sure
4 you and I are on the same page basically.

5 Essentially, what's going to happen is, I'm
6 going to ask you questions and hopefully you can answer
7 them, okay?

8 A. Yes, sir.

9 Q. You've got to answer your questions outloud,
10 audibly, so that the court reporter can take down what
11 you say. Try to avoid saying uh-huh or huh-uh or
12 shaking your head up and down or back and forth. We
13 need some kind of verbal response.

14 If I ask you a question and it doesn't make
15 any sense to you, it's perfectly okay for you to say, I
16 didn't understand that, can you re-ask it or ask it in a
17 different way.

18 A. Okay, sir.

19 Q. If you answer a question I ask, I'm going to
20 assume you understood what I was asking, fair enough?

21 A. Uh-huh.

22 Q. Yes?

23 A. Yes.

24 Q. Okay. Good. Where do you presently reside,

1 Abdi?

2 A. Reside?

3 Q. Where do you live?

4 A. I live in 3183 Pendelton Court.

5 Q. And where is that?

6 A. It's the north side.

7 Q. Here in Columbus?

8 A. Yeah, Columbus, Ohio.

9 Q. And how long have you lived at that place?

10 A. This place?

11 Q. Yes.

12 A. One and a half year, estimating.

13 Q. And who lives there with you?

14 A. My kids.

15 Q. How many kids do you have?

16 A. Two, and my wife.

17 Q. What's your wife's name?

18 A. Maryan, M-A-R-Y-A-N, Hersi, H-E-R-S-I.

19 Q. And is that the only time you've been

20 married is to Maryan?

21 A. Yeah.

22 Q. You only have one wife?

23 A. No, I have before a wife, you know, when I

24 arrive in this country, so we divorce, okay.

1 Q. How long have you lived in the United
2 States?

3 A. Since May 24, I guess.

4 Q. Of what year?

5 A. 2000.

6 Q. Okay. And where did you come from?

7 A. Back home, Somalia.

8 Q. And when you came to the United States in
9 May 2000, was that the first time you'd been to the
10 United States?

11 A. Yes.

12 Q. And are you a U.S. citizen presently?

13 A. Actually, I passed the test, exam of
14 American history and they give me a paper that I have to
15 wait for the ceremony. But until now I didn't get their
16 answer yet, so still it means I'm eligible, but I have a
17 green card now.

18 Q. When did you take the test and pass the
19 test?

20 A. It was like one and a half year or two
21 years. So I talk to them, but they said all you need is
22 -- you did everything and you have to wait, so I have to
23 wait.

24 Q. What's your date of birth, Abdi?

1 A. January 1st, 1952.

2 Q. And back in Somalia what did you do for a
3 living?

4 A. Just, you know, business, store manager. I
5 was doing my own business.

6 Q. What was that business?

7 A. It was a supermarket, what we call a
8 supermarket.

9 Q. And since you've been in the United States
10 since 2000 have you been employed here?

11 A. Yes, sir.

12 Q. And give me a history of what you've been
13 doing for employment.

14 A. When I live three months I get a job from
15 Limited Express and I was working actually like two
16 months or something like that and I get work injury at
17 that time for wrists and arms.

18 Q. Your wrists and your arms were injured?

19 A. Broke. They told me that I was a seasonal
20 employee, something like that, so I lost that job.

21 And then again I get another job, you know,
22 little easier than that to the gas station, a BP gas
23 station Consumer Drive and I was working there until the
24 end of 2001. So I was not happy for that job, and I get

1 another job from the Kroger bakery. That was the best
2 job I get and I was working there until 2007, May 2007,
3 March 2007, I'm sorry.

4 Q. Okay.

5 A. I got laid off from that, lack of -- you
6 know, laid off from that company and I'm still
7 unemployed.

8 Q. And you've been unemployed since about March
9 of 2007?

10 A. Yeah.

11 Q. One of the things we've got to do, I know
12 there are times when I'm asking a question and you know
13 what I'm asking and you start to answer before I finish.
14 It makes it kind of difficult on the court reporter to
15 take that down, okay?

16 A. To write.

17 Q. To write down both of us talking at the same
18 time. So wait until I stop talking, then I'll let you
19 answer. I'll let you answer and then when you're done
20 answering I'll ask you another question just so it's
21 easier. So it's like a back and forth kind of thing.
22 It just makes it easier on the court reporter, all
23 right?

24 A. Okay.

1 Q. And so since March 2007 you haven't had any
2 employment, any job, correct?

3 A. Yeah.

4 Q. And what have you done for income since
5 March 2007?

6 A. It's just sometimes, you know, I drive a cab
7 for one day or two day a week.

8 Q. Okay. Do you do anything else for income?

9 A. No.

10 Q. Presently?

11 A. No.

12 Q. Prior to this lawsuit have you ever been
13 involved in any kind of lawsuits before?

14 A. I just have, you know, workers' compensation
15 for that wrist injury, but that's it.

16 Q. Tell me about that workers' compensation
17 claim for the wrist injury. Is that still pending or is
18 that over with?

19 A. It's over.

20 Q. Okay. And did you have any other injury
21 other than to your wrists or your hands as a result of
22 that work situation?

23 A. No, that's only the one I have.

24 Q. Any other workers' compensation claims that

1 you've had to file?

2 A. No.

3 Q. How about any other disability kind of
4 claims, have you ever filed any type of disability
5 claim?

6 A. No.

7 Q. And no other lawsuits other than the
8 workers' compensation thing and I think you said you got
9 divorced?

10 A. Yeah.

11 Q. Was your divorce here in the United States
12 or was it back in Somalia?

13 A. Yes, here.

14 Q. Give me a brief description of your
15 education.

16 A. I have education up to high school back to
17 Somalia.

18 Q. When you came over to the United States were
19 you able to speak English or did you learn that when you
20 came over?

21 A. I was able to speak English, but, you know,
22 I take a lot of, you know, practical when I come here.

23 Q. Have you taken any kind of classes or had
24 any education since you've been in the United States?

1 A. Not yet, but I hope.

2 MR. PETRO: Off the record.

3 (Off the record.)

4 MR. PETRO: Let's go back on.

5 Q. Any kind of criminal background for you?

6 Have you ever been in trouble with the law either in
7 Somalia or since you've been in the United States?

8 A. No, sir, at all.

9 Q. And give me names and ages of your children.
10 You said you have two kids.

11 A. Yes, my son is one and a half year, I think,
12 yeah, and my daughter is three years and a couple of
13 months, like four months, something like that.

14 Q. And no other children other than those two?

15 A. They're back home to Somalia. They grow up.

16 Q. You have older kids?

17 A. Yeah.

18 Q. And they're still in Somalia?

19 A. Yeah.

20 Q. No other children here in the United States?

21 A. No.

22 Q. Do you have a family doctor presently?

23 A. Yes.

24 Q. Who is that?

1 A. What is his name, Awale, A-W-A-L-E.

2 Q. And how long has that doctor been your
3 family doctor, your primary care physician?

4 A. It's like since, was it 2004 up to now, I
5 think.

6 Q. Prior to this situation that happened at the
7 Capital Park Apartments that's at issue in this did you
8 ever have any kind of medical situation where you needed
9 to get ongoing medical treatment before this thing
10 happened?

11 A. No.

12 Q. You didn't have any kind of diseases or any
13 kind of body pains or anything like that where you
14 needed to go to a doctor on a regular basis?

15 A. No, sir.

16 Q. Okay.

17 MR. MALEK: Other than the workers' comp.
18 claim that we discussed.

19 Q. Yeah, other than that workers' comp. claim.

20 A. Yeah.

21 Q. The workers' comp. claim, did you have a
22 fracture of your wrist or was it just wrist pain?

23 A. Yeah, I broke both wrists.

24 Q. And how did you do that?

1 A. I was working with a receiving and shipping
2 department so it was kind of work quality, work we were
3 doing by hand. Time being after I understand the United
4 States we have a lot of equipment for your job, but at
5 that time it looks like very not effective, so I tried
6 to pull boxes in the trailer to put down to the floor.
7 So when I get, you know, those boxes up, I fall down to
8 floor, but I was lucky I used the box.

9 Q. So as you were unloading some piece of
10 material?

11 A. Uh-huh.

12 Q. You fell and you landed on your wrists and
13 broke your wrists?

14 A. Yes, sir.

15 Q. Okay. Do you still have difficulty with
16 your hands or wrists presently?

17 A. Yeah, but we already finish for that.

18 Q. Okay. You're not still receiving any kind
19 of medical treatment for your hands or wrists, correct?

20 A. I already have, you know, receive long time.
21 I get a surgery with the arms and treatment, some
22 treatments, but it's done.

23 Q. And did workers' compensation pay you or pay
24 your medical bills because of that incident?

1 A. Yeah.

2 Q. Before this situation over at Capital Park
3 Apartments had you ever been a victim of any crime?

4 A. No, sir.

5 Q. Never been shot before, correct?

6 A. No, sir.

7 Q. Never been assaulted in any way before?

8 A. No.

9 Q. Never made a claim to the Victims of Crime
10 Fund, anything like that?

11 A. No, sir.

12 Q. After this situation at Capital Park
13 Apartments did you make a claim with the Victims of
14 Crime Fund?

15 A. Excuse me, say it again.

16 Q. After this incident that happened at Capital
17 Park Apartments where you got shot, correct --

18 A. Yes.

19 Q. -- did you make a claim with the Victims of
20 Crime Fund to try to get money as a victim of crime?

21 A. No. No.

22 Q. The lawsuit that you filed here in Franklin
23 County indicates that this situation happened on May 14,
24 2006, at the Capital Park Apartments?

1 A. Yes, sir.

2 Q. That's what it says in the complaint, right?

3 A. Yes, sir.

4 Q. What documentation, pieces of paper,
5 reports, anything, do you have that would verify that
6 this thing happened on May 14, 2006?

7 A. Only the police report.

8 Q. Okay. And I was provided some documents by
9 your attorney when we showed up this morning and why
10 don't we mark that thing as an exhibit.

11 (EXHIBIT 1 MARKED FOR IDENTIFICATION.)

12 Q. Abdi, I'm showing you a few pieces of paper
13 that have been marked as Exhibit 1; do you see that?
14 Just take a look at that.

15 A. I need glasses. I can't see.

16 Q. Do you have glasses with you?

17 A. I think this is the police report.

18 Q. I think that is the police report. On the
19 top of Exhibit 1 it says Columbus Division of Police
20 preliminary investigation; do you see that?

21 A. Uh-huh.

22 Q. Yes?

23 A. Yes.

24 Q. Okay. You've got to say yes or no as

1 opposed to uh-huh or huh-uh.

2 A. Yes. I see this, yes.

3 Q. Okay. It also says there's a report date of
4 5-15-2006; do you see that?

5 A. Yes.

6 Q. Okay. Who was it that reported to the
7 Columbus Division of Police about this incident; do you
8 know?

9 A. I do contact a couple of times to the, what
10 they call, sorry about the English.

11 Q. That's okay.

12 A. Detective, but I'm not sure, you know, about
13 this, you know. This is a report from the police,
14 that's what I thought. This is the report from the
15 police, that's what I believe.

16 MR. MALEK: John, just for the record, I'd
17 like to put something on real quick there. I understand
18 the issue with the date on the police report, but if you
19 look at the squad report it says the 14th and if you
20 look at the initial emergency room records they also say
21 the 14th.

22 MR. PETRO: Right. That's what I wanted to
23 clear up. There was an issue on our end about that just
24 to confirm.

1 MR. MALEK: No, I understand. I was a
2 little bit worried about that myself.

3 Q. One of the things, Abdi, we're talking about
4 there's an indication on the police report, and frankly
5 I'm not sure if it's this one.

6 MR. MALEK: It's on there.

7 Q. Do you see this here, on the first page of
8 Exhibit 1 and this is just for the record a five page
9 document, okay?

10 A. Okay.

11 Q. On the first page of Exhibit 1 it has right
12 here in small handwriting or small print, occurred on.
13 Do you see that where it says occurred on and it gives a
14 date of 5-5-2006.

15 A. No.

16 Q. That's what that document says, right?

17 A. But this is not mine. I don't say 5-5-2005.

18 Q. 2006?

19 A. 2006.

20 Q. I understand that. My question to you is,
21 do you have any idea where that date came from,
22 5-5-2006?

23 A. No, sir.

24 Q. Okay.

1 A. I have no idea at all.

2 Q. And do you believe that the incident that
3 happened at Capital Park Apartments where you got shot
4 happened on 5-5-2006?

5 A. No.

6 Q. Okay. When do you believe it happened?

7 A. I'm very sure it was my vacation day, 15 May
8 2006.

9 Q. And why are you sure that it happened on
10 your vacation day?

11 A. Because I was going to vacation, you know,
12 that was starting my vacation day and I just go, you
13 know, with a friend over there to tell him that, you
14 know, to take care of my family, I'm leaving to Toronto,
15 Canada.

16 Q. You were going to Toronto?

17 A. Toronto, Canada, that's where I used to go
18 to vacation.

19 (EXHIBIT 2 MARKED FOR IDENTIFICATION.)

20 Q. I'm going to show you also this other
21 document that we've marked as Exhibit 2, okay? Do you
22 know what that document is? Have you seen that before?

23 A. No.

24 Q. Okay. Just take a look at what that is and

1 I'll ask you a couple questions about it briefly.

2 A. I don't know who wrote this, you know,
3 report, maybe the police or the emergency ambulance.

4 Q. I believe what this is, and it's hard to see
5 because it's darkened, but I think the emergency medical
6 services report?

7 A. Uh-huh.

8 Q. From the emergency squad.

9 A. Oh, the ambulance, the guys who took me over
10 there?

11 Q. Yes.

12 A. I don't know if they write this or not.

13 Q. Fair enough. You've never seen this before?

14 A. I've never seen this before.

15 Q. This has a date on it, if you see in the
16 upper left-hand corner 5-14-2006; do you see that?

17 A. 5-14-2006, yes.

18 Q. Okay. And it looks like there's some
19 numbers over here right under that and I believe those
20 are times of, say, when they were called and when they
21 arrived at the scene. Those times would indicate that
22 the emergency squad got called and got to the scene
23 around 10:00, 10:30 on May 14, 2006?

24 A. Yeah, it was that time, you know, exactly

1 the timing we made a call, 10:00.

2 Q. Okay. Who was it that made the call to the
3 emergency squad; do you know?

4 A. I do myself. I call my cell phone because I
5 was panicked. I believe that I was bleeding. So the
6 other guys, they told me they called to the ambulance,
7 but I don't believe it. Because I feel hurt, I just get
8 my phone and call 911, say I got shot.

9 Q. Okay. So soon after you got shot you called
10 911?

11 A. And they come.

12 Q. And the emergency squad came?

13 A. Yes.

14 Q. Did the police also come to the scene while
15 you were still there?

16 A. I'm not quite sure, but I seen somebody who
17 have police dress, a black dress so they were maybe
18 getting scene of crime that time but I believe they are
19 police. I was a little unconscious.

20 Q. You were what?

21 A. I feel pain.

22 Q. You were a little confused?

23 A. Yeah, confused.

24 Q. Just so we're clear, going back to Exhibit

1 1, you believe this May 5, 2006, date is incorrect; is
2 that true?

3 A. May 5?

4 Q. Yes.

5 A. It's incorrect.

6 Q. Fair enough. Let's say just going forward
7 you had initially, I think, said May 15, 2006, this
8 thing happened?

9 A. That's what I got, you know, the vacation
10 day I remember, that's why I remember exactly the
11 injury, the time I get injured.

12 Q. Okay. This document, Exhibit 2, indicates
13 that it happened on May 14?

14 A. 14, the nighttime, yes.

15 Q. And that's your memory as well, correct?

16 A. Yes.

17 Q. That you got shot the nighttime of May 14,
18 2006?

19 A. Yes.

20 Q. Great. Thank you. Prior to May 14, 2006,
21 had you been to the Capital Park Apartments before?

22 A. No.

23 Q. This was your first time that you had ever
24 gone to that --

1 A. I don't go inside the Capital but I don't
2 know whether you see or not, there's a mosque over
3 there, we go to like a church. I used to go there to
4 pray all the time, but I see as a shape, but I'm not
5 going in there before.

6 Q. Just so I'm clear, and keep in mind we have
7 a little language difficulty and I want to make sure I'm
8 understanding you just like I want to make sure you're
9 understanding me. Prior to May 14, 2006, you had never
10 been inside any of the apartments within Capital Park
11 Apartments, correct?

12 A. No, I don't go inside.

13 Q. The only place you had been in that area was
14 a church that was maybe nextdoor to or around Capital
15 Park Apartments?

16 A. Yes.

17 Q. So before May 14, 2006, did you yourself
18 have any knowledge or information about any kind of
19 criminal activity that had taken place at Capital Park
20 Apartments?

21 A. No, sir.

22 Q. And what was the reason that you were going
23 to the Capital Park Apartments on May 14, 2006?

24 A. My friend is invited there, invited me there

1 and they was watching, you know, a game, the NBA game,
2 basketball. So he just called me and invite me there to
3 drink a cup of coffee because he knows that I'm leaving
4 and I was trusting him to tell him, hey, take care of
5 the family until I come back.

6 Q. And who is this friend that invited you over
7 there?

8 A. Osman Abas.

9 Q. Can you spell that?

10 A. O-S-M-A-N, Abas is A-B-A-S.

11 Q. And did Abas live in the Capital Park
12 Apartments? Back at that time was he a resident of that
13 apartment complex?

14 A. I don't believe so. I can't say no, but he
15 have family, his family is there, a woman who lives
16 there. Sorry about my English.

17 Q. That's okay. Don't apologize. It's
18 perfectly okay. Who was the family member of Mr. Abas
19 that lived at the Capital Park Apartments?

20 A. I just know her name is Hawa, H-A-W-A.

21 Q. And did you know that person at all, the
22 person that was the resident of Capital Park Apartments?

23 A. I just know her, you know, as a Somalian
24 woman.

1 Q. But she was not a friend of yours or
2 somebody that you talked to?

3 A. We know each other, you know, but we don't
4 have close friend.

5 Q. On page 2 of Exhibit 1 there's a person
6 listed there as victim two; do you see that?

7 A. Oh, my God, I'm sorry, I make mistake to say
8 Hawa. Alimo, I see the name here, Alimo and it's not
9 Alimo, it's H-A-L-I-M-O, Halimo, not Hawa. That's my
10 fault.

11 Q. That's okay. That person that is listed as
12 victim two on page 2 of Exhibit 1 is the person who was
13 the resident of Capital Park Apartments; is that
14 correct?

15 A. Yes.

16 Q. Okay. She's listed as a victim on that
17 report. Did she also sustain some kind of injury in
18 this incident?

19 A. I hear she said, I get hit, so you guys --
20 when the ambulance arrived, she says, Don't take him
21 first, take me first. That's what I hear. So I
22 understand she's a woman and she get hit.

23 Q. Was it your understanding that she was hit
24 or she was shot?

1 A. She got shot. She was saying I got shot
2 from my leg.

3 Q. And did you actually see her injury?

4 A. I didn't see anything. I was blacked out
5 that time.

6 Q. On page 3 of Exhibit 1 there's some other
7 individuals listed as witnesses; do you see that?

8 A. Uh-huh.

9 Q. Witness one, witness two.

10 A. Gurhan Mohamed, yes.

11 Q. He was a witness and was there at the
12 apartment when this happened?

13 A. Yeah, he was there.

14 Q. Was he a resident of the apartment or just
15 somebody visiting like you were?

16 A. No, he not live that apartment as he told
17 me.

18 Q. He didn't live in that apartment where it
19 happened, correct?

20 A. Yes.

21 Q. Did he live in the apartment complex in some
22 other apartment?

23 A. Yes.

24 Q. Within Capital Park Apartments?

1 A. Yes, that's what he said.

2 Q. And how about this other person who is
3 listed as witness 2, who is that?

4 A. Yusef Abdulahi, I don't know that guy.

5 Q. You don't know who that is?

6 A. I don't know who that is.

7 Q. Do you know whether that person was within
8 the apartment when you got shot?

9 A. I don't know.

10 Q. Okay.

11 A. I'm not sure.

12 Q. Do you know whether that person, who is
13 listed as witness 2, was a resident of that apartment
14 where you got shot?

15 A. No, I don't know, sir.

16 Q. Do you know whether that person was a
17 resident of some other apartment within Capital Park
18 Apartments?

19 A. No, sir.

20 Q. You don't know one way or the other?

21 A. I don't even know the name.

22 Q. Got you. There's another person listed on
23 page 4 of Exhibit 1 as a witness do you see that?

24 A. Ahmed Sekeriye.

1 Q. Do you know that person?

2 A. I don't know.

3 Q. Do you know whether that person was in the
4 apartment when you got shot?

5 A. I don't know.

6 Q. Do you know whether that person was a
7 resident of that apartment or some other apartment in
8 Capital Park Apartments?

9 A. I don't know. I don't know even the name.

10 Q. Fair enough. What time was it that you got
11 to the Capital Park Apartments on May 14, 2006?

12 A. It was like 9:00.

13 Q. In the evening?

14 A. Yeah.

15 Q. And you went over there because Mr. Abas
16 invited you?

17 A. Abas is there, yeah.

18 Q. Did you know anybody else that was inside
19 the apartment when you arrived?

20 A. Yeah, there was a couple of people, but I
21 don't know their names.

22 Q. Just people that you recognized?

23 A. Yes, some of them I recognize.

24 Q. Other people from the Somalian community?

1 A. Like Gurhan, I recognize that guy. Like
2 Mir, I don't know whether that's his name or a nickname,
3 Mir, M-I-R, I remember those guys. There's almost six
4 people there.

5 Q. Before you got to the Capital Park
6 Apartments at about 9:00 what were you doing for the few
7 hours before then?

8 A. I was preparing myself, you know, with the
9 car, engine, check oil, water, everything.

10 Q. Getting ready to go on vacation?

11 A. Yeah, getting ready to go on vacation.

12 Q. Packing, that kind of thing?

13 A. Yes.

14 Q. Prior to going to the Capital Park
15 Apartments had you had any alcohol to drink?

16 A. No, sir.

17 Q. Had you taken any kind of drugs, medication,
18 prescription or otherwise?

19 A. No, sir.

20 Q. At the time that you got shot were you on
21 any kind of medication of any kind?

22 A. No, sir.

23 Q. And you weren't under any kind of doctor's
24 orders for anything?

1 A. No, sir.

2 Q. Okay. When you went over there how long
3 were you planning on staying at the apartment complex?

4 A. It's like maybe 30 minutes, that's what I
5 thought, you know, to talk to this guy and he's my
6 friend, is some kind of fan of Lakers. They don't
7 people even listen to me. It was very complicated to
8 talk to each other.

9 Q. Why is that?

10 A. They was watching the game. They are very
11 interested about the game. People are screaming and
12 shouting, so I keep telling my friend, hey, I'm leaving,
13 I don't have no more time at this time. And he said,
14 okay, okay.

15 Q. And you wanted to talk to him about him
16 taking care of your family while you were gone?

17 A. Yes, that's what I wanted. My priority was
18 that.

19 Q. And how long were you there at the Capital
20 Park Apartments before you got shot?

21 A. It was like 20 minutes.

22 Q. And the whole time you were just trying to
23 talk to this guy and he was watching the game?

24 A. Yes.

1 Q. Okay. Did you have anything to eat or drink
2 while you were there at the apartment?

3 A. No, sir, just a coffee. We drink some
4 coffee.

5 Q. Did you talk to anybody who was an employee
6 of the Capital Park Apartments at any time before this
7 happened?

8 A. No.

9 Q. At any time after this happened did you talk
10 to anybody that was an employee of Capital Park
11 Apartments?

12 A. No.

13 Q. You never made any kind of incident report
14 to Capital Park Apartments about this thing happening,
15 correct?

16 A. No.

17 Q. That's correct?

18 A. That's correct.

19 Q. Before going to the Capital Park Apartments
20 is it also correct that you didn't have any information
21 about what kind of security measures they had there?

22 A. No.

23 Q. You didn't know anything about that, true?

24 A. No. I believe it was okay, but I don't know

1 nothing information about it.

2 Q. And after this happened did you do any type
3 of investigation to try to determine what kind of
4 security measures they had at Capital Park Apartments,
5 security guards, security cameras, any of that kind of
6 stuff?

7 A. Yes, I talked to one of my friends. After I
8 come back and feel okay I was wondering how I get this
9 problem. And I talk to a couple of friends, you know,
10 over there and they told me, you know, this security
11 measures of this apartment is worst, there's gang
12 activity and they can do anything they want.

13 Q. And who were the friends that you talked to
14 after this happened that made the comments about the
15 security being bad there?

16 A. We have same name like Abdi, A-B-D-I, I
17 don't know his last name but Aden, A-D-E-N.

18 Q. And you said there were a couple people that
19 you talked to?

20 A. Yeah, you know, a couple of friends. So
21 it's like saying, you know, you don't know that this
22 area is the worst. I said, I don't know, I have no idea
23 at all. So they said, you know, these gangs is all the
24 time in these apartments and they can do whatever they

1 want.

2 Q. Who is they?

3 A. Abdi and, you know, the guy his name is --
4 what is his name, nickname, Ali, A-L-I, that's what I
5 know his name is Ali.

6 Q. Were those two people residents of Capital
7 Park Apartments?

8 A. One of them, I think, I guess Abdi is there.

9 Q. You think Abdi Aden --

10 A. Yes.

11 Q. -- is a resident?

12 A. Yes.

13 Q. Do you know if he's still at Capital Park
14 Apartments?

15 A. No, I don't ask him anymore. I was scared
16 of the place. I don't go to anymore.

17 Q. Since this incident happened have you ever
18 been back to the Capital Park Apartments?

19 A. No, just only that time I ask Abdi.

20 Q. Did you do anything else in terms of any
21 investigation after this incident to try to find out
22 anything about the Capital Park Apartments, criminal
23 activity that had gone on there, anything?

24 A. No, sir.

1 Q. You just talked one time to these two
2 friends, Abdi Aden and Mr. Ali?

3 A. Yeah.

4 Q. And that conversation, how long was that
5 conversation that you had with them, fairly brief?

6 A. It's like, after that I get the accident.
7 After that day I get that problem. When I come back I
8 talked to them.

9 Q. It was a phone conversation?

10 A. No, we just see each other and I talk to
11 them, I say, What is going on here? And they say, you
12 know, You don't know, here it's the worst.

13 Q. And describe for me what they said to you in
14 terms of the worst.

15 A. They're talking about the gangs over there
16 and I saw my eyes, the apartment have no lights and
17 fences or security or anything. So I ask him again,
18 there's no security here? And he said they don't have
19 at all security.

20 Q. Okay. What other information did you get
21 during that conversation?

22 A. That's what he said. That's what he told
23 me.

24 Q. Any other information that you have about

1 the security measures at Capital Park Apartments?

2 A. No, sir.

3 Q. Any other information that you got about
4 criminal activity at Capital Park Apartments?

5 A. It's just the gangs they told me, that's it.

6 Q. And Mr. Abdi Aden and Mr. Ali told you that
7 there were gangs there?

8 A. Yeah.

9 Q. Okay. But no more details, no more
10 specifics?

11 A. No more details.

12 Q. Okay. Do you know or have you ever talked
13 to a woman named Phyllis Fitzgerald?

14 A. What?

15 Q. Phyllis Fitzgerald at Capital Park
16 Apartments?

17 A. No.

18 Q. You never spoke with that woman?

19 A. No.

20 Q. Okay. So tell me, you're there at the
21 apartment, you're having a cup of coffee, trying to talk
22 to your friend for 15, 20 minutes or whatever, tell me
23 what you remember what happened, just describe for me
24 what you remember.

1 A. I remember that as we are talking, I'm
2 talking to the friend and watching the game so I
3 remember, you know, there's four gangs inside, you know,
4 the apartment in front of us and --

5 Q. You said four gangs?

6 A. Yeah, four robbery gangs.

7 Q. Four men?

8 A. Four men, yeah, sorry.

9 Q. That's okay.

10 A. And they have scarf or what they call those
11 things. I watch the movies. When they rob a bank, they
12 put their face, people, you can't describe his face or
13 who is he.

14 Q. They had something covering their faces?

15 A. Cover face.

16 Q. Could you tell whether these were white men
17 or black men?

18 A. I don't know.

19 Q. You couldn't tell?

20 A. No.

21 Q. Could you tell anything really about them?
22 Could you describe them in any way?

23 A. No.

24 Q. You knew there were four of them?

1 A. I just see there are four, I remember. And
2 they already started shooting, boom, boom, boom, that's
3 what I see.

4 Q. They started shooting right when they walked
5 in the apartment?

6 A. Yes.

7 Q. Was the apartment door open or closed?

8 A. I don't know, sir.

9 Q. Was it locked or unlocked?

10 A. I have no idea, sir.

11 Q. Do you know whether they had to like break
12 the door in in order to get into the apartment?

13 A. I really don't know.

14 Q. Where were you? I assume they came in
15 through the front door?

16 A. Uh-huh.

17 Q. Yes?

18 A. I don't know, but I think. I'm not sure.

19 Q. When you first saw those four individuals
20 where were they and where were you?

21 A. They was in front of us, you know, in the
22 sitting room.

23 Q. Okay.

24 A. And start shooting.

1 Q. Do this for me, can you draw me a diagram of
2 what the apartment looks like from the inside?

3 A. Okay.

4 MR. MALEK: Obviously this isn't going to be
5 to scale. This is for demonstrative purposes.

6 Q. Just so I get an idea of what the apartment
7 looks like, where you were seated, where the TV was,
8 where the front door was.

9 A. This is the door.

10 Q. Okay. Why don't you write -- I just put
11 door next to that, all right?

12 A. This is where we sit, the sitting room.

13 Q. I'm going to put sitting room right here,
14 all right?

15 A. All right. There was a TV here. So the TV
16 was here.

17 Q. Why don't you put --

18 A. Big screen TV.

19 Q. We'll put TV right in here.

20 A. We were sitting here in this area watching
21 the TV.

22 Q. Okay.

23 A. So they come over here and I see four men is
24 around here in front of the TV.

1 Q. And just so we've got it clear for the
2 record, you've put four circles in front of the TV?

3 A. Yes.

4 Q. And they were facing you and your friends
5 who were sitting there watching the TV?

6 A. To the people who were sitting there and
7 they start shooting.

8 Q. And how many people were sitting in that
9 area?

10 A. I believe it was me and my friend, the other
11 woman and four people, I think.

12 Q. Four, maybe five people?

13 A. I'm not sure. I didn't count.

14 Q. Before they started shooting did those four
15 individuals say anything?

16 A. I don't remember anything about what they
17 say. I remember the bullet is -- they start shooting,
18 boom, boom, boom, boom.

19 Q. And what were they shooting with, were they
20 handguns or were they rifles?

21 A. It was a handgun, pistol.

22 Q. And did they all have handguns, all four of
23 them?

24 A. I just see the one of them, the one who shot

1 me.

2 Q. And were you able to see that person's face
3 at all, the person that shot you?

4 A. No, he have that scarf face, they all have
5 it.

6 Q. During the time that they were there did you
7 hear any of them say anything?

8 A. No. I'm not sure, you know, what else, but
9 I'm very sure they come in. When I see this they start
10 shooting.

11 Q. Right away?

12 A. And I was confused. Yes.

13 Q. Did any of the people that you were sitting
14 there watching the game with who were inside the
15 apartment, did any of those people say anything while
16 they were shooting?

17 A. Yes, my friend.

18 Q. What did your friend say?

19 A. Abas.

20 Q. What did he say?

21 A. He said, What you want from us? That's what
22 he said. And he stand up and there's thermos to use the
23 coffee and it was really very hot. He take the thermos
24 and stand up and say, What you want, some not good

1 saying bastards or something. And then the guy started
2 shooting and then he throw the thermos in front of his
3 face like boom.

4 Q. Threw the pot of coffee?

5 A. Yes. And he just go down there and he run
6 away to here, this angle somewhere, other rooms or back
7 rooms or something. And then like it was like one
8 minute or two minute, you know, everybody was down on
9 the floor and I was confused and I don't know what to do
10 and I don't want to get any trouble. I try to go out,
11 run away. I stand up. As I stand up, the guy come back
12 over there where the bedroom is, he come back and he
13 face me like this. As we see each other he just started
14 shooting again, boom, and then I was like I realized
15 that I get hit and I fall down on the floor.

16 Q. Was that the first time that you got shot
17 was what you just described there?

18 A. Yes.

19 Q. Okay. When these guys initially came into
20 the apartment and started shooting you don't believe you
21 were shot at that point, correct?

22 A. No, I don't get shot at that point.

23 Q. Do you have any idea how many times anybody
24 shot a gun?

1 A. I'm not sure, but I think it was four times
2 they fired.

3 Q. And do you have any idea how many people got
4 injured as a result of this shooting?

5 A. I just hear only that woman saying, I got
6 shot with my leg, take me first, don't take him.

7 Q. So it was the woman and you were the only
8 two that got shot?

9 A. Yeah.

10 Q. And you think this happened in the course of
11 about a minute or two?

12 A. It's a minute, just like very quick.

13 Q. Okay. While those individuals were in the
14 apartment did they take or steal anything?

15 A. They don't get any chance because the guy,
16 my friend stand up and he face the gangs and he just
17 throw the thermos in his face and the guy run away and
18 already he chase him, he might catch or something, I
19 don't know. But somehow he managed to escape with the
20 guy who have the pistol.

21 And before he come out, I believe that I'm
22 in trouble, I need to go out as soon as I can. So I was
23 confused and I stand up and try to go but the guy almost
24 come back and he might think that I'm catching him or

1 something, boom.

2 Q. That's when he shot you?

3 A. Yeah, I understand something inside my
4 stomach and my balls feeling different, hard. Then I
5 fall down on the floor. So I realize to rub my body,
6 where is there blood or something. I touched blood. I
7 said, oh, my God I get shot, guys, call me the
8 ambulance. So people are confused. Nobody's saying
9 anything. So I try to get my phone and call 911.

10 Q. And where exactly were you shot?

11 A. Stomach, if you see my stomach you --

12 Q. You have a big scar on the middle of your
13 stomach?

14 A. I got shot here, so it comes out in my butt
15 or something.

16 Q. You got hit with one bullet?

17 A. Yeah.

18 Q. Right in the stomach and it went out your
19 back side?

20 A. Yeah.

21 Q. Okay.

22 A. For nothing.

23 MR. PETRO: Do you want to take a break for
24 a second?

1 (Recess taken.)

2 MR. PETRO: Let's go back on.

3 Q. I'm going to ask you some more questions,
4 Abdi. You had just said while we were off the record
5 you don't have any idea who shot you, correct?

6 A. No.

7 Q. And before this situation you didn't have
8 anybody making any kind of threats against you or your
9 family, correct?

10 A. Correct.

11 Q. You didn't owe anybody a bunch of money,
12 anything like that, right?

13 A. Correct.

14 Q. Okay. Did you ever have any idea that
15 somebody else in that apartment might have owed one of
16 these guys money?

17 A. I don't have no idea.

18 Q. Did you ever talk to any of those other
19 people in the apartment about people trying to go after
20 them or people trying to commit some crime against them
21 before this situation happened?

22 A. No.

23 Q. This was as far as you're concerned
24 something that you never expected would have happened,

1 correct?

2 A. Correct.

3 Q. Okay. And similarly, from your
4 understanding from the other people that were in that
5 room, this situation was unexpected from their
6 perspective as well, correct?

7 A. Correct.

8 Q. They didn't expect this to happen?

9 A. Correct.

10 Q. It was a surprise to you and all these other
11 people within the apartment?

12 A. Correct.

13 Q. And before this situation happened you had
14 never had anything like this happen to you before,
15 right?

16 A. Correct.

17 Q. And similarly, was it your understanding
18 that none of the other people that were in the apartment
19 with you watching this game they had never experienced
20 anything like this either?

21 A. Correct.

22 Q. You had mentioned that the one friend of
23 yours that threw the pot at one of these four guys you
24 think tried to chase them or chase one of them; is that

1 right?

2 A. Correct, he fight.

3 Q. Okay. Do you know whether he did catch the
4 guy or whether your friend was able to identify any of
5 those people?

6 A. No, he don't know, that's what he said. He
7 told me after the accident time being after I talked to
8 him and he didn't say anything, he don't know.

9 Q. This is Mr. Abas?

10 A. Abas.

11 Q. And Abas is the one that threw the pot at
12 him?

13 A. Yes.

14 Q. Okay. So this one individual runs into this
15 side room or back room and then comes back and when he
16 came back into the main sitting room that's when you got
17 shot?

18 A. Yes.

19 Q. And then that individual that shot you ran
20 out the door?

21 A. Yes, they all ran out the door.

22 Q. And nobody saw where they went, right?

23 A. Nobody.

24 Q. Nobody followed them, correct?

1 A. I don't know after that time, you know, I
2 get black out, feeling a lot of pain.

3 Q. Feeling pain in your stomach from where you
4 were shot?

5 A. Yes.

6 Q. Okay. What do you remember happening after
7 that? You said you called 911?

8 A. Yeah.

9 Q. Do you remember the paramedics, the
10 emergency squad coming there?

11 A. Yeah.

12 Q. And did they provide you some medical
13 treatment there?

14 A. Yeah, they did good.

15 Q. And then they transported you to the
16 hospital?

17 A. To the hospital, yes.

18 Q. Did anybody go with you to the hospital?

19 A. No.

20 Q. I assume you went in a different ambulance
21 than the lady that got shot in the leg, right?

22 A. I have no idea. Since they took me to the
23 ambulance and my pain is increasing they give me a shot
24 or something so I was asleep. I don't even know when

1 I --

2 Q. Did you ever talk to the lady that got shot
3 in the leg after this happened?

4 A. No, I just see her one day.

5 Q. You just saw her?

6 A. One day. She told me she moved from the
7 apartment.

8 Q. She moved from the apartment?

9 A. Yes.

10 Q. What kind of surgery did you have at the
11 hospital; do you know?

12 A. They told me that I get internal bleeding.

13 Q. You got what, I'm sorry?

14 A. Internal bleeding.

15 Q. Internal bleeding, okay. Do you know
16 whether that bullet that they shot you with was still
17 inside of you or was it --

18 A. No, it goes through.

19 Q. It went through?

20 A. Out.

21 Q. You said it went through your bottom,
22 basically?

23 A. Yeah.

24 Q. And how long were you in the hospital?

1 A. A guess, ten days or one week.

2 Q. Did you have any complications from the
3 surgery or from the gunshot wound?

4 A. Complications, like what?

5 Q. Like infection, or I know you had one
6 surgery, did you have more than one surgery?

7 A. Yeah, I just have blood in my urine all the
8 time.

9 Q. Okay. And you were released from the
10 hospital a week or ten days later?

11 A. Yes.

12 Q. Did you have additional medical treatment
13 after you were released from the hospital?

14 A. My family doctor told me that, you know, I
15 go to him for checkup and he says all the time I get
16 exam in urine there's blood, he sent me to University
17 Hospital and they check me out. They didn't get nothing
18 but still I have that same pain when I get urine.

19 Q. I'm not sure I understood what you were
20 saying just there. You still have pain frequently as
21 you sit here today?

22 A. No, my urine, my pee, when I go to go pee, I
23 need to go to the toilet every time I drink something
24 very quick, I can't hold my pee.

1 Q. I got you.

2 A. And the pee is yellow all the time, that's
3 what I think the blood is in the urine. When they get a
4 sample a test to the lab he told me, the doctor told me
5 there's blood and I don't know where it comes, this
6 blood.

7 Q. Blood?

8 A. Yeah.

9 Q. Okay.

10 A. But I don't have that problem before the
11 accident.

12 Q. And just so I understand, Abdi, you're still
13 having problems with your urine?

14 A. Urine, yes.

15 Q. And are you still having problems with blood
16 in your urine?

17 A. Yes.

18 Q. And the problems you have with your urine
19 presently, in addition to having blood in your urine, is
20 that when you drink something you have to go to the
21 bathroom fairly quickly after?

22 A. Quickly, yes.

23 Q. As you sit here are you still having any
24 kind of pains or difficulties with your stomach or the

1 place where you got shot?

2 A. No, not at all.

3 Q. For how long after you got shot were you
4 having stomach pain or some kind of body pain?

5 A. Like first month.

6 Q. Okay. And just -- can you describe for me
7 what kind of pain you were having? Could you compare it
8 to anything or just describe what it was like?

9 A. Yeah, it looks like a nerve or something,
10 kind of my balls or something. It's like something, I
11 can't describe it, I can't say it, like nervous system,
12 something like that.

13 Q. Okay.

14 A. That first month I have that problem and
15 also activities, my activities become less.

16 Q. You couldn't do as much?

17 A. As much as I do before.

18 Q. Because of the pain in your stomach?

19 A. Yeah.

20 Q. You said that the bullet went out your back
21 side. Did you have any difficulties with your backside,
22 your bottom at all?

23 A. Just a little bit, looks like, you know, I'm
24 tired all the time. It looks like something heavy in my

1 back the first two months when I am standing up, when
2 I'm walking, when I try to run, but I was like -- I do
3 like to figure it out if you have something, you know,
4 bad or not. So I try to make some exercise, go to the
5 park and later I become all right. But that time I felt
6 bad.

7 Q. Your body was sore for the first month or
8 so?

9 A. Yeah, exactly.

10 Q. And it was hard to move around; is that
11 right?

12 A. Exactly.

13 Q. And I assume you never went to Toronto on
14 the vacation you were going to go on, right?

15 A. Oh, no.

16 Q. Did you end up going back to work? I think
17 you said you told me that you were working at the Kroger
18 bakery back then, right?

19 A. Yeah, I go back to work because I don't want
20 to lose that job. That job was very nice.

21 Q. And how long were you off work after this
22 happened, Abdi?

23 A. I'm not sure, John, but it looks like maybe
24 three months or something like that.

1 Q. Did Kroger pay you while you were off work?

2 A. Yes.

3 Q. Even though you weren't working they still
4 paid you?

5 A. Yeah.

6 Q. Okay.

7 A. That's what they call family leave absence
8 or something like that.

9 Q. Okay. At the time of this shooting did you
10 have health insurance?

11 A. Yes.

12 Q. And who was your health insurance through,
13 what company; do you remember?

14 A. It's United Health Care or something.

15 Q. Fair enough. That job you had at Kroger was
16 a full-time job?

17 A. Yes.

18 Q. 40 hours plus a week?

19 A. More than 40 hours.

20 Q. More than 40 hours. And what were you
21 earning there at Kroger?

22 A. It was operator machine, baking the stuff,
23 something like that.

24 Q. How much money were you making?

1 A. \$18 an hour.

2 Q. \$18 an hour?

3 A. Yeah.

4 Q. Okay. And tell me again, you said that you
5 worked in the bakery, right?

6 A. Yes.

7 Q. And what were you doing in the bakery? What
8 were your job duties?

9 A. Operating machine.

10 Q. What kind of machine?

11 A. Packing crackers, a machine, packing the
12 crackers.

13 Q. Got you.

14 A. Saltines or cookie crackers or something.

15 Q. Okay. And what else, besides operating a
16 machine did you do, anything?

17 A. Also what they call grade five cleaning the
18 area or something, sanitation.

19 Q. Anything else that you remember that you did
20 there at Kroger?

21 A. Operated machines like forklifts, you know,
22 shipping that stuff, stocking.

23 Q. Got you. And then you said you were off
24 work about three months after this. When you went back

1 to work were you back full-time?

2 A. Yeah.

3 Q. And were you doing the same kind of things
4 that you did before this incident?

5 A. Yeah, but first three months they just
6 evaluate me and they send me a little bit different, you
7 know, like I can't say easy job but, you know, not
8 lifting anything or something. So they ask me, you
9 know, to tell them if I feel something, but I was okay,
10 I don't feel bad.

11 Q. And just so I understand, maybe the first
12 couple months after you got back to work you weren't
13 doing like the heavy lifting, right?

14 A. Yeah.

15 Q. You were able to do like normal lifting?

16 A. Yeah, I was doing normal, what I was doing
17 before.

18 Q. Okay. Fair enough. And then you're getting
19 laid off from Kroger didn't have anything to do with
20 this incident or the injuries from this incident,
21 correct?

22 A. No, not related for this incident. It's
23 laid off.

24 Q. You were laid off from Kroger because of

1 lack of work?

2 A. Yes.

3 Q. And in terms of the medical treatment that
4 you received after this incident -- and your attorney
5 provided me with some things. I just haven't had a
6 chance to look through them yet. But just so I
7 understand, you had a seven or ten day stay at the
8 hospital, correct?

9 A. Uh-huh.

10 Q. Yes?

11 A. Yes.

12 Q. And then you followed up with your family
13 doctor a couple of times maybe after this incident?

14 A. Yes.

15 Q. And you mentioned something about, I think,
16 going to OSU Hospital?

17 A. Yes.

18 Q. University Hospital.

19 A. Correct.

20 Q. How many times did you go to University
21 Hospital?

22 A. Maybe two, three times.

23 Q. And that was just for kind of checkups to
24 see how you were doing?

1 A. They put something evaluate through to my
2 penis, something to look, you know, how what's going on
3 inside or something.

4 Q. Because of the urine problems?

5 A. Urine problem, yeah.

6 Q. And do you know what the results of those
7 tests were?

8 A. I don't know. They didn't say nothing.
9 They say we don't have no problem, we don't see
10 anything.

11 Q. And did you have any other medical
12 treatment, doctor visits, hospital visits other than
13 what we've talked about?

14 A. No.

15 Q. The last time you got any treatment for the
16 injuries from this incident were when you went to
17 University Hospital and they did this test, right?

18 A. Yes, and I go back to the my family doctor
19 they told me, you know, they would give the information
20 to my family doctor. So when I see Awale, he say, I
21 don't know what is going on here, but you might get some
22 healing and see next time what is going on, I might send
23 you some professional or something, somebody like that,
24 but I didn't go back there because I was okay, I feel

1 that I was okay.

2 Q. And when was that about, Abdi, that you last
3 saw your family doctor that you just described?

4 A. Maybe it was three months after that
5 accident.

6 Q. Three months after the shooting?

7 A. Yeah.

8 Q. Okay. So since about August, September of
9 2006 you haven't had any more medical treatment for
10 these problems from this incident?

11 A. No. No, sir.

12 Q. Okay. And I assume since this incident you
13 haven't had anything like this happen to you, correct?

14 A. Correct.

15 Q. You haven't been shot again, correct?

16 A. Correct.

17 Q. You haven't had any kind of criminal
18 activity against you?

19 A. Correct.

20 Q. Okay. Good. Have you had -- since this
21 incident have you had any other situations where you
22 sustained any kind of injury and needed to get medical
23 treatment or a surgery of any kind?

24 A. No.

1 Q. And you haven't stayed at the hospital
2 overnight since that seven or ten day hospital stay,
3 correct?

4 A. Correct.

5 Q. Have you followed up at all with your family
6 doctor for any other kind of reason since September or
7 so of 2006?

8 A. Correct. Say again.

9 Q. Since, let's say September 2006, have you
10 been back to your family doctor for any other kind of
11 reason?

12 A. No.

13 Q. And you're not taking any kind of
14 prescription medication presently, correct?

15 A. No, sir. That's correct.

16 Q. At the time this thing happened did any of
17 the people who were in the apartment watching the game,
18 did anybody else have any kind of weapon, a gun, a
19 knife, anything like that?

20 A. No.

21 Q. Okay. Do you have any documents of any kind
22 about the Capital Park Apartments like an apartment
23 lease or any kind of incident reports from the Capital
24 Park Apartments before or after this incident took

1 place?

2 A. No, sir.

3 Q. I understand that after this thing happened
4 you talked to Mr. Abas and Mr. Ali about the gang
5 activity within the Capital Park Apartments?

6 A. Yes.

7 Q. You described that for me. Did Mr. Abas or
8 Mr. Ali ever say anything to you that they had reported
9 to Capital Park Apartments about this gang activity?

10 A. No.

11 Q. Did anybody ever say to you that before this
12 incident took place they had made complaints to Capital
13 Park Apartments about criminal activity or gang activity
14 at the apartments?

15 A. No.

16 Q. While you were at the hospital after you got
17 shot did the police come and do some kind of interview
18 or investigation to talk to you about what happened?

19 A. I just talk one time, you know, to the
20 detective.

21 Q. And when was that?

22 A. I guess it was in the hospital.

23 Q. Okay. And do you know that detective's
24 name?

1 A. I'm not quite sure but I have his card, I
2 think something. Did I show you the card? I'm not
3 sure, John.

4 Q. Do you think --

5 A. His card.

6 Q. His business card?

7 A. Business card, yeah.

8 Q. Do you think you still have that somewhere?

9 A. I'm not sure. It was a long time ago.

10 Q. I understand. All I'm asking, Abdi, is that
11 you would look in your personal records, documents,
12 whatever to see if you could find that card and if you
13 can find it give it to Jim and then I want to get a copy
14 of it.

15 A. Okay.

16 Q. I tell you this, I'm looking at one of the
17 police documents from the investigation and there's a
18 Detective Bowman, B-O-W-M-A-N, that's listed here. Does
19 that name ring any bells for you?

20 A. Sounds familiar, but I'm not sure.

21 Q. Okay. Fair enough. There's another guy
22 that's listed here, maybe a woman, I don't know,
23 Detective Kirby, K-I-R-B-Y?

24 A. No, I don't hear that.

1 Q. And just so you understand what this thing
2 says, it says, "Detective Kirby attempted to interview
3 Mr. Magan but he was in surgery." You don't know
4 anything about that?

5 A. I don't know. I just see only my wife, she
6 was pregnant, that was it, horrible time.

7 MR. PETRO: Why don't we mark this thing
8 too.

9 (EXHIBIT 3 MARKED FOR IDENTIFICATION.)

10 MR. PETRO: We've marked that document as
11 Exhibit 3. And actually before we even start talking
12 about that why don't we mark the drawing as Exhibit 4.

13 (EXHIBIT 4 MARKED FOR IDENTIFICATION.)

14 MR. MALEK: Do you want him to read that?

15 MR. PETRO: No. I wanted you to actually
16 have an opportunity to read it because I wasn't sure if
17 you saw it before or not.

18 MR. MALEK: No, I've never seen that.

19 Q. Before we get to Exhibit 3 I just wanted to
20 show you this thing. This is the drawing that you drew
21 of the apartment, correct?

22 A. Yes.

23 Q. And we've marked that as Exhibit 4, correct?

24 A. Yes, sir.

1 Q. I understand that's not a drawing to scale.
2 You're not an architect, correct?

3 A. Yes.

4 Q. It's just your basic understanding of kind
5 of what that apartment looked like and where the people
6 were and where you guys were when this happened, right?

7 A. Correct.

8 Q. Thank you. All right. Let's go to Exhibit
9 3 and Exhibit 3 is also, it's kind of similar to Exhibit
10 1, in that it's part of the Columbus Division of Police
11 investigation; do you see that there?

12 A. Yes.

13 Q. Okay. And it has a lot of the same
14 information as Exhibit 1 does with a description of some
15 of the events and some of the investigation that the
16 detectives did, okay?

17 A. I never seen this before, sir.

18 Q. That's what I was going to ask you, you've
19 never seen this document?

20 A. Never ever seen this, never see anybody who
21 is talking about my case. That's why I feel bad and
22 upset even if they say we didn't get nothing, I was very
23 unhappy about it.

24 Q. One of the things that this investigative

1 information indicates is that a Detective Bowman
2 responded to the scene of the apartment, okay?

3 A. Uh-huh.

4 Q. And what it says is that there was a 15-year
5 old witness named Ahmed who picked up some shell casings
6 before the police arrived. Do you know who that 15-year
7 old person Ahmed was?

8 A. No.

9 Q. Do you remember a 15-year-old or a teenage
10 person being at the apartment when this happened?

11 A. No.

12 Q. Did you remember ever seeing a 15-year-old
13 or teenage kind of person being there at any point while
14 you were there?

15 A. No, sir.

16 Q. Okay. Do you remember seeing anybody while
17 you were there picking up any kind of shell casings from
18 these bullets that were fired?

19 A. No, sir.

20 Q. It also indicates that this Detective Bowman
21 photographed the scene and interviewed a couple of the
22 people that were there. Do you remember a police
23 officer taking photographs?

24 A. No, sir.

1 Q. And I understand you had been shot and so
2 you might have been kind of fading in and out and I just
3 wanted to know if you remember any of that kind of
4 stuff. And I'll just read for you what this says and
5 then I'm going to ask you a couple of questions to make
6 sure we're on the same page. It says, "According to the
7 victim's witnesses the following happened: Three men
8 were watching television. The 15-year-old was in bed
9 sleeping. A female victim was sitting in the living
10 room. Three masked men entered into the apartment
11 through an unlocked door. The suspects were wearing a
12 white, black and red do rags over their face. No one
13 can ID the suspects. Mr. Magan said the suspects were
14 going to kill them for some unknown reason. Only one
15 suspect was armed with a handgun, black in color, auto
16 pistol. Mr. Magan began to fight the suspect but he
17 overpowered him and shot him and the female. The
18 suspects took Mr. Magan's wallet after they shot him.
19 The suspects fled in an unknown direction. It is
20 unknown if they drove there or live in the surrounding
21 apartments. According to the witnesses the suspects
22 were from Somalia." So that's just a description of I
23 think what the police wrote down from interviewing a
24 couple of the people that were there. Does that sound

1 about like what you remember happening?

2 A. That's not true. I remember I give my
3 wallet to the son of an aunt, my wife's aunt for that
4 son, I just give him my wallet I see outside and say
5 keep my wallet and my phone, that's what I remember.

6 Q. So your wallet was not stolen?

7 A. No, not stolen.

8 Q. Okay. Other than that part about your
9 wallet, is that description fairly accurate, from your
10 memory or are there other parts of what I just read to
11 you that you don't agree with?

12 A. I don't know what they talking.

13 Q. Okay.

14 A. I don't see a 15-year-old boy sleeping
15 there, no, I don't see that.

16 Q. You didn't see that?

17 A. Huh-uh.

18 Q. And it wasn't the 15-year-old boy that you
19 gave the wallet to?

20 A. Huh-uh.

21 Q. It was somebody else. Who was the person
22 that you gave your wallet to?

23 A. It's a boy who is called Abdi Shurk.

24 Q. Can you spell that for us?

1 A. S-H-U-R-K. He's not here now. He move to
2 Seattle, Washington.

3 Q. You said he is the nephew of?

4 A. My wife.

5 Q. And tell me your wife's name again, I'm
6 sorry?

7 A. Maryan.

8 Q. This report also indicates that you were
9 shot in the butt and the bullet traveled through your
10 body and out your stomach, the bullet was never
11 recovered.

12 A. They shot through to the stomach and take
13 over through my butt.

14 Q. And out your left butt cheek?

15 A. Left butt.

16 Q. Got you. And this thing here lists these
17 three people as witnesses, Mr. Guhran, Yusef and Ahmed,
18 right?

19 A. I don't know this guy Ahmed, but I remember
20 this guy Guhran and maybe this is the guy I believe his
21 name is Mir something. I'm not sure.

22 Q. Okay.

23 A. But I remember that guy, Guhran, but I don't
24 see Ahmed there, I don't see that. Osman Abas, that's

1 my friend.

2 Q. Okay. Was this ever -- this incident ever
3 in the newspaper or on the television that you know of?

4 A. I don't know.

5 Q. Do you know of any other lawsuits that have
6 been filed against Capital Park Apartments?

7 A. No.

8 Q. Other than the problem with your urine that
9 you described earlier are you having any other problems
10 presently that you attribute to this incident?

11 A. No.

12 Q. You indicated that you had health insurance
13 you thought through United Healthcare at the time this
14 happened, correct?

15 A. Yes.

16 Q. Did United Healthcare pay for the medical
17 expense, like your stay at the hospital, your doctor's
18 visits, the evaluation over at OSU Hospitals?

19 A. I also have, you know, my wife gets a card,
20 you know, health card from what they call it Medicare or
21 something.

22 Q. Okay.

23 A. Or Social Security, so she was the one who
24 is going to the hospital and, you know, doing everything

1 so I remember we just get, you know, paid for the
2 medicals, the cards.

3 Q. Just so I understand, the insurance either
4 the Social Security or the health insurance company paid
5 for the medical expenses?

6 A. Yes.

7 Q. You haven't had to pay anything out of your
8 pocket?

9 A. No.

10 Q. And you don't have any appointments to see
11 any doctors for the injuries from your -- from the
12 injuries from this incident, correct?

13 A. No.

14 Q. You don't plan on going back to see any
15 doctors, correct?

16 A. No.

17 Q. And it's not your belief that you're going
18 to have some kind of problem getting a job in the future
19 because of the injuries from this?

20 A. No, sir.

21 Q. You have a scar on your belly that you
22 showed us. That scar is from the surgery that was done
23 after you got shot?

24 A. Yes, that's the one, that's the surgery

1 where I get shot.

2 Q. It looked like you also had some other marks
3 on your stomach?

4 A. Yes.

5 Q. What are those from?

6 A. It looks like that. That's what I hate. I
7 don't know. I was a two-year-old boy, so it's kind of
8 traditional treatment.

9 Q. In Somalia?

10 A. In Somalia.

11 Q. What is that?

12 A. They put fire, your mom, it's not a
13 developed country so there's no good doctors, good
14 hospitals that time, so I maybe get something, a stomach
15 pain, so they believe if they put you some -- a little
16 small fire on your stomach you might be okay. That's
17 what they believe. I don't know.

18 Q. And so when they did that it caused scars on
19 your stomach?

20 A. Yeah.

21 Q. Just so I can see, can you show me that
22 again?

23 A. Yes, you can see it over here.

24 Q. Just so I'm clear, all those?

1 A. And also they have a knife, little knife
2 like this to take out some blood over there. It's kind
3 of traditional, you know. I don't believe it.

4 Q. Just tell me, lift that up again real quick,
5 the scar from the surgery is the thing -- is the big
6 thick thing that goes down?

7 A. From here up to here.

8 Q. Is there a scar from the bullet?

9 A. The bullet is here, exactly here.

10 Q. It's the darker circle?

11 A. Can you see it, the dark one.

12 Q. You don't have to show me, but I believe
13 you. Is there also a scar from where the bullet went
14 out your left buttocks?

15 A. Yeah.

16 Q. Okay. Are there any other scars on your
17 left buttocks other than where that bullet went out?

18 A. No, there's nothing back there.

19 Q. Okay. Good. Do you have any other scars on
20 any other part of your body other than what you just
21 showed me?

22 A. No.

23 MR. PETRO: Let's do this. Let's take a
24 break for a second and flip through some of this stuff

1 that your attorney gave me and then we may be almost
2 done, all right.

3 (Recess taken.)

4 Q. (By Mr. Petro) Just a couple more follow-up
5 questions, Abdi. After you got released from the
6 hospital you didn't have any kind of home healthcare,
7 correct?

8 A. No.

9 Q. Where a nurse or a doctor or somebody came
10 to your house or apartment to help you feel better after
11 you got shot?

12 A. Correct.

13 Q. And did you ever have any kind of
14 psychological counseling or visit a psychiatrist to talk
15 about how this incident might have affected you mentally
16 or emotionally?

17 A. No, sir.

18 Q. Did this incident have any effect on your
19 relationship with your wife in any way, shape or form?

20 A. I don't like to talk about that, but, yeah,
21 yes. I didn't do sexual activity like I did before. I
22 don't even want to remember.

23 Q. Was that for a brief period of time after
24 this or does that still happen today that you don't have

1 as much sexual activity with your wife as you did
2 before?

3 A. Up to now I feel not good like before.

4 Q. Okay.

5 A. But I'm okay.

6 Q. Okay.

7 A. I'm still a man.

8 Q. You're still able to do what you need to do?

9 A. Yes.

10 Q. Got you.

11 A. Thank you.

12 Q. And how about in terms of like your social
13 activities, recreational activities, are you still able
14 to do those kind of things that you did before this
15 incident?

16 A. Yeah, like exercise I'm even scared to do or
17 to lift anything. I try to go, you know, to the gym
18 because I don't like a body like this, but I still have
19 some fear, you know, if maybe get something it might be
20 affecting me again so I don't do any exercises, you
21 know, as I used to do before.

22 Q. How often would you exercise before this
23 shooting incident?

24 A. Say that again.

1 Q. How often would you go to the gym to
2 exercise before this thing happened to you?

3 A. I just go, you know, to the park and where
4 the park is and I play soccer. I run, you know, like
5 two hours, something like that.

6 Q. Okay.

7 A. And do a lot of exercises myself.

8 Q. Do you do any of that stuff anymore?

9 A. No.

10 Q. You don't play soccer at all?

11 A. No.

12 Q. And you don't really work out at all?

13 A. Huh-uh.

14 Q. No?

15 A. No, sir.

16 Q. And how about, you mentioned that you were
17 going to Toronto or you had planned to go to Toronto
18 when this thing happened. Have you been on any
19 vacations to Toronto or to Somalia or anywhere since
20 this?

21 A. No, Toronto, I like to go there because
22 there's one of my aunts over there. I used to go --
23 whenever I get a vacation I used to go to Toronto to
24 visit them and unfortunately she passed away last year,

1 so no more.

2 Q. Since this incident happened did you
3 ultimately ever go to Toronto to visit your aunt?

4 A. Yes.

5 Q. You did. How many times did you go?

6 A. I think two times.

7 Q. Okay. And how about any other vacations
8 that you've been on since this incident?

9 A. I just stay here.

10 Q. You haven't been back to Somalia at all?

11 A. No.

12 Q. Do you have any plans to go back to Somalia?

13 A. No.

14 Q. I've never been there so I don't know.

15 A. Now it's a lot of -- it's an insecure place
16 now, a lot of trouble there. I don't blame me and my
17 kids to go there anymore.

18 Q. One of the things your complaint says is
19 that you were robbed while you were at the apartment
20 complex. Did you have anything that was taken from you
21 during this incident, money, anything of value?

22 A. No, sir.

23 Q. Okay.

24 A. Even one penny.

1 MR. PETRO: All right. I don't think I have
2 any other questions for you for now, Abdi. We're going
3 to send your attorney some authorizations to get some
4 records from University Hospitals and from Kroger. So
5 when you get that just sign those things, get them back
6 to your attorney and then we're going to take a look at
7 that stuff. I may have some additional questions for
8 you at some point, but for now we're done.

9 THE WITNESS: Anytime.

10 MR. PETRO: Thank you.

11 THE WITNESS: I just don't like to remember
12 that case, that part, but everything is all right.

13 MR. PETRO: Thanks.

14 MR. MALEK: Abdi, you have a right to read
15 this transcript if it's ordered up and he'll go ahead
16 and read it if it's ordered.

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1 A F F I D A V I T

2 - - -

3 State of _____)
) SS:
 4 County of _____)

5 I, Abdi Magan, do hereby certify that I have
 6 read the foregoing transcript of my deposition given on
 7 April 30, 2009; that together with the correction
 8 page(s) attached hereto noting changes in form or
 9 substance, if any, is true and correct.

10

11 _____
 Abdi Magan

12

13 I do hereby certify that the foregoing
 14 transcript of the deposition of Abdi Magan, was
 15 submitted to the witness for reading and signing; that
 16 after he had stated to the undersigned Notary Public
 17 that he had read and examined his deposition, he signed
 18 the same in my presence on the ____ day
 19 of _____, 2009.

20 _____
 NOTARY PUBLIC

21

22 My commission expires _____

23

24

1 C E R T I F I C A T E

2 State of Ohio)
3) SS:
4 County of Franklin)

5 I, Connie M. Willman, Notary Public in and
6 for the State of Ohio, duly commissioned and qualified
7 certify that the within named Abdi Magan was by me duly
8 sworn or affirmed to testify to the whole truth in the
9 cause aforesaid; that the testimony was taken down by me
10 in stenotypy in the presence of said witness; afterwards
11 transcribed upon a computer; that the foregoing is a
12 true and correct transcript of the testimony given by
13 said witness taken at the time and place in the
14 foregoing caption specified.

15 I certify that I am not a relative, employee
16 or attorney of any of the parties, or financially
17 interested in the action.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and affirmed my seal of office at Columbus, Ohio,
20 on this__day of _____, 2009.

21 _____
22 Connie M. Willman, Notary Public in
23 and for the State of Ohio and
24 Registered Professional Reporter.

My commission expires February 18, 2013.

Appeals: 373 S. High St., 23rd Fl. (614) 525 - 3624
Civil: 345 S. High St., 1st Fl. (614) 525 - 3621
Criminal: 345 S. High St., 1st Fl. (614) 525 - 3650
Domestic: 373 S. High St., 4th Fl. (614) 525 - 4410
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Juvenile Traffic: 399 S. Front St. 1st Fl. (614) 525 - 5279
Public Records: 345 S. High St., 1st Fl. (614) 525 - 3625



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Middle Init:

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CASE NUMBER	TYPE of CASE	STATUS	DATE FILED
10 CV 008228	PERSONAL INJURY	CLOSED	06/01/2010

JUDGE	COURTROOM
CHARLES A SCHNEIDER	COURTROOM 5A 345 S. HIGH STREET 5TH FLOOR COLUMBUS, OH 43215

PLAINTIFF(S)

Name	Attorney
ABDI MAGAN	JAMES MALEK

DEFENDANT(S)

Name	Attorney
VOANS CAPITAL PARK LIMITED PARTNERSHIP	LORREE L DENDIS
ANTHEM BLUE CROSS & BLUESHIELD	LANCE K OLIVER

CASE SCHEDULE

Date	Description
06/01/10	CASE FILED
09/29/11	INITIAL STATUS CONFERENCE
10/19/10	INITIAL JOINT DISCLOSURE OF ALL WITNESSES
12/14/10	SUPPLEMENTAL JOINT DISCLOSURE OF ALL WITNESSES
12/28/10	TRIAL CONFIRMATION DATE
03/08/11	DISPOSITIVE MOTIONS
05/07/11	DISCOVERY CUT-OFF
05/03/11	DECISIONS ON MOTIONS
05/17/11	FINAL PRE-TRIAL CONFERENCE/ORDER (OR BOTH)
08/22/11	TRIAL ASSIGNMENT

DOCKET

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12/01/11	APPLIED - CLERK			00	
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11/10/11	STIPULATION OF DISMISSAL		0A058	C49	2
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



























































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	03/18/11	ORIGINAL COPY OF HEARING NOTICE FILED				
	03/11/11	MOTION FOR LEAVE TO FILE		E0848	F28	9
	03/11/11	MOTION TO EXTEND TIME		E0848	F24	4
	03/11/11	MOTION FOR CONTINUANCE		E0848	F20	4
	03/07/11	DEPOSITION - FILED		E0835	L29	92
	03/07/11	NOTICE OF FILING DEPOSITION		E0835	L27	2
	03/07/11	MOTION FOR SUMMARY JUDGMENT		E0831	G96	30
	12/13/10	DEFENDANT DISCLOSURE OF WITNESSES		E0611	A49	3
	12/13/10	APPEARANCE FILED				
	09/29/10	MOTION GRANTED		E0416	X42	6
	09/29/10	JUDGMENT ENTRY		E0416	X42	6
	09/20/10	MOTION FOR PROTECTIVE ORDER		E0385	Q85	8
	08/11/10	JUDGMENT ENTRY		E0275	G79	4
	07/22/10	MOTION DENIED		E0224	F17	2
	07/22/10	MOTION GRANTED		E0224	F17	2
	07/22/10	DECISION		E0224	F17	2
	07/13/10	ANSWER TO COMPLAINT		E0191	F43	7
	07/13/10	NOTICE		E0191	F40	3
	07/13/10	AMENDED ANSWER		E0187	T02	8
	07/13/10	APPEARANCE FILED				
	07/12/10	APPEARANCE FILED		E0190	E15	3
	06/24/10	MOTION		E0141	Y24	5
	06/24/10	MOTION FOR BIFURCATION		E0141	Y24	5
	06/24/10	ANSWER TO COMPLAINT		E0140	P33	6
	06/24/10	JURY DEMAND - DEFENDANT		E0140	P33	6
	06/24/10	APPEARANCE FILED				
	06/22/10	APPEARANCE FILED				
	06/15/10	SERVICE COMPLETE - CERTIFIED MAIL		E0118	L75	1
	06/10/10	SERVICE COMPLETE - CERTIFIED MAIL		E0118	L74	1
	06/08/10	PROOF OF SERVICE ISSUED - CERTIFIED MAIL		E0095	E44	1
	06/08/10	PROOF OF SERVICE ISSUED - CERTIFIED MAIL		E0095	E43	1
	06/08/10	SUMMONS ISSUED		E0092	V81	1
	06/08/10	SUMMONS ISSUED		E0092	V80	1
	06/07/10	INTERROGATORY FILED		E0089	O94	14
	06/07/10	REQUEST FOR PRODUCTION OF DOCUMENTS		E0089	G41	16
	06/01/10	SECURITY DEPOSIT RECEIVED			00	
	06/01/10	APPLIED - SPECIALTY DOCKET FUND			00	
	06/01/10	APPLIED - LEGAL AID			00	
	06/01/10	APPLIED - CLERK			00	
	06/01/10	APPLIED - COMPUTERIZED RESEARCH LEGAL FEES			00	
	06/01/10	APPLIED - COURT COMPUTERIZATION			00	
	06/01/10	APPLIED - DAILY REPORTER			00	
	06/01/10	APPLIED - DEPOSIT FOR COSTS			00	
	06/01/10	JUDGE ASSIGNED - ORIGINAL				
	06/01/10	CLERKS ORIGINAL CASE SCHEDULE FILED		E0076	G11	1
	06/01/10	COMPLAINT FILED		E0076	G04	7
	06/01/10	JURY DEMAND - PLAINTIFF		E0076	G04	7
	06/01/10	APPEARANCE FILED		E0076	G04	7
	06/01/10	HEARING/EVENT SCHEDULED				
	06/01/10	HEARING/EVENT SCHEDULED				
	06/01/10	REQUEST FOR SERVICE - CERTIFIED MAIL				
	06/01/10	REQUEST FOR SERVICE - CERTIFIED MAIL				

Exhibit 5: May 24, 2012 email from Plaintiff to Defendant serving Plaintiff's Second Set of Interrogatories and letter to Defendant regarding his deficient discovery

From: [Hioureas, Christina \(NY\)](#)
To: ["aamagan@hotmail.com"](#)
Cc: [Cookson, Kenneth \(KCookson@keglerbrown.com\)](#); [Beckett, Mark \(NY\)](#); [Natasha Fain \(nfain@cja.org\)](#); [Georgieva, Katya \(DC\)](#)
Subject: Plaintiff's Second Set of Interrogatories and Letter re deficient discovery
Date: Thursday, May 24, 2012 3:46:27 PM
Attachments: [Ps Second Set Interrogatories May 24, 2012.pdf](#)
[Ltr to Magan re Deficient Discovery May 24, 2012.pdf](#)

Dear Mr. Magan:

Further to the Court's Discovery Order and my letters to you from yesterday, May 23, 2012, attached please find (1) a letter from the Plaintiff regarding your deficient discovery and (2) Plaintiff's Second Set of Interrogatories. These have also been sent to you via US mail.

Thanks,

Christina

Christina G. Hioureas

LATHAM & WATKINS LLP

885 Third Avenue
New York, NY 10022-4834
Direct Dial: +1.212.906.1791
Fax: +1.212.751.4864
Email: christina.hioureas@lw.com
<http://www.lw.com>

*Admitted to practice in California

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Abukar H. Ahmed,)	Case No. 2:10-cv-342
Plaintiff)	
v.)	PLAINTIFF’S SECOND SET OF
Abdi A. Magan,)	INTERROGATORIES AND SECOND
Defendant)	REQUEST FOR PRODUCTION OF
)	DOCUMENTS TO DEFENDANT ABDI
)	ADEN MAGAN

PLAINTIFF’S SECOND SET OF INTERROGATORIES
TO DEFENDANT ABDI ADEN MAGAN

Pursuant to Federal Rule of Civil Procedure 33, Plaintiff Abukar Hassan Ahmed (“Plaintiff”) hereby requests that Defendant Abdi Aden Magan (“Defendant”) answer, separately and truthfully, in writing under oath within 30 days of service hereof, each of the Interrogatories set forth below in accordance with the Definitions and Instructions as they appear below.

DEFINITIONS

A. “You” and “your” shall mean defendant Abdi Aden Magan, his representatives, subordinates, agents, employees, attorneys, companies or any other person or entity acting or purporting to act on his behalf.

B. “Somali” or “Somalia” shall refer to the Somali Democratic Republic, as it existed during the period 1969 through 1991.

C. The National Security Service (“NSS”) shall refer to any unit or member of the government institution in Somalia known as the National Security Service between 1970 and 1990, including any persons working in conjunction with, or with the acquiescence of the NSS.

D. “NSS Officer” shall refer to a person holding a post of employment under the National Security Service or anyone acting or purporting to act under the authority of the National Security Service.

E. “Security related offenses” shall mean any alleged or perceived allegiance to, sympathy for, interest in, or involvement in activities perceived to oppose the Somali Government, or in support of the Somali National Movement (“SNM”) or the United Somali Congress (“USC”), including authoring or possession of materials perceived as opposing the Somali Government.

F. “Arrest” (and its forms) shall mean any arrest (with or without warrant or legal charges), detention, confinement, apprehension, or questioning of any civilian by the Somali Armed Forces, paramilitary, or other persons associated therewith.

G. “Detain” (and its forms) shall mean any imprisonment or confinement, with or without warrant or legal charges, of any civilian by the Somali Armed Forces, NSS, paramilitary, or other persons associated therewith.

H. “Person” shall mean a natural person and any other cognizable entity, including without limitation, firms, partnerships, corporations, divisions, proprietorships, joint ventures, consortiums, clubs, associations, foundations, governmental agencies or instrumentalities, societies, orders, or any other organization or entity.

I. “Communicate” and “Communication” shall mean any transmission or exchange of information by any manner including telephonic “statements,” voicemail, inquiries, negotiations, discussions, agreements, understandings, meetings, notes, mail, facsimile, letters, electronic mail (e-mail), telegrams, teletypes, telexes, telecopies, computer linkups, written memoranda, face-to-face conversations and any verbal or non-verbal assertion (or “statement”) by one or more persons or among two or more persons.

J. “Document” and/or “thing” shall be synonymous in meaning and equal in scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil Procedure and the term “writing” as defined in the Rule 1001 of the Federal Rules of Evidence. Electronic correspondence is also included within the meaning of this term. A draft or non-identical copy is a separate document within the meaning of this term.

K. “Refer,” “Relate” and “Concern” (and their forms), shall mean refer to, relate

to, pertaining to, having a relationship to, evidencing or constituting evidence of in whole or in part, concern, involve, be connected with, reflect, indicate, disclose, summarize, explain, support, refute, exhibit, entail, illustrate, record, memorialize, discuss, include, implicate, name, reveal, expose, denote, imply, suggest, show, mention, demonstrate, embody, comprise, constitute, contain, identify, state, pertain directly or indirectly to, show signs of, or be in any way relevant to the particular subject matter identified.

L. “Position” shall refer to a post of employment under the Somali Government or Somali Armed Forces, including a post of employment in any of the following units within the Somali Armed Forces: (a) the Somali military forces: army, navy, air force, or special forces; (b) the National Security Service (“NSS”); (c) the Red Berets; (d) any police organization including the Defense Intelligence Security Agency (also known as “Hangash”); (e) anyone acting or purporting to act under the authority (whether actual or apparent) of the Somali Armed Forces; and (f) any other military force, unit, organization, department or agency of Somalia and any of the aforementioned predecessor or successor organizations or groups (whether or not formally instituted) and shall be construed so as to mean any of these organizations individually, severally, or collectively.

M. To the extent necessary to bring within the scope of the Interrogatories contained herein any information that might otherwise be construed to be outside their scope, (a) the words “and” and “or” shall be read in the conjunctive and in the disjunctive wherever they appear; (b) the word “all” means “any and all”; (c) the word “including” means “including but not limited to”; (d) the word “any” means and includes both “any” and “every”; (e) “each” shall mean both “each” and “every,” and the word “every” shall mean “each” and “every,” as appropriate; (e) the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa; (f) the neuter form of a pronoun shall be considered to include within its meaning the masculine and feminine forms of the pronoun, and vice versa; and (f) the use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb.

N. The term “Identity” (and its forms), when used with respect to documents or things, means to provide, to the extent known, a description of each document or thing sufficient to obtain production thereof by subpoena, discovery request, or court order, including:

- (a) the type of document or thing (letter, photograph, etc.);
- (b) the name and current business or residential address of the author(s) or originator(s), including each person or persons who (a) prepared or participated in the preparation or creation of the document or thing, (b) signed it, initialed it or over whose signature or initials it was issued, and (c) to whom it was addressed or distributed;
- (c) the title and nature of the document's or thing's contents;
- (d) the date appearing on the document or thing and the date or dates when it was prepared;
- (e) a brief summary of the substance of each document or thing;
- (f) the current physical location of the document or thing; and
- (g) if the document or thing is no longer in existence or in defendant's control, the disposition that was made of it and the location of any copies of the document or thing known to the defendant. Alternatively, you may identify any document or thing by instead attaching a full, clear, legible copy thereof to your response hereto, provided that each such copy contains a reference to each Interrogatory to which it is responsive.

O. The term “Identify” (and its forms), when used with respect to persons, means to provide, to the extent known, such person's full name (or if not known, provide sufficient description so that such person will be identifiable to the plaintiffs), present or last known business or residential address, and previous or last known telephone number(s). If the person is a natural person, also provide that person's present or last known job title, place of employment or business affiliation and business telephone number. If the person was a former officer in the Somali Armed Forces, provide their position and rank and their relationship to you, the Defendant Abdi Aden Magan, as Chief of the NSS Department of Investigations. If the person is a governmental or business entity, also provide the address of its principle place of business, the address of the particular office and the identity of the person or persons having knowledge of the matter with respect to which the business or governmental entity is named.

P. The term “Identify” (and its forms), when used with respect to communications, means, to the extent known:

- (1) state the date and place of each communication;
- (2) state the medium through which such communication was made (*e.g.*, in

person, by telephone, etc.);

(3) identify each person who participated in the Communication;

(4) identify each person (other than a participant) who heard or had access to the communication;

(5) state the substance of the communication, including any discussion constituting or relating to the communication, the order in which such discussion was had, and any decisions or conclusions reached in the course of or as a result of the communication; and

(6) identify each document or thing relating to the substance of the communication.

Q. The term “Identify” (and its forms), when used with respect to actions, means, to the extent known:

(1) state the date and place of each action;

(2) identify each person who participated in the action;

(3) identify each person (other than a participant) who heard or bore witness to the action;

(4) state the substance of the action, including any discussion constituting or relating to the action, the order in which such discussion was had, and any decisions or conclusions reached in the course of or as a result of the action; and

(5) identify each document or thing relating to the substance of the action.

R. “Jurisdiction” shall refer to the Southern District of Ohio.

INSTRUCTIONS

1. Plaintiffs incorporate herein by reference Rules 26 and 33 of the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Southern District of Ohio. These Interrogatories seek responses to the full extent of the Federal and Local Rules.

2. In answering these Interrogatories, you are required to furnish truthfully, fully and in good faith, all information that is presently available to you, regardless of whether such information was obtained directly by you, your former or present attorneys, agents, consultants, employees, investigators, accountants, experts or anyone acting or purporting to act on their behalf or your behalf. If, after having consulted all the aforementioned persons, you are unable

to provide the information being sought by any Interrogatory or any portion thereof, describe in detail your efforts to obtain such information.

3. If any of the following Interrogatories cannot be answered in full, answer to the extent possible, specifying the reasons for your inability to answer the remainder of the Interrogatory and stating whatever information, to your knowledge or belief you do have relating to the unanswered portion thereof.

4. A request to “state the entire factual basis” for an allegation or contention means to:

(a) State all facts in your knowledge, possession or control regarding any allegation or contention, including all facts that you may use to support the allegation or contention, as well as all facts that tend to contradict or undermine the allegation or contention;

(b) Identify each person having knowledge relating to the subject matter of the allegation or contention, regardless of whether such person’s knowledge tends to support or contradict or undermine the allegation or contention; and

(c) Identify each document or thing relating to the subject matter of the claim or defense, regardless of whether such document or thing tends to support or contradict or undermine the allegation or contention.

5. If and to the extent to which you claim a privilege as a ground for refusing to answer an Interrogatory in whole or in part, describe the bases for such claim of privilege and provide such other information as is required by Federal Rule of Civil Procedure 26(b)(5) and other applicable rules of court or law.

6. If you object to or refuse to answer any part of an Interrogatory on grounds other than privilege, describe the ground(s) separately, fully and with particularity.

7. These interrogatories shall be deemed continuing, and you shall be obligated to change, supplement, and correct your answers to conform to all available information, including such information as first becomes available to you after your answers hereto are served.

INTERROGATORIES

Interrogatory No. 21.

State all facts known to you concerning NSS personnel Lieutenant Mohamed Abdi, who worked at the NSS during 1988-1989, including without limitation:

- a) his rank, position and responsibility;
- b) the supervision you exercised on him;
- c) the frequency that he reported to you;
- d) his duties, authority and tactics in conducting investigations; and
- e) if he has ever disobeyed your order and in what circumstances.

Answer:

a)

b)

c)

d)

e)

Interrogatory No. 23.

State all facts known to you concerning an NSS personnel, who worked at the NSS during 1988-19989, referred to by the name of “Antar,” including without limitation:

- a) his rank, position and responsibility;
- b) the supervision you exercised on him;
- c) the frequency that he reported to you;
- d) his duties, authority and tactics in conducting investigations; and
- e) if he has ever disobeyed your order and in what circumstances.

Answer:

a)

b)

c)

d)

e)

Interrogatory No. 24.

State all facts known to you concerning an NSS personnel who worked at the NSS during 1988-1989, referred to by the name of “Deeq,” including without limitation:

- a) his rank, position and responsibility;
- b) the supervision you exercised on him;
- c) the frequency that he reported to you;
- d) his duties, authority and tactics in conducting investigations; and
- e) if he has ever disobeyed your order and in what circumstances.

Answer:

a)

b)

c)

d)

e)

Interrogatory No. 25.

State all facts known to you concerning NSS personnel who worked at the NSS during 1988-1989, Hassan Ga'al, including without limitation:

- a) his position, rank and responsibilities;
- b) whether he was working in NSS the Department of Investigations;
- c) whether he was assisting the investigators in interrogations or had any contact with detainees.

Answer:

a)

b)

c)

This is a continuing request and Plaintiff reserves the right to renew or make additional requests.

Dated: May 24, 2012

ABUKAR HASSAN AHMED

By Counsel

s/ Kenneth Cookson

Kenneth Cookson (0020216)
Trial Attorney
KEGLER BROWN HILL & RITTER, LPA
Capitol Square, Suite 1800
65 East State Street
Columbus, OH 43215
Ph: (614) 462-5445
kcookson@keglerbrown.com

Mark Beckett
Christina Hioureas
Katya Georgieva
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885 Third Avenue
New York, NY 10022-4834
Ph: (212) 906-1200

Natasha E. Fain
Center for Justice & Accountability
870 Market Street, Suite 682
San Francisco, CA 94102
Ph: (415) 544-0444

Attorneys for Plaintiff
Abukar Hassan Ahmed

PROOF OF SERVICE

These interrogatories were sent via ordinary U.S. mail and e-mail, this 24th day of May, 2012 to the Defendant via **Email and Express Mail**:

Abdi Aden Magan
3183 Pendleton Court Columbus,
Ohio 43249
aamagan@hotmail.com

Dated: May 24, 2012

s/ Kenneth Cookson

Kenneth Cookson (0020216)
Trial Attorney
KEGLER BROWN HILL & RITTER, LPA
Capitol Square, Suite 1800
65 East State Street
Columbus, OH 43215
Ph: (614) 462-5445
Fax: (614) 464-2634
kcookson@keglerbrown.com

Attorney for Plaintiff
Abukar Hassan Ahmed

LATHAM & WATKINS LLP

BY EMAIL AND U.S. MAIL

Abdi Aden Magan
3183 Pendleton Court
Columbus, Ohio 43249
aamagan@hotmail.com

May 24, 2012

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Madrid	Washington, D.C.
Milan	

Re: **Ahmed v. Magan, Case No. 2:10-cv-342: Deficient Discovery**

Dear Mr. Magan:

I am writing to you further to my letter to you yesterday, May 23, 2012 regarding the Court's Discovery Order (dated May 22, 2012) and a number of outstanding issues that require your immediate action in relation to your obligation to supplement your responses to Plaintiff's First Set of Interrogatories and First Request for Production.

In particular, I am writing to make clear that your discovery obligations include providing the Plaintiff with information regarding, among other things, (1) your recent trip to abroad (Kenya or elsewhere) and return to Ohio and (2) how you have paid for this recent travel. Pursuant to Document Request No. 21, this also includes copies of your airline tickets, flight itineraries, and a copy of all pages of your most recent passport. For your ease of reference, I have included the text of Plaintiff's Document Request No. 21:

"All documents relating to any travel you have made since 1991 involving the crossing of any national border other than the United States border, including copies of all passports and travel visas, whether in your name or under another name or alias."

Accordingly, we ask that you provide this information to the Plaintiff and inform the Court and the Plaintiff whether you have returned to the United States, immediately and in any event no later than June 6, 2012.

Sincerely,
/S/
Christina Hioureas

cc: Mark Beckett, Esq.
Natasha Fain, Esq.
Kenneth Cookson, Esq.
Katya Georgieva, Esq.

Exhibit 6: June 7, 2012 letter from Plaintiff to Defendant reminding Defendant of his obligation to comply with the Court's Discovery Order and to respond to Plaintiff's Second Set of Interrogatories

From: [Hioureas, Christina \(NY\)](#)
To: ["aamagan@hotmail.com"](#)
Cc: [Beckett, Mark \(NY\)](#); [Cookson, Kenneth \(KCookson@keglerbrown.com\)](#); [Georgieva, Katya \(DC\)](#)
Subject: Outstanding Discovery
Date: Thursday, June 07, 2012 10:53:10 AM
Attachments: [Ltr June 7, 2012.PDF](#)

Dear Mr. Magan:

Please see the attached letter regarding your obligation to provide responses to Plaintiff's Second Set of Interrogatories sent to you on May 24, 2012 and to supplement your responses to Plaintiff's First Set of Interrogatories and Request for Production, pursuant to the Court's Discovery Orders of May 22 and 24, 2012.

This letter has also been sent to you by US mail.

Thanks,

Christina

Christina G. Hioureas

LATHAM & WATKINS LLP

885 Third Avenue
New York, NY 10022-4834
Direct Dial: +1.212.906.1791
Fax: +1.212.751.4864
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*Admitted to practice in California and England & Wales

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Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

BY EMAIL AND US MAIL

Abdi Aden Magan
3183 Pendleton Court
Columbus, Ohio 43219
aamagan@hotmail.com

June 7, 2012

Re: *Ahmed v. Magan*, Case No. 2:10-cv-342: Plaintiff's Second Set of Interrogatories and the Court's Discovery Orders of May 22, 2012 and May 24, 2012

Dear Mr. Magan:

I am writing to you concerning Plaintiff's Second Set of Interrogatories, sent to you via U.S. mail and email on May 24, 2012. I am also writing to you regarding the Court's Discovery Orders of May 22, 2012 and May 24, 2012 ordering you to supplement your responses to Plaintiff's requests for First Request for Production of Documents and First Set of Interrogatories on or before Friday, June 8, 2012.

As you know, you have the legal obligation to provide complete and good faith responses to these interrogatories and requests for production and must do so in a timely manner. However, to date, we have not received any response from you or any indication that you intend to comply with respect to either set of interrogatories or the request for production.

Therefore, if you do not respond to Plaintiff's First and Second Set of Interrogatories and Plaintiff's First Request for Production of Documents by June 13, 2012, please be advised that we will file a motion requesting the Court to order you to comply with your discovery obligations with respect to Plaintiff's Second Set of Interrogatories and will seek sanctions against you with respect to, among other things, the First Set of Interrogatories and Request for Production of Documents.

Sincerely,



Christina Hioureas, Esq.

cc: Mark Beckett, Esq. (mark.beckett@lw.com)
Kenneth R. Cookson, Esq. (kcookson@kelgerbrown.com)
Natasha Fain, Esq. (nfain@cja.org)
Katya Georgieva, Esq. (katya.georgieva@lw.com)

Exhibit 7: May 23, 2012 letter from Plaintiff to Defendant explaining the Court's May 22, 2012 Discovery Order

LATHAM & WATKINS^{LLP}

BY EMAIL AND U.S. MAIL

Abdi Aden Magan
3183 Pendleton Court
Columbus, Ohio 43249
aamagan@hotmail.com

May 23, 2012

Re: Ahmed v. Magan, Case No. 2:10-cv-342: Discovery Order

Dear Mr. Magan:

I am writing to you regarding the Court's Discovery Order, dated May 22, 2012, which I have enclosed with this letter. Granting Plaintiff's Motion to Compel filed on April 24, 2012, the Court ordered that you supplement your responses to Plaintiff's First Set of Interrogatories and produce the documents requested in Plaintiff's First Request for the Production of Documents.

More specifically, the Discovery Order requires that you provide us with the documents identified in Plaintiff's First Request for the Production of Documents and supplement your responses to Plaintiff's First Set of Interrogatories that we identified as deficient in our Motion to Compel. For your convenience, I have enclosed a copy of our Motion to Compel and its exhibits. The Motion to Compel and exhibits set out the Document Requests that you must address and the Interrogatories that you must supplement, together with the reasons why you have not complied with your discovery obligations.

You must comply with the Discovery Order as soon as possible. As you are aware, if you fail to comply with the Court's Discovery Order, we may ask the Court for sanctions under Federal Rule of Civil Procedure 37(b)(2)(A). These sanctions may include precluding you for admitting certain evidence in this case and ordering you to pay the expenses we incurred in making our Motion to Compel. As we have previously informed you, we reserve our right to seek sanctions for your continuous failure to comply with the Court's orders.

Sincerely,

/S/

Christina Hioureas

cc: Mark Beckett, Esq.
Natasha Fain, Esq.
Kenneth Cookson, Esq.
Katya Georgieva, Esq.

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885 Third Avenue
New York, New York 10022-4834
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Madrid	Washington, D.C.
Milan	

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ABUKAR H. AHMED,	:	
Plaintiff	:	Civil Action 2:10-cv-342
v.	:	Judge Smith
ABDI A. MAGAN,	:	Magistrate Judge Abel
Defendant	:	

DISCOVERY ORDER

This matter is before the Court pursuant to Plaintiff's motion to compel Defendant Abdi Aden Magan to produce certain documents in response to Plaintiff's First Request for the Production of Documents and to supplement Defendant's responses to Plaintiff's First Set of Interrogatories.

For good cause shown, the Motion (Doc. 82) is **GRANTED**. Defendant is hereby **ORDERED** to produce all relevant documents previously requested in Plaintiff's First Request for the Production of Documents, and to supplement the responses to Plaintiff's First Set of Interrogatories identified by Plaintiff as deficient in his Motion to Compel.

Plaintiff is **ORDERED** to serve a copy of this Order via email and express mail upon Abdi Aden Magan within three (3) days of the date of entry of this Order.

s/Mark R. Abel
United States Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ABUKAR HASSAN AHMED,	:	CASE NO. 2:10-cv-00342
	:	
Plaintiff,	:	
	:	District Judge: George C. Smith
	:	Magistrate Judge: Mark R. Abel
v.	:	
	:	
ABDI ADEN MAGAN,	:	
	:	
Defendant.	:	
	:	
	:	

**PLAINTIFF’S MOTION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION
TO COMPEL PRODUCTION OF ALL RELEVANT DOCUMENTS**

Plaintiff Abukar Hassan Ahmed (the “Plaintiff”) hereby moves to compel Defendant Abdi Aden Magan (the “Defendant”) to produce all relevant documents as previously requested in Plaintiff’s First Request for Production of Documents and to supplement Defendant’s deficient responses to Plaintiff’s First Set of Interrogatories, for the reasons set forth in the Memorandum in Support that follows.

Respectfully submitted,

s/ Kenneth Cookson
Kenneth Cookson (0020216)
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Attorneys for Plaintiff
Abukar Hassan Ahmed

MEMORANDUM IN SUPPORT

Plaintiff Abukar Hassan Ahmed hereby moves to compel Defendant Abdi Aden Magan to produce all relevant documents as previously requested in Plaintiff's First Request for Production of Documents and to supplement Defendant's deficient responses to Plaintiff's First Set of Interrogatories. As Defendant has been unresponsive to Plaintiff's repeated requests for production, letters clarifying the requests, and responses to Defendant's objections, Plaintiff now moves to compel Defendant to produce all relevant documents as previously requested and to fully respond to Plaintiff's interrogatories.

Statement of Facts

On September 29, 2010, Plaintiff served upon Defendant Plaintiff's First Request for Production of Documents (**Exhibit A.**) and Plaintiff's First Set of Interrogatories (**Exhibit B.**). On November 17, 2010, Defendant provided his first responses to Plaintiff's interrogatories. (**Exhibit C.**) On December 12, 2010, Defendant responded to Plaintiff's document production request with general and specific objections. (**Exhibit D.**) Defendant produced *no documents* at that time. Meanwhile, on October 22, 2010, Plaintiff produced 76 documents responsive to Defendant's First Request for Production. (**Exhibit E.**)

Through extensive e-mail and phone communications, Plaintiff's counsel informed Defendant's counsel that Defendant's responses to Plaintiff's discovery requests remained deficient. On March 29, 2011, Plaintiff's counsel sent a letter to Defendant's counsel explaining, among other things, that "a number of Mr. Magan's responses to Mr. Ahmed's discovery requests were and remain deficient. Specifically, as to Plaintiff's First Set of Document requests, we believe Mr. Magan inadequately responded to Document Request numbers 18, 20, 21, 22, 24, 25, 26, and 27. As to Plaintiff's First Set of Interrogatories, we believe that Mr. Magan inadequately answered Interrogatory numbers 5, 6, 9, 13, 15, and 16." (**Exhibit F.**) Plaintiff's

counsel proposed that the parties meet to discuss these outstanding discovery issues and asked that Defendant resolve the deficiencies in due time. (*Id.*)

On February 10, 2011, the Court stayed this case until November 7, 2011, when the Court denied Defendant's Motion to Dismiss pursuant to F.R.C.P. 12(b)(6). Over one year after Plaintiff served his First Request for Production of Documents, on November 22, 2011, Plaintiff's counsel yet again contacted Defendant's counsel to inform Defendant of the deficiencies with his responses to "Document Request numbers 18, 20, 21, 22, 24, 25, 26, and 27" and to "Interrogatory numbers 1, 2, 5, 6, 9, 13, 15, and 16" and requested additional information in relation to Defendant's initial disclosures (**Exhibit G.**) After several e-mails and phone calls with Defendant's counsel, Plaintiff sent Defendant yet another letter, explaining in full detail the deficiencies of Defendant's responses to Plaintiff's First Request for Production of Documents and Plaintiff's First Set of Interrogatories. (**Exhibit H.**) Defendant nonetheless did not produce any documents.

On December 16, 2011, Plaintiff supplemented his responses and objections to Defendant's First Set of Interrogatories and produced additional documents responsive to Defendant's First Request for Production. (**Exhibits I, J.**) Plaintiff's counsel requested that Defendant do the same, including but not limited to, details on Defendant's recent settlement of his personal injury claim and the amount of the settlement. (**Exhibits H, K.**)

On December 16, 2011, Plaintiff filed his Opposition to Defendant's Motion for Continuance of Proceedings, opposing the length of Defendant's requested stay and proposing a stay of no longer than approximately three weeks. (Doc. 72). Plaintiff highlighted that it is "clear from court records that *less than a month* prior to filing the Motion for Continuance in the present case Defendant entered into a settlement with Voans Capital Park Limited Partnership and Anthem Blue Cross & Blue Shield in a personal injury suit he brought against the insurance

companies in 2010”, demonstrating that Defendant has been able to actively participate in the settlement of his litigation while abroad. (Doc. 72).

On December 19, 2011, the Court granted Defendant’s prior Counsel’s Motion of Counsel to Withdraw (Doc. 70), but denied Defendant’s motion for a sixty-day stay of proceedings (Doc. 71). The Court ordered the Defendant to advise the Court and Plaintiff within twenty-eight days on how he intended to proceed – by new counsel or *pro se*.

On January 20, 2012, after the Court’s deadline had passed, Defendant filed a motion for a three month extension (Doc. 74). Defendant indicated that he would return from Kenya if his mother’s health improved or if she passed away.

On January 23, 2012, the Court held a case management conference where Plaintiff opposed Defendant’s motion for a further extension. Defendant did not attend this conference call, but instead called in to Plaintiff’s conference call number 15 minutes late and after the call had ended. Plaintiff’s counsel informed Defendant that the call had ended but that Plaintiff’s counsel could try to get the Magistrate Judge back on the phone. Defendant then hung up the phone.

On January 24, 2012, the Court denied without prejudice to Defendant’s right to renew the motion, supported by certain requested information, his motion for extension of time (Doc. 74). The Court ordered that any renewed motion for an extension of time / stay of proceedings would have to be submitted within fourteen days of the date of the Court’s order and supported by certain information regarding Defendant’s mother’s medical condition.

Defendant did not file such a motion or otherwise indicate how he intends to proceed.

On February 16, 2012, the Court held another case management conference. Defendant did not attend. Plaintiff’s counsel highlighted to the Court that Defendant had not filed the documents required to request an extension for the stay as set out in the January 24, 2012 Order.

The Court then set the discovery schedule, ordering close of discovery for June 29, 2012 and any case-dispositive motions by July 31, 2012.

Finally, on March 22, 2012, Plaintiff sent yet another letter to Defendant, again explaining in detail the deficiencies in Defendant's discovery responses and urging Defendant to produce all relevant documents as defined in Plaintiff's prior discovery requests. (**Exhibit L.**) Plaintiff specifically noted the following deficiencies regarding the production of documents:

- **Document Request 20:** You have indicated that you do not have any responsive Documents related to your immigration and/or citizenship. However, your citizenship and asylum papers are documents expected to be within your possession or control.
- **Document Request 21:** You have indicated that you do not have responsive Documents relating to travel Documents or passports. However, since you have represented that you are currently in Kenya, this cannot be true.
- **Document Request 22:** You have indicated that you do not have any responsive Documents relating to any other court proceedings in which you have been involved. At the same time, in your Response to Plaintiff's Interrogatory No. 18, you disclosed that you were and are involved in proceedings related to your divorce and a shooting. Please provide documents relating to these events and legal proceedings, without delay.
- **Document Request 24:** You have indicated that you do not have any responsive Documents relating to your current or prior employment. However, you should be able to provide a proof of current and/or prior

employment, such as pay stubs or any other Documents establishing your work history.

- **Document Request 25:** You have objected to producing Documents relating to your income and tax returns on the basis of confidentiality and irrelevance to the facts of the case. Your income statements are central to any potential settlement negotiations, among other things. Additionally, the Plaintiff would agree to confidentiality stipulation or protective order with respect of these Documents.
- **Document Request 26:** You have objected to producing Documents relating to your assets. To the extent that this information is confidential, the Plaintiff will agree to a reasonable confidentiality stipulation or protective order with respect to these Documents.
- **Document Request 27:** You have objected to providing your Social Security Number or Driver's License Number. While this information is not necessarily confidential, the Plaintiff will agree to a reasonable confidentiality stipulation with respect of these Documents. Please note that should you produce Documents relating to your income and assets, the Plaintiff would not require you to produce your Social Security Number.

With respect to the deficient responses to Plaintiff's interrogatories, the letter noted that Defendant should supplement the following responses:

- **Interrogatory Number 1:** Regarding the individuals listed in your Initial Disclosures, you must provide any known aliases or nicknames

for the individuals listed. This is essential since, as you are aware, in Somalia most individuals are known by their nicknames. Further, you should provide any additional addresses or contact information that you have located, provide information on which of the witnesses require translation, and confirm which of the individuals you have listed are currently located in Ohio.

- **Interrogatory Number 2:** Regarding your educational and work history, you indicate that you were a student from 1986-1987 without specifying any institution at which you studied. Additionally, you do not provide any information about your employment from 1987-1988. Further, you have failed to provide information on your immediate superiors for all but your position with the National Security Service (“NSS”) and information on your immediate subordinates for all positions. You failed to provide information on all aspects of your role and responsibility and did not provide information on the NSS units under your authority. For your work history in the United States, you failed to provide all of the above.
- **Interrogatory Number 6:** We request updated information on the current locations, known aliases or nicknames, and contact information for the following individuals: Abdullahi Ismail Ciro, Col. Abdullahi Agojid, and Col. Abdirashid Yasin.
- **Interrogatory Number 9:** You have failed to provide information on interrogation techniques, how often individuals were questioned, and how information was reported to you.

- **Interrogatory Number 13:** You have failed to include information on the investigation procedures, documentation and reporting procedures. You have also failed to include the names of individuals authorized to carry out investigation orders (such as yourself and those below you
- **Interrogatory Number 15:** You have failed to provide information on documenting and reporting detentions.
- **Interrogatory Number 16:** You have failed to provide information on the collaboration between NSS and National Security Court.
- **Interrogatory No. 18:** This calls for you to, “Identify any litigation you have initiated or been involved with, either as a party or witness, since the date of your first entry into the United States, including the outcome of the litigation, any award of damages and any money obtained through settlement.” (emphasis added). Your response that you do not have any responsive Documents is insufficient: as we previously raised with your prior counsel, we have discovered that on November 8, 2011, you settled your personal injury action with Voans Capital Park Limited Partnership, et al., in the Stipulation of Dismissal and Journal Entry for Case. No. 10 CVC-06- 8228. As set out above, you are required to supplement your responses with information in relation to this or any other action, and in particular, any money obtained through settlement. We ask that you do so immediately.

It is now April 24, 2012. Plaintiff has responded and even supplemented his responses to Defendant’s Request for Responses to Interrogatories and Document Production. The Plaintiff

has, so far, produced a total of 78 responsive documents and intends to supplement its production with additional documents upon receipt of a signed confidentiality stipulation or protective order from the Court, which is currently pending. Defendant has produced no documents. Defendant has further failed to supplement his interrogatory responses and to respond to Plaintiffs numerous discovery letters and requests.

Argument

Plaintiff is now in the process of drafting its case-dispositive motion according to the discovery and briefing schedule set by this Court. Plaintiff has been deprived of the opportunity to review any relevant documents that Defendant might rely upon in his response to this motion, if any. Defendant has not provided Plaintiff with any discovery documents, any supplemental responses to Plaintiff's interrogatories, or any replies to Plaintiff's numerous recent attempts to meet and confer. Moreover, Defendant has not confirmed whether Defendant intends to engage new counsel, continue *pro se*, or altogether defend this lawsuit.

Plaintiff certifies that he has satisfied his obligations under Fed. R. Civ. Proc. 37(a)(1) and S.D. Ohio Civ. R. 37.1 to meet and confer in an effort to resolve any outstanding discovery disputes. Plaintiff now respectfully moves this Court to compel Defendant to produce all documents in his possession responsive to Plaintiff's discovery requests and to supplement Defendant's deficient responses to Plaintiff's First Set of Interrogatories. Plaintiff's First Request for Production of Documents asks that Defendant produces only those documents that are relevant to the matters at issue in this lawsuit and is proper under the Federal Rules of Civil Procedure and this Court's jurisprudence. *Lewis v. ACB Bus. Servs., Inc.*, 135 F.3d 389, 402 (6th Cir. 1998) ("[t]he scope of discovery under the Federal Rules of Civil Procedure is traditionally quite broad.")

Plaintiff further requests, in the event that Defendant maintains that he possesses no responsive documents or fails to altogether respond to the Court's order and Plaintiff's discovery requests, that this Court prevents Defendant from using any documents not-yet-produced in any response he might file to Plaintiff's case-dispositive motion.

Conclusion

For the reasons stated herein, Plaintiff respectfully requests this Court's assistance in compelling the Defendant to produce all relevant documents as previously requested in Plaintiff's First Request for Production of Documents and to supplement Defendant's deficient responses to Plaintiff's First Set of Interrogatories.

Dated: April 24, 2012

Respectfully submitted,

s/ Kenneth Cookson

Kenneth Cookson (0020216)

Trial Attorney

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Attorneys for Plaintiff
Abukar Hassan Ahmed

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April, 2012, I electronically transmitted the foregoing PLAINTIFF'S NOTICE OF MOTION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF ALL RELEVANT DOCUMENTS, AND PROPOSED ORDER with the Clerk of the Court using the CMJECF system for filing and Notice of Electronic Filing of the Motion to the following CMJECF registrants:

John J. Stark
U.S. Attorney's Office
303 Marconi Blvd, Suite 200
Columbus, OH 43215

Eric Joseph Bernie
U.S. Department of Justice
20 Massachusetts Ave N.W. #7124
Washington, DC 20520

and to the Defendant via **Email and Express Mail**:

Abdi Aden Magan
3183 Pendleton Court
Columbus, Ohio 43249
aamagan@hotmail.com

Dated: April 24, 2012

s/ Kenneth Cookson
Kenneth Cookson (0020216)
Trial Attorney
KEGLER BROWN HILL & RITTER, LPA
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kcookson@keglerbrown.com

Attorney for Plaintiff
Abukar Hassan Ahmed

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ABUKAR HASSAN AHMED,	:	CASE NO. 2:10-cv-00342
Plaintiff,	:	Electronically Filed
v.	:	District Judge: George C. Smith
	:	Magistrate Judge: Mark R. Abel
	:	
ABDI ADEN MAGAN,	:	AFFIDAVIT OF
Defendant.	:	CHRISTINA GEORGIA HIOUREAS
	:	IN SUPPORT OF PLAINTIFF'S
	:	MOTION TO COMPEL

State of New York)
):ss.:
County of New York)

I, Christina Georgia Hioureas, being duly sworn deposes and says:

1. I am over eighteen years of age and am otherwise qualified to testify to the facts set forth below. All of the facts rendered herein are based upon my personal knowledge.
2. I am an associate with the law firm of Latham & Watkins LLP, counsel for Plaintiff, Abukar Hassan Ahmed. I submit this Affidavit in Support of Plaintiff's Motion to Compel Defendant Abdi Aden Magan ("Defendant" or "Mr. Magan") to produce documents in response to Plaintiff's First Request for the Production of Documents and to supplement Defendant's deficient responses to Plaintiff's First Set of Interrogatories dated September 29, 2010.
3. Attached as Exhibit A is a true and correct copy Plaintiff's First Request for Production of Documents, dated September 29, 2010.

5. Attached as Exhibit B is a true and correct copy of the Plaintiff's First Request for Interrogatories, dated September 29, 2010.

6. Attached as Exhibit C is a true and correct copy of the Defendant's Responses to Plaintiff's First Request for Interrogatories, dated November 17, 2010.

7. Attached as Exhibit D is a true and correct copy of the Defendant's Responses to Plaintiff's First Request for the Production of Documents, dated December 12, 2010.

8. Attached as Exhibit E is a true and correct copy of the letter from Plaintiff's counsel to Defendant's counsel re: Plaintiff's Document Production, dated October 22, 2010.

9. Attached as Exhibit F is a true and correct copy of the letter from Plaintiff's counsel to Defendant's counsel re: Discovery Issues, dated March 29, 2011.

10. Attached as Exhibit G is a true and correct copy of the letter from Plaintiff's counsel to Defendant's counsel re: Discovery Issues, dated November 22, 2011.

11. Attached as Exhibit H is a true and correct copy of the letter from Plaintiff's counsel to Defendant's counsel re: Discovery Issues, dated December 9, 2011.

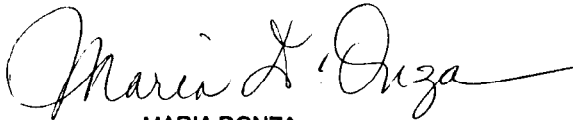
12. Attached as Exhibit I is a true and correct copy of the Plaintiff's Supplemental Responses and Objections to Defendant's First Set of Interrogatories and First Request for the Production of Documents, dated December 16, 2011.

13. Attached as Exhibit J is a true and correct copy of the letter from Plaintiff's counsel to Defendant's counsel re: Supplemental Production, dated December 16, 2011.

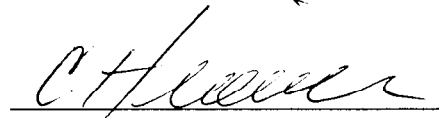
14. Attached as Exhibit K is a true and correct copy of the letter from Plaintiff's counsel to Defendant's counsel re: Outstanding Discovery Issues, dated December 16, 2011.

15. Attached as Exhibit L is a true and correct copy of the letter from Plaintiff's counsel to Defendant's counsel re: Discovery Issues, dated March 22, 2012.

Sworn and Subscribed to before me
this 24 day of April 2012



MARIA DONZA
Notary Public, State of New York
No. 01DO6223376
Qualified in Kings County
Commission Expires June 14, 2014



Christina Georgia Hioureas

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ABUKAR HASSAN AHMED,	:	CASE NO. 2:10-cv-00342
Plaintiff,	:	
v.	:	Electronically Filed
	:	District Judge: George C. Smith
	:	Magistrate Judge: Mark R. Abel.
	:	
ABDI ADEN MAGAN,	:	
Defendant.	:	

**EXHIBITS IN SUPPORT OF AFFIDAVIT OF CHRISTINA GEORGIA HIOUREAS
IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL**

Exhibit A Plaintiff's First Request for Production of Documents, dated September 29, 2010.

Exhibit B: Plaintiff's First Request for Interrogatories, dated September 29, 2010.

Exhibit C: Defendant's Responses to Plaintiff's First Request for Interrogatories, dated November 17, 2010.

Exhibit D: Defendant's Responses to Plaintiff's First Request for the Production of Documents, dated December 12, 2010.

Exhibit E: Letter from Plaintiff's counsel to Defendant's counsel re: Plaintiff's Document Production, dated October 22, 2010.

Exhibit F: Letter from Plaintiff's counsel to Defendant's counsel re: Discovery Issues, dated March 29, 2011.

Exhibit G: Letter from Plaintiff's counsel to Defendant's counsel re: Discovery Issues, dated November 22, 2011.

Exhibit H: Letter from Plaintiff's counsel to Defendant's counsel re: Discovery Issues, dated December 9, 2011

Exhibit I: Plaintiff's Supplemental Responses and Objections to Defendant's First Set of Interrogatories and First Request for the Production of Documents, dated December 16, 2011.

Exhibit J: Letter from Plaintiff's counsel to Defendant's counsel re: Supplemental Production, dated December 16, 2011.

Exhibit K: Letter from Plaintiff's counsel to Defendant's counsel re: Outstanding Discovery Issues, dated December 16, 2011

Exhibit L: Letter from Plaintiff's counsel to Defendant's counsel re: Discovery Issues, dated March 22, 2012

Exhibit A: Plaintiff's First Request for
Production of Documents dated September 29, 2010

EASTERN DIVISION

Defendant.

))))))))

Case No. 2:10-cv-342

Plaintiffs request that the defendant produce all documents identified by the Document Requests below, pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and in accordance with the General Instructions and definitions set forth herein, within thirty (30) days of the date of service hereof, or on such date as may be agreed by the parties. All documents called for by the following shall be produced at the offices of Akin Gump Strauss Hauer & Feld LLP, 1333 New Hampshire Avenue, N.W., Washington, DC 20036-1564.

B. You are required to produce the original, and all non-identical copies which differ from the original or from any other copy for any reason, including but not limited to the making of notes thereon, of each document described below. If the original is not in your possession, custody or control, a duplicate may be produced.

C. Each document shall be produced in such a fashion as to indicate clearly the identity of the file in which it was located. All documents are to be produced as they are kept in the usual course of business so that plaintiffs can ascertain the file in which they were located, their relative order in the files and how the files were maintained.

D. If you know of the existence, past or present, of any document described in the following requests, but are unable to produce such document because it is not presently in your possession, custody or control, please identify each and every such document, including the contents, date, sender(s), addressee(s), and any recipient of any copies, state that it is not presently in your possession, custody, or control and state what disposition was made, why such disposition was made, and the identity of the person who now has or may have possession, custody or control of the document.

E. If any document described in the following request has been modified, altered or destroyed in any way, in whole or in part, please identify each such document, state how the document was modified or altered, the person who modified, altered, or destroyed the document, and when and why the document was modified, altered, or destroyed.

F. With respect to each document identified by these requests as to which you assert the claim of privilege, separately state the following: (1) the date the document was prepared; (2) the length of the document; (3) the type of the document (*e.g.*, letter, memorandum, note); (4) a general description of the subject of the document; (5) the name and title of its author(s); (6) the name and title of any addressee; (7) the name and title of any other person to whom the document or any copies thereof were sent; and (8) the basis of the claim of privilege.

G. If any of the Document Requests cannot be answered in full, please answer to the extent possible and state with particularity the reasons why a more complete answer cannot be provided.

H. When an objection is made to any Document Request, or subpart thereof, the objection shall state with specificity all grounds on which the objection is based.

I. No part of a Document Request shall be left unproduced on the basis that an objection is interposed to another part of the Document Request.

J. Where documents with attachments are produced, they shall be attached in the same manner as included in the original file. Where documents are produced and all attachments thereto are not attached, please identify the missing attachments and explain the reason(s) for their non-production.

K. Unless otherwise specified, these Document Requests are to be deemed continuing in nature, and require that you promptly produce any additional document or theory that may become known to you or anyone on your behalf after your answers have been prepared or served.

DEFINITIONS

A. "You" and "your" shall mean defendant Abdi Aden Magan, his representatives, subordinates, agents, employees, attorneys, companies or any other person or entity acting or purporting to act on his behalf.

B. "Somali" or "Somalia" shall refer to the Somali Democratic Republic, as it existed during the period 1969 through 1991.

C. "Somali Armed Forces" shall refer to any unit or member of the following: (a) the Somali military forces: army, navy, air force, or special forces; (b) the National Security Service

("NSS"); (c) the Red Berets; (d) any police organization including the Defense Intelligence Security Agency (also known as "Hangash"); (e) anyone acting or purporting to act under the authority (whether actual or apparent) of the Somali Armed Forces; and (f) any other military force, unit, organization, department or agency of Somalia and any of the aforementioned predecessor or successor organizations or groups (whether or not formally instituted) and shall be construed so as to mean any of these organizations individually, severally, or collectively.

D. The National Security Service ("NSS") shall refer to any unit or member of the government institution in Somalia known as the National Security Service between 1970 and 1990, including any persons working in conjunction with, or with the acquiescence of the NSS.

E. "NSS Officer" shall refer to a person holding a post of employment under the National Security Service ("NSS") or anyone acting or purporting to act under the authority of the National Security Service.

F. "Position" shall refer to a post of employment under the Somali Government or Somali armed forces, including a post of employment in any of the following units within the Somali Armed Forces: (a) the Somali military forces: army, navy, air force, or special forces; (b) the National Security Service ("NSS"); (c) the Red Berets; (d) any police organization including the Defense Intelligence Security Agency (also known as "Hangash"); (e) anyone acting or purporting to act under the authority (whether actual or apparent) of the Somali Armed Forces; and (f) any other military force, unit, organization, department or agency of Somalia and any of the aforementioned predecessors or successor organizations or groups (whether or not formally instituted) and shall be construed so as to mean any of these organizations individually, severally, or collectively.

G. National Security Service Department of Investigations Prison (“NSS Prison”) shall refer to the prison located in the Headquarters of the National Security Service of Somalia Department of Investigations in Mogadishu, Somalia.

H. “Paramilitary” shall mean any armed group that was not a legally constituted unit of the Somali Armed Forces but which engaged in violent activity and worked in conjunction with or with the acquiescence of the Somali Armed Forces.

I. “Security related offenses” shall mean any alleged or perceived allegiance to, sympathy for, interest in, or involvement in activities perceived to oppose the Somali Government, or in support of the Somali National Movement (“SNM”) or the United Somali Congress (“USC”), including authorship or possession of materials perceived as opposing the Somali Government.

J. “Surveillance” shall mean the observation or monitoring, either visual or audial, of a person or persons, including any observation or monitoring conducted with the aid of technology such as binoculars or wiretapping.

K. “Arrest” (and its forms) shall mean any arrest (with or without warrant or legal charges), detention, confinement, apprehension, or questioning of any civilian by the Somali Armed Forces, NSS, paramilitary, or other persons associated therewith.

L. “Detain” (and its forms) shall mean any imprisonment or confinement, with or without warrant or legal charges, of any civilian by the Somali Armed Forces, NSS, paramilitary, or other persons associated therewith.

M. “Person” shall mean a natural person and any other cognizable entity, including without limitation, firms, partnerships, corporations, divisions, proprietorships, joint ventures,

consortiums, clubs, associations, foundations, governmental agencies or instrumentalities, societies, orders, or any other organization or entity.

N. “Communicate” and “Communication” shall mean any transmission or exchange of information by any manner including telephonic “statements,” voicemail, inquiries, negotiations, discussions, agreements, understandings, meetings, notes, mail, facsimile, letters, electronic mail (e-mail), telegrams, teletypes, telexes, telecopies, computer linkups, written memoranda, face-to-face conversations and any verbal or non-verbal assertion (or “statement”) by one or more persons or among two or more persons.

O. “Document” and/or “thing” shall be synonymous in meaning and equal in scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil Procedure and the term “Writing” as defined in the Rule 1001 of the Federal Rules of Evidence. Electronic correspondence is also included within the meaning of this term. A draft or non-identical copy is a separate document within the meaning of this term.

P. “Refer,” “Relate” and “Concern” (and their forms), shall mean refer to, relate to, pertaining to, having a relationship to, evidencing or constituting evidence of in whole or in part, concern, involve, be connected with, reflect, indicate, disclose, summarize, explain, support, refute, exhibit, entail, illustrate, record, memorialize, discuss, include, implicate, name, reveal, expose, denote, imply, suggest, show, mention, demonstrate, embody, comprise, constitute, contain, identify, state, pertain directly or indirectly to, show signs of, or be in any way relevant to the particular subject matter identified.

Q. The phrase “this Action” means *Ahmed v. Magan*, Civil Action No. 2:10-cv-342, currently pending in the United States District Court for the Southern District of Ohio Eastern Division.

DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1.

All documents and communications relating to any fact alleged in the complaint filed in this Action.

DOCUMENT REQUEST NO. 2.

All documents and communications relating to your position and responsibilities as Chief of the National Security Service of Somalia ("NSS") Department of Investigations.

DOCUMENT REQUEST NO. 3.

All official documents and communications relating to the structure of the Somali Armed Forces during your tenure as Chief of the NSS Department of Investigations, including any documents describing the operational structure or hierarchy of the Somali Armed Forces.

DOCUMENT REQUEST NO. 4.

All official documents and communications relating to the structure of the NSS Department of Investigations during your tenure as Chief of the NSS Department of Investigations, including any documents describing the operational structure or hierarchy of the NSS.

DOCUMENT REQUEST NO. 5.

All documents and communications relating to the structure of the NSS Prison during your tenure as Chief of the NSS Department of Investigations, including any documents describing the operational structure or hierarchy of the NSS.

DOCUMENT REQUEST NO. 6.

All documents that describe the duties and administration of the NSS during your tenure as Chief of NSS Department of Investigations.

DOCUMENT REQUEST NO. 7.

All documents that identify NSS officers under your supervision during your tenure as Chief of the NSS Department Investigations.

DOCUMENT REQUEST NO. 8.

All documents that describe the rules and procedures regulating the conduct of officers within the Somali Armed Forces during your tenure as Chief of NSS Department of Investigations.

DOCUMENT REQUEST NO. 9.

All documents and communications that describe your authority to discipline subordinate officers for violating military rules of conduct or committing a crime during your tenure as Chief of NSS Department of Investigations.

DOCUMENT REQUEST NO. 10.

All documents and communications distributed to personnel in the Somali Armed Forces pertaining to the standards for treatment of the civilian population in Somalia.

DOCUMENT REQUEST NO. 11.

All documents and communications relating to the surveillance of Plaintiff Abukar Hassan Ahmed from 1988 through 1990.

DOCUMENT REQUEST NO. 12.

All documents and communications relating to the arrest of Plaintiff Abukar Hassan Ahmed on or about November 1988.

DOCUMENT REQUEST NO. 13.

All documents and communications relating to the detention of Plaintiff Abukar Hassan Ahmed between November 1988 and March 1989.

DOCUMENT REQUEST NO. 14.

All documents and communications relating to the interrogation of Plaintiff Abukar Hassan Ahmed while in the NSS Prison between November 1988 and March 1989.

DOCUMENT REQUEST NO. 15.

All documents and communications between you and any officer of the Somali Armed Forces relating to Plaintiff Abukar Hassan Ahmed.

DOCUMENT REQUEST NO. 16.

All documents and communications between you and the Attorney General's Office of the Somali National Security Court relating to Plaintiff Abukar Hassan Ahmed.

DOCUMENT REQUEST NO. 17.

All documents and communications relating to Plaintiff Abukar Hassan Ahmed's trial before the National Security Court in March 1989.

DOCUMENT REQUEST NO. 18.

All documents relating to your allegation that Plaintiffs' claims are barred by the statute of limitations.

DOCUMENT REQUEST NO. 19.

All documents relating to your allegation that you did not have the authority to detain Plaintiff.

DOCUMENT REQUEST NO. 20.

All documents relating to your application for asylum, residency, or citizenship in, or acceptance of entry into, the United States, Kenya or elsewhere.

DOCUMENT REQUEST NO. 21.

All documents relating to any travel you have made since 1991 involving the crossing of any national border other than the United States border, including copies of all passports and travel visas, whether in your name or under another name or alias.

DOCUMENT REQUEST NO. 22.

All documents filed by you or your representative, and any documents filed by prosecutors or parties or their representatives, in any country, in any judicial or administrative proceeding in which you are or have been a party, or you are or were otherwise asked or ordered to participate.

DOCUMENT REQUEST NO. 23.

All documents and communications between yourself and any journalist concerning the Somalia Armed Forces.

DOCUMENT REQUEST NO. 24.

Your resume or any other document(s) reflecting your full work history.

DOCUMENT REQUEST NO. 25.

All documents relating to your income since 1990.

DOCUMENT REQUEST NO. 26.

All documents relating to any real property, bank account, trust, or other monetary asset, investment, stock or bond, corporation partnership or other business venture, in or over which you have or have had a legal or beneficial interest, or over which you have created or transferred (by sale, gift, or otherwise) a legal or beneficial interest to or from any other person, at any time since 1990, including all documents relating to any transfer of any property, interest, or asset identified above to any person.

DOCUMENT REQUEST NO. 27.

All documents reflecting your residency in the United States including social security identifications and drivers licenses.

DOCUMENT REQUEST NO. 28.

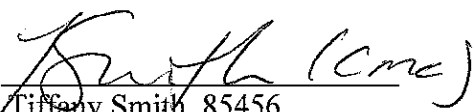
Any diary, journal, or calendar you maintained or have maintained since 1988 or are currently maintaining.

DOCUMENT REQUEST NO. 29.

All documents that you may use to support any claim or defense you may assert in this Action.

Dated: Sept 29, 2010

ABUKAR HASSAN AHMED
By Counsel

By: 
Tiffany Smith, 85456
Trial Attorney
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Kristine L. Sendek-Smith
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Natasha E. Fain
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(415) 544-0444

CERTIFICATE OF SERVICE

I hereby certify, this _____ day of _____, 2010, that a true copy of the foregoing was sent by electronic mail and first class mail, postage prepaid, to the following counsel of record:

Jeffrey Donnellon
Peter Ezanidis
Donnellon & Ezanidis, LLC
5 E. Long St., Ste. 605
Columbus, Ohio 43215

Exhibit B: Plaintiff's First Request for
Interrogatories, dated September 29, 2010

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF OHIO

EASTERN DIVISION

ABUKAR HASSAN AHMED,

Plaintiff,

v.

ABDI ADEN MAGAN,

Defendant.

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Case No. 2:10-cv-342

PLAINTIFF'S FIRST SET OF INTERROGATORIES

UNDER RULE 33, FEDERAL RULE OF CIVIL

PROCEDURE

PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT ABDI ADEN MAGAN

Pursuant to Federal Rule of Civil Procedure 33, Plaintiff Abukar Hassan Ahmed hereby requests that Defendant Abdi Aden Magan answer separately and truthfully in writing under oath within 30 days of service hereof, each of the Interrogatories set forth below in accordance with the Definitions and Instructions as they appear below.

DEFINITIONS

A. "You" and "your" shall mean defendant Abdi Aden Magan, his representatives, subordinates, agents, employees, attorneys, companies or any other person or entity acting or purporting to act on his behalf.

B. "Somali" or "Somalia" shall refer to the Somali Democratic Republic, as it existed during the period 1969 through 1991.

C. "Somali Armed Forces" shall refer to any unit or member of the following: (a) the Somali military forces: army, navy, air force, or special forces; (b) the National Security Service ("NSS"); (c) the Red Berets; (d) any police organization including the Defense Intelligence Security Agency (also known as "Hangash"); (e) anyone acting or purporting to act under the

authority (whether actual or apparent) of the Somali Armed Forces; and (f) any other military force, unit, organization, department or agency of Somalia and any of the aforementioned predecessor or successor organizations or groups (whether or not formally instituted) and shall be construed so as to mean any of these organizations individually, severally, or collectively.

D. The National Security Service (“NSS”) shall refer to any unit or member of the government institution in Somalia known as the National Security Service between 1970 and 1990, including any persons working in conjunction with, or with the acquiescence of the NSS.

E. National Security Service Department of Investigation Prison (“NSS Prison”) shall refer to the prison located in the Headquarters of the National Security Service of Somalia Department of Investigations in Mogadishu, Somalia.

F. “NSS Officer” shall refer to a person holding a post of employment under the National Security Service or anyone acting or purporting to act under the authority of the National Security Service.

G. “Somali Government” shall mean the Government of Somalia, including any ministries, Somali Armed Forces, missions, services, departments, agencies, commissions, legislatures, parliaments, assemblies, and cabinets, and shall be construed so as to mean any of these entities individually, severally or collectively.

H. “Paramilitary” shall mean any armed group that was not a legally constituted unit of the Somali Armed Forces but which engaged in violent activity and worked in conjunction with OR with the acquiescence of the Somali Armed Forces.

I. “Civilian” shall mean any resident of Somalia who was not a member of the Somali Armed Forces and was not engaged in uniformed armed combat with the Somali Armed

Forces, regardless of whether such resident was alleged to have any involvement in terrorist or subversive activities or opposing the Somali Government.

J. “Surveillance” shall mean the observation or monitoring, either visual or audial, of a person or persons, including any observation or monitoring conducted with the aid of technology such as binoculars or wiretapping.

K. “Security related offenses” shall mean any alleged or perceived allegiance to, sympathy for, interest in, or involvement in activities perceived to oppose the Somali Government, or in support of the Somali National Movement (“SNM”) or the United Somali Congress (“USC”), including authoring or possession of materials perceived as opposing the Somali Government.

L. “Arrest” (and its forms) shall mean any arrest (with or without warrant or legal charges), detention, confinement, apprehension, or questioning of any civilian by the Somali Armed Forces, paramilitary, or other persons associated therewith.

M. “Detain” (and its forms) shall mean any imprisonment or confinement, with or without warrant or legal charges, of any civilian by the Somali Armed Forces, NSS, paramilitary, or other persons associated therewith.

N. The phrase “this Action” means *Ahmed v. Magan*, Civil Action No. 2:10-cv-342, currently pending in the United States District Court for the Southern District of Ohio Eastern Division.

O. “Person” shall mean a natural person and any other cognizable entity, including without limitation, firms, partnerships, corporations, divisions, proprietorships, joint ventures, consortiums, clubs, associations, foundations, governmental agencies or instrumentalities, societies, orders, or any other organization or entity.

P. “Communicate” and “Communication” shall mean any transmission or exchange of information by any manner including telephonic “statements,” voicemail, inquiries, negotiations, discussions, agreements, understandings, meetings, notes, mail, facsimile, letters, electronic mail (e-mail), telegrams, teletypes, telexes, telecopies, computer linkups, written memoranda, face-to-face conversations and any verbal or non-verbal assertion (or “statement”) by one or more persons or among two or more persons.

Q. “Document” and/or “thing” shall be synonymous in meaning and equal in scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil Procedure and the term “writing” as defined in the Rule 1001 of the Federal Rules of Evidence. Electronic correspondence is also included within the meaning of this term. A draft or non-identical copy is a separate document within the meaning of this term.

R. “Refer,” “Relate” and “Concern” (and their forms), shall mean refer to, relate to, pertaining to, having a relationship to, evidencing or constituting evidence of in whole or in part, concern, involve, be connected with, reflect, indicate, disclose, summarize, explain, support, refute, exhibit, entail, illustrate, record, memorialize, discuss, include, implicate, name, reveal, expose, denote, imply, suggest, show, mention, demonstrate, embody, comprise, constitute, contain, identify, state, pertain directly or indirectly to, show signs of, or be in any way relevant to the particular subject matter identified.

S. “Position” shall refer to a post of employment under the Somali Government or Somali Armed Forces, including a post of employment in any of the following units within the Somali Armed Forces: (a) the Somali military forces: army, navy, air force, or special forces; (b) the National Security Service (“NSS”); (c) the Red Berets; (d) any police organization including the Defense Intelligence Security Agency (also known as “Hangash”); (e) anyone acting or

purporting to act under the authority (whether actual or apparent) of the Somali Armed Forces; and (f) any other military force, unit, organization, department or agency of Somalia and any of the aforementioned predecessor or successor organizations or groups (whether or not formally instituted) and shall be construed so as to mean any of these organizations individually, severally, or collectively.

T. To the extent necessary to bring within the scope of the Interrogatories contained herein any information that might otherwise be construed to be outside their scope, (a) the words “and” and “or” shall be read in the conjunctive and in the disjunctive wherever they appear; (b) the word “all” means “any and all”; (c) the word “including” means “including but not limited to”; (d) the word “any” means and includes both “any” and “every”; (e) “each” shall mean both “each” and “every,” and the word “every” shall mean “each” and “every,” as appropriate; (e) the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa; (f) the neuter form of a pronoun shall be considered to include within its meaning the masculine and feminine forms of the pronoun, and vice versa; and (f) the use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb.

U. The term “Identify” (and its forms), when used with respect to documents or things, means to provide, to the extent known, a description of each document or thing sufficient to obtain production thereof by subpoena, discovery request, or court order, including:

- (a) the type of document or thing (letter, photograph, etc.);
- (b) the name and current business or residential address of the author(s) or originator(s), including each person or persons who (a) prepared or participated in the

preparation or creation of the document or thing, (b) signed it, initialed it or over whose signature or initials it was issued, and (c) to whom it was addressed or distributed;

- (c) the title and nature of the document's or thing's contents;
- (d) the date appearing on the document or thing and the date or dates when it was prepared;
- (e) a brief summary of the substance of each document or thing;
- (f) the current physical location of the document or thing; and
- (g) if the document or thing is no longer in existence or in defendant's control, the disposition that was made of it and the location of any copies of the document or thing known to the defendant.

Alternatively, you may identify any document or thing by instead attaching a full, clear, legible copy thereof to your response hereto, provided that each such copy contains a reference to each Interrogatory to which it is responsive.

V. The term "Identify" (and its forms), when used with respect to persons, means to provide, to the extent known, such person's full name (or if not known, provide sufficient description so that such person will be identifiable to the plaintiffs), present or last known business or residential address, and previous or last known telephone number(s). If the person is a natural person, also provide that person's present or last known job title, place of employment or business affiliation and business telephone number. If the person was a former officer in the Somali Armed Forces, provide their position and rank and their relationship to you, the Defendant Abdi Aden Magan, as Chief of the NSS Department of Investigations. If the person is a governmental or business entity, also provide the address of its principle place of business, the

address of the particular office and the identity of the person or persons having knowledge of the matter with respect to which the business or governmental entity is named.

W. The term “Identify” (and its forms), when used with respect to communications, means, to the extent known:

- (1) state the date and place of each communication;
- (2) state the medium through which such communication was made (*e.g.*, in person, by telephone, etc.);
- (3) identify each person who participated in the Communication;
- (4) identify each person (other than a participant) who heard or had access to the communication;
- (5) state the substance of the communication, including any discussion constituting or relating to the communication, the order in which such discussion was had, and any decisions or conclusions reached in the course of or as a result of the communication; and
- (6) identify each document or thing relating to the substance of the communication.

X. The term “Identify” (and its forms), when used with respect to actions, means, to the extent known:

- (1) state the date and place of each action;
- (2) identify each person who participated in the action;
- (3) identify each person (other than a participant) who heard or bore witness to the action;

(4) state the substance of the action, including any discussion constituting or relating to the action, the order in which such discussion was had, and any decisions or conclusions reached in the course of or as a result of the action; and

(5) identify each document or thing relating to the substance of the action.

INSTRUCTIONS

1. Plaintiffs incorporate herein by reference Rules 26 and 33 of the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Southern District of Ohio. These Interrogatories seek responses to the full extent of the Federal and Local Rules.

2. In answering these Interrogatories, you are required to furnish truthfully, fully and in good faith, all information that is presently available to you, regardless of whether such information was obtained directly by you, your former or present attorneys, agents, consultants, employees, investigators, accountants, experts, or anyone acting or purporting to act on their behalf or your behalf. If, after having consulted all the aforementioned persons, you are unable to provide the information being sought by any Interrogatory or any portion thereof, describe in detail your efforts to obtain such information.

3. If any of the following Interrogatories cannot be answered in full, answer to the extent possible, specifying the reasons for your inability to answer the remainder of the Interrogatory and stating whatever information, knowledge or belief you do have relating to the unanswered portion thereof.

4. A request to "state the entire factual basis" for an allegation or contention means to:

(a) State all facts in your knowledge, possession or control regarding any allegation or contention, including all facts that you may use to support the allegation or contention, as well as all facts that tend to contradict or undermine the allegation or contention;

(b) Identify each person having knowledge relating to the subject matter of the allegation or contention, regardless of whether such person's knowledge tends to support or contradict or undermine the allegation or contention; and

(c) Identify each document or thing relating to the subject matter of the claim or defense, regardless of whether such document or thing tends to support or contradict or undermine the allegation or contention.

5. If and to the extent to which you claim a privilege as a ground for refusing to answer an Interrogatory in whole or in part, describe the bases for such claim of privilege and provide such other information as is required by Federal Rule of Civil Procedure 26(b)(5) and other applicable rules of court or law.

6. If you object to or refuse to answer any part of an Interrogatory on grounds other than privilege, describe the ground(s) separately, fully and with particularity.

7. These interrogatories shall be deemed continuing, and you shall be obligated to change, supplement, and correct your answers to conform to all available information, including such information as first becomes available to you after your answers hereto are served.

INTERROGATORIES

INTERROGATORY NO. 1:

For each person included in Defendant Magan's Initial Disclosures (filed pursuant to Federal Rule of Civil Procedure 26 (a)), state the full name, any aliases or nicknames, last known

address, telephone number, occupation, and identify the person's knowledge of the facts relating to any claims and defenses stated in the "pleadings" (as that term is defined pursuant to Rule 7(a) of the Federal Rules of Civil Procedure), the entire factual basis of that person's knowledge, and indicate whether such person will be called to testify at trial. For each expert witness identified, describe his or her qualifications, opinions, conclusions and basis for conclusions.

INTERROGATORY NO. 2:

Provide a timeline of your work history for the last 35 years. For each position you held, identify:

- (a) your position and title or rank at the time;
- (b) the dates of service in that position;
- (c) all aspects of your role and responsibilities in that position;
- (d) for National Security Service ("NSS") positions, each unit of the NSS under your authority;
- (e) your immediate superiors; and
- (f) your immediate subordinates

INTERROGATORY NO. 3:

State the procedure in effect from 1986 to 1990 for disciplining or removing an NSS officer that has violated military rules of conduct or committed a crime.

INTERROGATORY NO. 4:

Describe your authority to discipline subordinate NSS officers for violating military rules of conduct or committing a crime during your tenure as Chief of the NSS Department of Investigations.

INTERROGATORY No. 5:

Describe in detail:

- 1) your responsibilities relating to operation of the NSS prison from 1986 to November 1990;
- 2) the types of charges against detainees in the NSS prison during the period 1986 to November 1990; and
- 3) the types of reports made documenting the names of persons detained in the NSS prison and the charges against them, the location of the reports, who was responsible for creating them, and the persons who received copies of the reports and the frequency with which the reports were circulated.

INTERROGATORY No. 6:

Identify NSS officers and members of the Somali Armed forces that operated and worked within the NSS prison under your authority. Your answer should include but not be limited to their full name, nickname or alias, title, rank, last known address, and telephone number.

INTERROGATORY No. 7:

State all facts known to you regarding Hussein Sufi Derow, including but not limited to, his rank, title and position in the NSS in 1988 and 1989, his supervising and superior officers within the NSS in 1988 and 1989, his relationship to you as Chief of the NSS Department of Investigations, any disciplinary proceedings against him for criminal activity or violation of military rules of conduct, his travel since 1989 and his last known address and phone number.

INTERROGATORY No. 8:

State all facts known to you regarding Mohamoud Hagi Farah Igal, including but not limited to his rank, title and position in the NSS in 1988 and 1989, his supervising and superior

officers within the NSS in 1988 and 1989, his relationship to you as Chief of the NSS Department of Investigations, any disciplinary proceedings against him for criminal activity or violation of military rules of conduct, his travel since 1989 and his last known address and phone number.

INTERROGATORY NO. 9:

State all facts known to you concerning the treatment of persons detained in the NSS prison during your tenure as Chief of the NSS Department of Investigations, including:

- 1) the conditions of confinement of persons detained at the NSS prison, including a description of the prison cells, whether persons detained at the NSS prison were kept in solitary confinement, whether they were kept in handcuffs, the type and amount of food provided daily to them, and how often they were permitted to go to the toilet and bathe;
- 2) the questioning of persons detained at the NSS prison, including who questioned them, how often they were questioned, what types of interrogation techniques were used on them, how information obtained from questioning was stored, and how information obtained from questioning was reported to you in your capacity as Chief of the Department of Investigations.

INTERROGATORY NO. 10:

State all facts known to you, and the date in which you first learned this information, regarding Plaintiff Abukar Hassan Ahmed, especially with regard to any NSS investigation, surveillance, arrest, imprisonment and treatment during imprisonment, and any evidence collected by the NSS and presented to the National Security Court in support of criminal charges against Plaintiff Abukar Hassan Ahmed.

INTERROGATORY NO. 11:

Identify all communications that you have had with Plaintiff Abukar Hassan Ahmed and concerning Plaintiff Abukar Hassan Ahmed, including communications with the National Security Court and the Office of the Attorney General.

INTERROGATORY NO. 12:

Identify each person with knowledge of facts relating to the arrest, detention and interrogation of Plaintiff Abukar Hassan Ahmed between and including 1988 and 1989, and your relationship to that person.

INTERROGATORY NO. 13:

State all facts known to you concerning the NSS procedure in effect from 1980 to 1990 for investigating an individual for suspicion of security related offenses. Include any procedures for documenting and reporting information obtained through investigations, identify the NSS officers with authority to order an investigation or the continuation of an investigation and the NSS officers that supervised and carried out orders for an investigation.

INTERROGATORY NO. 14:

State all facts known to you concerning the NSS procedure for arresting persons during your tenure as Chief of the NSS Department of Investigations. Include any procedures for documenting and reporting the arrest, and identify the NSS officers with authority to order an arrest, the NSS officers authorized to carry out an arrest and the persons and NSS officers that were notified when an arrest was made.

INTERROGATORY NO. 15:

State all facts known to you regarding the NSS procedure for detaining a civilian for security related offenses in the NSS prison. Identify any and all procedures for pre-trial detention

in the NSS prison and documenting and reporting the detention. Identify NSS officers with authority to order the continued detention of a civilian for security related offenses.

INTERROGATORY NO. 16:

State all facts known to you concerning the National Security Court during the time you were a member of the NSS, including:

- 1) the types of cases tried before the Court;
- 2) the key members of the Court; and
- 3) the collaboration between the NSS prison and the National Security Court in the prosecution of an accused before the Court.

INTERROGATORY NO. 17:

Identify any incidents known to you, and the time at which you first learned of them, relating to the arbitrary arrest, detention, mistreatment, torture, or killing of any civilian in Somalia alleged to have been committed by the NSS during the period 1970 through 1989.

INTERROGATORY NO. 18:

Identify any litigation that you have initiated or been involved with, either as a party or witness, since the date of your first entry into the United States, including the outcome of the litigation, any award of damages and any money obtained through settlement.

INTERROGATORY NO. 19:

Identify all instances in which you have been arrested and/or convicted of a crime. Include the nature of the offense, the arresting agency, the outcome, and the case number and court identification.

INTERROGATORY No. 20:

Identify your immigration status in the United States, from the date of your first entry into the United States of America.

Dated: Sept 29, 2010

ABUKAR HASSAN AHMED
By Counsel

By: Tiffany Smith (CME)
Tiffany Smith, 85456
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CERTIFICATE OF SERVICE

I hereby certify, this _____ day of _____, 2010, that a true copy of the foregoing was sent by electronic mail and first class mail, postage prepaid, to the following counsel of record:

Jeffrey Donnellon
Peter Ezanidis
Donnellon & Ezanidis, LLC
5 E. Long St., Ste. 605
Columbus, Ohio 43215

Exhibit C Defendant's Responses to Plaintiff's First
Request for Interrogatories, dated November 17,
2010

or disclosure of information, documents, or things that are protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, and all other applicable privileges, protections, or immunities from discovery. If and to the extent the Defendant inadvertently discloses in this litigation, information that is, or may be, protected from discovery, such inadvertent disclosure is not intended to, and shall not be construed to, waive any such privilege, protection or immunity.

Defendant further objects to the interrogatories to the extent they seek information that is overly broad and unduly burdensome and/or is without appropriate temporal limitation or qualification.

Defendant further objects to the interrogatories to the extent they refer to the "NSS prison". Mr. Magan does not know what is being referred to. When the term NSS prison is used in popular media sources they are usually referring to an interrogation center in Mogadishu, referred to as *Godka*, or other centers including the Mogadishu Central Prison, and stations at Lanta Bur, Labtanjirow and Burwein. Mr. Magan did not work or have any authority at any of these places.

The absence of an objection to a particular interrogatory, or any part thereof, shall not be deemed to be an acknowledgment that information responsive to such interrogatory, or an admission or agreement that the subject of any such interrogatory, or any part thereof, is relevant to the subject matter of this case. Defendant hereby reserves the right to object to relevancy and/or admissibility of any information provided in these answers, objections, and responses.

INTERROGATORIES

INTERROGATORY NO. 1:

For each person included in Defendant Magan's Initial Disclosures (filed pursuant to Federal Rule of Civil Procedure 26 (a)), state the full name, any aliases or nicknames, last known address, telephone number, occupation, and identify the person's knowledge of the facts relating to any claims and defenses stated in the "pleadings" (as that term is defined pursuant to Rule 7(a) of the Federal Rules of Civil Procedure), the entire factual basis of that person's knowledge, and indicate whether such person will be called to testify at trial. For each expert witness identified, describe his or her qualifications, opinions, conclusions and basis for conclusions.

ANSWER:

See initial disclosures. New information that is responsive to this request that is not listed on the initial disclosures is listed below. Defendant does not yet know who he plans to call as a witness at trial. Defendant's full name is Abdi Aden Magan. He resides at 3183 Pendleton Ct., Columbus, Ohio, 43219. The phone number for Abdeqadir Aden is 614-281-7823. The phone number of Abdi Ali is 614-424-2468. The phone number for Ibrahim Moalin is 937-450-6656. The phone number of Jama Egal is 614-475-7265. The phone number of Mohamed Samatar is 614-556-0223.

INTERROGATORY NO. 2:

Provide a timeline of your work history for the last 35 years. For each position you held, identify:

- (a) your position and title or rank at the time;

- (b) the dates of service in that position;
- (c) all aspects of your role and responsibilities in that position;
- (d) for National Security Service ("NSS") positions, each unit of the NSS under your authority;
- (e) your immediate superiors; and
- (f) your immediate subordinates

ANSWER:

Objection, Mr. Magan is unable to provide a complete response to this request because this information is not available to him. Without waiving said objection, Mr. Magan's work history:

1. Army officer: 1976-1980, Specialized in Antiaircraft artillery
2. Antiterrorism Officer, 1980-1986, specialized in bomb squad
3. Student from approximately 1986-1987
4. Department of Criminal Investigation at the National Security

Service, from approximately 1988-1990. There was very little stability in Somalia at this time. Mr. Magan did not apply for this position or ask for this position. Mr. Magan was ordered to take this job. He had no choice. This was a dangerous position. Both of Mr. Magan's children were murdered as a result of him holding this position. Defendant's immediate superior was General Mohammed Jibril Muse Commander of the National Security Service. Towards the end of 1990 General Adan Cirday became commander of the National Security Service.

5. 2000 Limited Brands.
6. 2001 BP Gas Station.
7. 2001-2007 Kroger bakery.

INTERROGATORY NO. 3:

State the procedure in effect from 1986 to 1990 for disciplining or removing an NSS officer that has violated military rules of conduct or committed a crime.

ANSWER:

Objection this request is vague and overbroad. Without waiving said objection Mr. Magan does not know other than this would be handled by the court system.

INTERROGATORY NO. 4:

Describe your authority to discipline subordinate NSS officers for violating military rules of conduct or committing a crime during your tenure as Chief of the NSS Department of Investigations.

ANSWER:

None.

INTERROGATORY NO. 5:

Describe in detail:

- 1) your responsibilities relating to operation of the NSS prison from 1986 to November 1990;
- 2) the types of charges against detainees in the NSS prison during the period 1986 to November 1990; and
- 3) the types of reports made documenting the names of persons detained in the NSS prison and the charges against them, the location of the reports, who was responsible for creating them, and the persons who received copies of the reports and the frequency with which the reports were circulated.

ANSWER:

Objection, this question is vague and ambiguous. Defendant further objects to this interrogatory to the extent it refers to the "NSS prison". Mr. Magan does not know what is being referred to. When the term NSS prison is used in popular media sources they are usually referring to an interrogation center in Mogadishu, referred to as *Godka*, or other centers including the Mogadishu Central Prison, and stations at Lanta Bur, Labtanjirow and Burwein. Mr. Magan did not work or have any authority at any of these places.

The National Security Service had numerous divisions. Mr. Magan worked in the criminal investigation department. Without waiving said objection, the criminal investigation department of the National Security Service did not maintain a prison. If "NSS prison" refers to the central jail Mr. Magan did not work there or have any authority there. Anyone questioned by the Department of Criminal Investigation was there temporarily similar to a law enforcement station. Captain Sheikh Mohamed Hussein was responsible for the prisoner, their food, and their safety. The Department of Criminal Investigation investigated cases related to national security. The case would be with the National Security Court. To the best of Mr. Magan's knowledge any reports generated would go to the National Security Court and/or the headquarters of the National Security Service.

INTERROGATORY NO. 6:

Identify NSS officers and members of the Somali Armed forces that operated and worked within the NSS prison under your authority. Your answer should include but not be limited to their full name, nickname or alias, title, rank, last known address, and telephone number.

ANSWER:

Objection, this question is vague and ambiguous. Mr. Magan does not know what "NSS prison" is referring to. Defendant further objects to this interrogatory to the extent it refers to the "NSS prison". Mr. Magan does not know what is being referred to. When the term NSS prison is used in popular media sources they are usually referring to an interrogation center in Mogadishu, referred to as *Godka*, or other centers including the Mogadishu Central Prison, and stations at Lanta Bur, Lahtanjirow and Burwein. Mr. Magan did not work or have any authority at any of these places.

Without waiving said objection, the National Security Service had numerous divisions. Mr. Magan worked in the criminal investigation department. The criminal investigation department of the National Security Service did not maintain a prison. Abdullahi Ismail Ciro, Col. Abdullahi Agojiid, and Col. Abdirashid Yasin worked at the Department of Criminal Investigation. Mr. Magan does not know the location of Col. Abdullahi Agojiid. Abdullahi Ismail Ciro. is in Somaliland. Col. Abdirashid Yasin lives in Denmark.

INTERROGATORY NO. 7:

State all facts known to you regarding Hussein Sufi Derow, including but not limited to, his rank, title and position in the NSS in 1988 and 1989, his supervising and superior officers within the NSS in 1988 and 1989, his relationship to you as Chief of the NSS Department of Investigations, any disciplinary proceedings against him for criminal activity or violation of military rules of conduct, his travel since 1989 and his last known address and phone number.

ANSWER:

To the best of Mr. Magan's knowledge Hussein Sufi Derow was a Lieutenant and a

member of the National Security Service. He was in training to be an investigator in approximately 1988 and was transferred to the National Security Service headquarters after that. His superior was Abdi Duale. Mr. Magan does not know his location. Mr. Magan has no knowledge regarding any disciplinary action against him.

INTERROGATORY NO. 8:

State all facts known to you regarding Mohamoud Hagi Farah Igal, including but not limited to his rank, title and position in the NSS in 1988 and 1989, his supervising and superior officers within the NSS in 1988 and 1989, his relationship to you as Chief of the NSS Department of Investigations, any disciplinary proceedings against him for criminal activity or violation of military rules of conduct, his travel since 1989 and his last known address and phone number.

ANSWER:

To the best of Mr. Magan's knowledge Mohamed Haji Farh Igal was a Lieutenant and a member of the National Security Service. He was a case investigator. His superior was Col. Abdirashid Yasin. Mr. Magan does not know his location. Mr. Magan has no knowledge regarding any disciplinary action against him.

INTERROGATORY NO. 9:

State all facts known to you concerning the treatment of persons detained in the NSS prison during your tenure as Chief of the NSS Department of Investigations, including:

- 1) the conditions of confinement of persons detained at the NSS prison, including a description of the prison cells, whether persons detained at the NSS prison were kept

in solitary confinement, whether they were kept in handcuffs, the type and amount of food provided daily to them, and how often they were permitted to go to the toilet and bathe;

- 2) the questioning of persons detained at the NSS prison, including who questioned them, how often they were questioned, what types of interrogation techniques were used on them, how information obtained from questioning was stored, and how information obtained from questioning was reported to you in your capacity as Chief of the Department of Investigations.

ANSWER:

Objection, this question is vague and ambiguous. Defendant further objects to this interrogatory to the extent it refers to the "NSS prison". Mr. Magan does not know what is being referred to. When the term NSS prison is used in popular media sources they are usually referring to an interrogation center in Mogadishu, referred to as *Godka*, or other centers including the Mogadishu Central Prison, and stations at Lanta Bur, Labtanjirow and Burwein. Mr. Magan did not work or have any authority at any of these places.

The National Security Service had numerous divisions. Mr. Magan worked in the criminal investigation department. Without waiving said objection, the criminal investigation department of the National Security Service did not maintain a prison. Anyone held at the Department of Criminal Investigation was there at the order of the court. Anyone held there would be there temporarily until the case was investigated or the court ordered otherwise. There were two rooms that faced outside and four rooms inside. Each room was 4 x 6 meters. There were two bathrooms and two toilets. The toilets could be used at any time. Meals were served three times per day. Handcuffs were not used inside the building. There was no solitary room in

the facility at all. Suspects were asked questions by the officer who was investigating the case. The officer responsible for investigating the case would transfer the information to prosecutors at the court. Information that the Department of Criminal Investigations used came from the National Security Service headquarters.

INTERROGATORY NO. 10:

State all facts known to you, and the date in which you first learned this information, regarding Plaintiff Abukar Hassan Ahmed, especially with regard to any NSS investigation, surveillance, arrest, imprisonment and treatment during imprisonment, and any evidence collected by the NSS and presented to the National Security Court in support of criminal charges against Plaintiff Abukar Hassan Ahmed.

ANSWER:

Mr. Magan does not know the Plaintiff and has no recollection of ever meeting him.

INTERROGATORY NO. 11:

Identify all communications that you have had with Plaintiff Abukar Hassan Ahmed and concerning Plaintiff Abukar Hassan Ahmed, including communications with the National Security Court and the Office of the Attorney General.

ANSWER:

None.

INTERROGATORY NO. 12:

Identify each person with knowledge of facts relating to the arrest, detention and interrogation of Plaintiff Abukar Hassan Ahmed between and including 1988 and 1989, and your relationship to that person.

ANSWER:

None.

INTERROGATORY NO. 13:

State all facts known to you concerning the NSS procedure in effect from 1980 to 1990 for investigating an individual for suspicion of security related offenses. Include any procedures for documenting and reporting information obtained through investigations, identify the NSS officers with authority to order an investigation or the continuation of an investigation and the NSS officers that supervised and carried out orders for an investigation.

ANSWER:

Objection, Mr. Magan is not qualified to answer questions concerning National Security Service procedures from 1980 to 1990. Without waiving said objection, Mr. Magan served as Chief of the Department of Criminal Investigations from approximately 1988 to 1990. Commander of the National Security Service, General Mohamed Jibril, was the officer with authority to order any investigation. This was done in conjunction with the National Security Court. The only exception to this during Mr. Magan's tenure with the Department of Criminal Investigation, while General Mohamed Jibril was in charge, was the detention of Osman Hassan Ali Atto. Mr. Magan refused to allow Osman Hassan Ali Atto to be detained at the Department of Criminal Investigation. Towards the end of 1990 General Adan Cirday became Commander of the National Security Service. General Cirday did order people detained without involvement of the National Security Court. This escalated a conflict between Mr. Magan and General

Cirday. General Cirday arrested Mr. Magan.

INTERROGATORY NO. 14:

State all facts known to you concerning the NSS procedure for arresting persons during your tenure as Chief of the NSS Department of Investigations. Include any procedures for documenting and reporting the arrest, and identify the NSS officers with authority to order an arrest, the NSS officers authorized to carry out an arrest and the persons and NSS officers that were notified when an arrest was made.

ANSWER:

During my tenure documentation and reports came from the National Security Service headquarters under the order of General Mohamed Jibril Muse. After the Department of Criminal Investigation received the report the procedure was to consult with the prosecutors at the National Security Court. During my tenure Col. Nur Hasan Hussien was in charge of the prosecutors at the National Security Court. The court had to issue a warrant for the arrest of a person. After the warrant was issued an officer assigned to the investigation would usually arrest the person. Within days the officer assigned to the investigation would report to the prosecutor's office at the National Security Court. If an investigation could not be completed within days the officer assigned to the case would have to ask the court for an extension. After the investigation was completed the court would either order the person released or to the central jail. Mr. Magan had no authority over how the central jail was run.

INTERROGATORY NO. 15:

State all facts known to you regarding the NSS procedure for detaining a civilian for security related offenses in the NSS prison. Identify any and all procedures for pre-trial detention in the NSS prison and documenting and reporting the detention. Identify NSS officers with authority to order the continued detention of a civilian for security related offenses.

ANSWER:

Objection the question is vague and ambiguous. Mr. Magan worked at the Department of Criminal Investigations. His is only familiar with the procedures at the Department of Criminal Investigations. Defendant further objects to this interrogatory to the extent it refers to the "NSS prison". Mr. Magan does not know what is being referred to. When the term NSS prison is used in popular media sources they are usually referring to an interrogation center in Mogadishu, referred to as *Godka*, or other centers including the Mogadishu Central Prison, and stations at Lanta Bur, Labtanjirow and Burwein. Mr. Magan did not work or have any authority at any of these places.

Without waiving said objection, the court had the authority to order the continued detention of a civilian for security related offenses. Also, see response to Interrogatory 14.

INTERROGATORY NO. 16:

State all facts known to you concerning the National Security Court during the time you were a member of the NSS, including:

- 1) the types of cases tried before the Court;
- 2) the key members of the Court; and

- 3) the collaboration between the NSS prison and the National Security Court in the prosecution of an accused before the Court.

ANSWER:

Objection, Mr. Magan is only familiar with the National Security Court to the extent that they worked with the Department of Criminal Investigations. Defendant further objects to this interrogatory to the extent it refers to the "NSS prison". Mr. Magan does not know what is being referred to. When the term NSS prison is used in popular media sources they are usually referring to an interrogation center in Mogadishu, referred to as *Godka*, or other centers including the Mogadishu Central Prison, and stations at Lanta Bur, Labtanjirow and Burwein. Mr. Magan did not work or have any authority at any of these places.

Without waiving said objections:

- 1) Cases related to the safety and/or stability of Somalia.
- 2) Majesty, Mohamud Gelle, Attorney General Col. Nur Hasan Hussien
- 3) The court ordered warrants for arrest, and the Court then prosecuted the cases.

INTERROGATORY NO. 17:

Identify any incidents known to you, and the time at which you first learned of them, relating to the arbitrary arrest, detention, mistreatment, torture, or killing of any civilian in Somalia alleged to have been committed by the NSS during the period 1970 through 1989.

ANSWER:

Objection, the request is overbroad. Without waiving said objection, Mr. Magan worked in one of numerous National Security Service divisions. During Mr. Magan's tenure at the Department of Criminal Investigation he is unaware of any instance of torture or killing of a

civilian. Mr. Magan served as Chief of the Department of Criminal Investigations from approximately 1988 to 1990. Commander of the National Security Service, General Mohamed Jibril, was the officer with authority to order any investigation. This was done in conjunction with the National Security Court. The only exception to this during Mr. Magan's tenure with the Department of Criminal Investigation, while General Mohamed Jibril was in charge, was the detention of Osman Hassan Ali Atto. Mr. Magan refused to allow Osman Hassan Ali Atto to be detained at the Department of Criminal Investigation. Towards the end of 1990 General Adan Cirday became Commander of the National Security Service. General Cirday did order people detained without involvement of the National Security Court. This escalated a conflict between Mr. Magan and General Cirday. General Cirday arrested Mr. Magan.

INTERROGATORY NO. 18:

Identify any litigation that you have initiated or been involved with, either as a party or witness, since the date of your first entry into the United States, including the outcome of the litigation, any award of damages and any money obtained through settlement.

ANSWER:

See <http://fcdcfjs.co.franklin.oh.us/CaseInformationOnline/> case numbers 08 CV 007049, 08 DD 002001 (divorce), and 10 CV 008228 (Mr. Magan was shot. The case is pending). In addition, Mr. Magan had a workers compensation case from when he worked with the Limited.

INTERROGATORY NO. 19:

Identify all instances in which you have been arrested and/or convicted of a crime.
Include the nature of the offense, the arresting agency, the outcome, and the case number and court identification.

ANSWER:

In 1990, General Cirday arrested Mr. Magan. See response to Interrogatory 17.

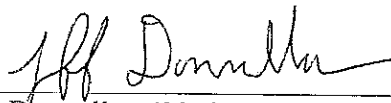
INTERROGATORY No. 20:

Identify your immigration status in the United States, from the date of your first entry into the United States of America.

ANSWER:

Mr. Magan is a Permanent Resident of the United States.

Respectfully submitted and
as to objections,



Jeffrey Donnellon (0079472)
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jrd@columbuslegalhelp.com

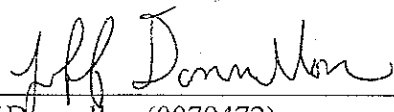
Attorney for Mr. Magan

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendant Abdi Aden Magan's Responses
To Plaintiff Abukar Hassan Ahmed's First Set of Interrogatories was served on the 17th day of
November, 2010, by first class U.S. mail, postage prepaid, upon:

Tiffany Smith
Mark J. MacDougall
Kristine L. Sendek-Smith
Akin Gump Strauss Hauer & Feld LLP
Robert S. Strauss Building
1333 New Hampshire Avenue, N.W.
Washington, DC 20036-1564
Attorney For Plaintiff
Abukar Hassan Ahmed

Andrea C. Evans
Natasha E. Fain
Center for Justice & Accountability
870 Market Street, Suite 684
San Francisco, California 94102



Jeff Donnellon (0079472)
DONNELLON & EZANIDIS

Exhibit D Defendant's Responses to Plaintiff's First
Request for the Production of Documents, dated
December 12, 2010

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Abukar Hassan Ahmed,

Plaintiff,

vs.

Abdi Magan,

Defendant.

Case No. 2:10-cv-342

Judge Smith

**DEFENDANT ABDI MAGAN'S RESPONSES
TO PLAINTIFF'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Civ.R. 26 and 34, defendant Abdi Magan ("defendant" or "Mr. Magan") hereby responds in writing to the requests for production propounded upon him by plaintiff, subject to the General Objections and specific objections noted below.

These answers and objections rely upon information that is currently available or known to Mr. Magan after diligent investigation. Mr. Magan reserves the right to amend or revise these answers, objections, and/or responses as necessary in the event additional information becomes available to him or comes to his attention.

GENERAL OBJECTIONS

Defendant objects to plaintiff's instructions and definitions in the paragraphs preceding the discovery requests to the extent that they seek to impose upon defendant obligations in addition to, inconsistent with, or which are not authorized by the Federal Rules of Civil Procedure and applicable Local Rules. Defendant will respond to plaintiff's requests for production in accordance with the obligations imposed by the applicable rules and law.

Defendant further objects to plaintiff's requests for production to the extent they seek admission or disclosure of information, documents, or things that are protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, and all other applicable privileges, protections, or immunities from discovery. If and to the extent the defendant inadvertently discloses in this litigation information that is, or may be, protected from discovery, such inadvertent disclosure is not intended to, and shall not be construed to, waive any such privilege, protection or immunity.

Defendant further objects to the requests for production to the extent they seek information that is overly broad and unduly burdensome and/or is without appropriate temporal limitation or qualification.

The absence of an objection to a particular request for admission, or any part thereof, shall not be deemed to be an acknowledgment that information responsive to such request for production exists, or an admission or agreement that the subject of any such request for production, or any part thereof, is relevant to the subject matter of this case. Defendant hereby reserves the right to object to relevancy and/or admissibility of any information provided in these answers, objections, and responses to plaintiff.

DOCUMENTS TO BE PRODUCED

Document Request No. 1-24

Mr. Magan has no documents responsive to Document Request No. 1-24.

Document Request No. 25

Objection, this request asks for personal information that will not make any fact at issue in this case more or less likely to be true. Mr. Magan objects to this request because it asks for confidential information that is not relevant and will not lead to the discovery of admissible evidence.

Document Request No. 26

Objection, this request asks for personal information that will not make any fact at issue in this case more or less likely to be true. Mr. Magan objects to this request because it asks for confidential information that is not relevant and will not lead to the discovery of admissible evidence. Without waiving said objection, Mr. Magan has no documents relating to any real property, trust, other monetary asset, investment, stock or bond, corporation partnership or other business venture. Mr. Magan has a checking account. The current balance is less than one hundred dollars.

Document Request No. 27

Objection, this request asks for personal information that will not make any fact at issue in this case more or less likely to be true. Mr. Magan objects to this request because it asks for confidential information that is not relevant and will not lead to the discovery of admissible evidence.

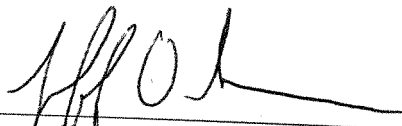
Document Request No. 28

Mr. Magan has no documents responsive to this request.

Document Request No. 29

Mr. Magan does not know what documents he may use to support any claim or defense at this time.

Respectfully submitted and as to objections,



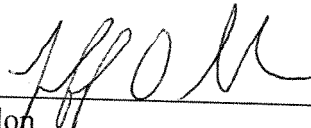
Jeffrey Donnellon (0079472)
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(614) 223-1729 – facsimile
jrd@columbuslegalhelp.com
Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing has been served via ordinary U.S. Mail, postage prepaid, this 12th day of December 2010 upon the following:

Tiffany Smith
Mark J. MacDougall
Kristine L. Sendek-Smith
Akin Gump Strauss Hauer & Feld LLP
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1333 New Hampshire Avenue, N.W.
Washington, DC 20036-1564

Andrea C. Evans
Natasha E. Fain
Center for Justice & Accountability
870 Market Street, Suite 684
San Francisco, California 94102
Attorneys for plaintiff



Jeff Donnellon

Exhibit E Letter from Plaintiff's counsel to
Defendant's counsel re: Plaintiff's Document
Production, dated October 22, 2010

AKIN GUMP
STRAUSS HAUER & FELD LLP

Attorneys at Law

COLLEEN M. COYLE
202.887.4485/1.202.887.4288
ccoyle@akingump.com

October 22, 2010

VIA E-MAIL AND FIRST-CLASS MAIL

Jeffrey Donnellon
Peter Ezanidis
Donnellon & Ezanidis, LLC
5 E. Long St., Ste. 605
Columbus, Ohio 43215

Re: *Ahmed v Magan*, Civil Case No. 2:10cv00342, U.S. District Court for the
Southern District of Ohio

Dear Messrs. Donnellon and Ezanidis:

Enclosed please find bates labeled documents P-000001-P-000829 that are responsive to Defendant's Document Requests. We have medical records, bates labeled P-000821-P-000829 that will be produced upon your signing an appropriate protective order. We will send you a draft in the next day or so.

Also enclosed are Plaintiff's Response and Objections to Defendant's First Set of Interrogatories, And First Request for Production of Documents to Plaintiff.

If you have any questions, please contact me.

Sincerely,



Colleen M. Coyle

Enclosures

cc: Tiffany T. Smith
Natasha E. Fain
Andrea C. Evans

Exhibit F Letter from Plaintiff's counsel to
Defendant's counsel re: Discovery Issues, dated
March 29, 2011

March 29, 2011

VIA E-MAIL

Jeffrey Donnellon, Esq.
Donnellon & Ezanidis, LLC
53 Long St.
Suite 1005
Columbus, OH 43215
jrd@columbuslegalhelp.com

Re: *Ahmed v. Magan*, 10-cv-342 (S.D. Ohio): Stay Request and Outstanding
Discovery Issues

Dear Jeff:

As we discussed yesterday, I am now providing you with a proposed joint motion to stay proceedings. During our initial discussions on this issue, including our February 4, 2011 telephone discussion when you stated you would be amenable to a stay, I framed the issue as a stay of discovery. After our conversation yesterday, I agree that the request is for a more general stay of proceedings and the attached proposed joint motion reflects that position.

As we state in the motion, we believe that based on the current circumstances of this case, a temporary stay of the proceedings is a reasonable request. We ask that you consent to the motion. Akin Gump serves as lead and local counsel in this matter, however, there is a possibility that we will be withdrawing from the case. In the event this occurs, new counsel will then need a reasonable amount of time to become familiar with the case. Additionally, this case is currently administratively stayed and has a pending motion to dismiss. Therefore, we believe that neither the Court nor Mr. Magan will be prejudiced by the proposed stay.

The proposed stay will also, as I touched on yesterday, give the parties time to resolve issues surrounding the responses to Mr. Ahmed's discovery requests. By this letter, we are informing you that we believe a number of Mr. Magan's responses to Mr. Ahmed's discovery requests were and remain deficient. Specifically, as to Plaintiff's First Set of Document requests, we believe Mr. Magan inadequately responded to Document Request numbers 18, 20, 21, 22, 24, 25, 26, and 27. As to Plaintiff's First Set of Interrogatories, we believe that Mr. Magan inadequately answered Interrogatory numbers 5, 6, 9, 13, 15, and 16. Some of the responses improperly claim ambiguity for terms defined in the Interrogatories and others fail to provide documents that Mr. Magan must have in light of other answers and documents provided to us.

Jeffrey Donnellon, Esq.
March 29, 2011
Page 2

Once you have had time to review these issues, I am available to further discuss the proposed stay and the discovery responses mentioned above. The final language of the motion to stay proceedings is ultimately dependent on whether you offer your consent. As you are aware, Plaintiff's Rule 26(a)(2) disclosures are due on Wednesday, March 30, 2011 and, thus, if we don't hear from you by 4:00 pm E.S.T. on March 30, we will proceed with the motion to stay without your consent. I look forward to hearing from you soon.

Sincerely,

/s/ Jon Goodrich

Jon Goodrich

Encl.

cc: Peter C. Ezanidis, Esq.
Kristine Sendek-Smith, Esq.
Andrea C. Evans, Esq.

Exhibit G Letter from Plaintiff's counsel to
Defendant's counsel re: Discovery Issues, dated
November 22, 2011

Mark Beckett
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mark.beckett@lw.com

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www.lw.com

LATHAM & WATKINS ^{LLP}

November 22, 2011

VIA ELECTRONIC MAIL

Jeffrey Donnellon, Esq.
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jrd@columbuslegalhelp.com

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Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

Re: Ahmed v. Magan, Case No. 2:10-cv-342: Outstanding Discovery Issues

Dear Mr. Donnellon:

In relation to the Court's Scheduling Order dated November 14, 2011 (the "**Order**"), I am writing to meet and confer regarding the current status of written discovery prior to exchanging our lists of deponents. I understand that Akin Gump, prior co-counsel on this case, met and conferred with you on March 29, 2011 regarding the same matters that I address below.

Therefore, I request that you provide responses to the issues raised below no later than Friday, December 2, 2011, to ensure a timely response to the Order. Once we have received your response, we should arrange to discuss our deposition list, pursuant to the Order.

Deficient Discovery

A number of the Defendant's responses to the Plaintiff's discovery requests were and remain deficient. Specifically, as to the Plaintiff's First Set of Document requests, we believe the Defendant inadequately responded to Document Request numbers 18, 20, 21, 22, 24, 25, 26, and 27.

As to the Plaintiff's First Set of Interrogatories, we believe that the Defendant inadequately answered Interrogatory numbers 1, 2, 5, 6, 9, 13, 15, and 16. Some of the responses improperly claim ambiguity for terms defined in the Interrogatories and others fail to provide documents that the Defendant must have in light of other answers and documents provided to us. Additionally, pursuant to question number 1, you must provide us with any aliases or nicknames for the individuals listed in the Defendant's Initial Disclosures.

LATHAM & WATKINS LLP

Additional Disclosures and Production

Further to the Order, in order to exchanging our lists of deponents, we would like to clarify whether the Defendant intend to make any additional initial disclosures pursuant to Rule 26(a), and in particular, whether the Defendant intends to call any expert witnesses. Additionally, we request that you provide information on which of the individuals listed in the Defendant's initial disclosures will require translation.

We would like to note that the Plaintiff reserves the right to engage medical, psychological, legal expert, or any other relevant expert and I will notify you and the Court as soon as we have done so, by supplementing the Plaintiff's Rule 26(a) initial disclosure.

Likewise, we plan to supplement the Plaintiff's response to your First Request for Production with additional documents, including medical records. However, in order for us to provide you with certain documents, we again request that you sign the appropriate protective order which was previously provided to you on October 22, 2010 by prior co-counsel. For your reference, I have attached the prior correspondence on this as well as a draft confidentiality stipulation.

Additionally, I would like you to confirm whether the Defendant plans to include the following individuals listed in Defendant's Responses to Plaintiff's First Set of Interrogatories, Answer No. 6, in his Rule 26(a) disclosures: Abdullahi Ismail Ciro, Col. Abdullahi Agojid, and Col. Abdirashid Yasin. If the Defendant plans to include these individuals in his initial disclosure, we request that the Defendant provide updated information on their current locations. Please also confirm which of the individuals Defendant has listed in his Rule 26(a) Disclosures are currently located in Ohio.

I look forward to hearing from you soon.

Sincerely,



Mark Beckett

Encl.

cc: Peter C. Ezanidis, Esq.
Christina Hioureas, Esq.
Andrea C. Evans, Esq.
Kenneth Cookson, Esq.

Exhibit H Letter from Plaintiff's counsel to
Defendant's counsel re: Discovery Issues, dated
December 9, 2011

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LATHAM & WATKINS

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Houston	Shanghai
London	Silicon Valley
Los Angeles	Singapore
Madrid	Tokyo
Milan	Washington, D.C.

VIA ELECTRONIC MAIL

Jeffrey Donnellon, Esq.
Donnellon & Ezanidis, LLC
53 Long St.
Suite 1005
Columbus, OH 43215

jrd@columbuslegalhelp.com

9 December 2011

Re: *Ahmed v. Magan*, Case No. 2:10-cv-342: Outstanding Discovery Issues

Dear Mr. Donnellon:

Further to our telephone call on December 6, 2011 and my prior letter of November 22, 2011, I am writing to meet and confer regarding the current status of written discovery. We understand that you have filed a motion to withdraw as counsel. However, until such time (if any) that the motion is granted you remain counsel of record. Accordingly, we request that you make every reasonable effort to respond to these requests in a timely manner and in no event later than December 19, 2011.

Deficient Discovery

A number of the Defendant's responses to the Plaintiff's discovery requests were and remain deficient. Some of the responses improperly claim ambiguity for terms defined in the Document Requests and Interrogatories and others fail to provide documents that the Defendant must have in light of other answers and documents provided to us.

These deficiencies include, but are not limited to:

- Document Request 20: The Defendant has indicated that he does not have any responsive Documents related to his immigration and/or citizenship. However, the Defendant's citizenship and asylum papers are documents expected to be within the Defendant's possession or control.

- Document Request 21: The Defendant has indicated that he does not have responsive Documents relating to travel Documents or passports. However, since counsel has represented that he is currently in Kenya, this cannot be true.
- Document Request 22: The Defendant has indicated that he does not have any responsive Documents relating to any other court proceedings in which he has been involved. At the same time, the Defendant disclosed that he was involved in proceedings related to his divorce and a shooting. The Defendant should provide documents relating to these events and legal proceedings.
- Document Request 24: The Defendant has indicated that he does not have any responsive Documents relating to his current or prior employment. However, the Defendant should be able to provide a proof of current and/or prior employment, such as pay stubs or any other Documents establishing his work history.
- Document Request 25: The Defendant has objected to producing Documents relating to his income and tax returns on the basis of confidentiality and irrelevance to the facts of the case. Defendant's income statements are central to, *inter alia*, any potential settlement negotiations. Additionally, the Plaintiff would agree to confidentiality stipulation or protective order with respect of these Documents.
- Document Request 26: The Defendant has objected to producing Documents relating to his assets. Plaintiff could agree to confidentiality stipulation or protective order with respect of these Documents.
- Document Request 27: The Defendant has objected to providing his Social Security Number or Drivers License Number. Plaintiff could agree to confidentiality stipulation with respect of these Documents. Should the Defendant produce Documents relating to his income and assets, the Plaintiff would not require his Social Security Number.

Additionally, as to the Defendant's response to the Plaintiff's First Set of Interrogatories, the Defendant has objected to the Plaintiff's reference to the "NSS prison" because it is a term "used in popular media sources [] usually referring to an interrogation center in Mogadishu referred to as, *Godka*, or other centers including the Mogadishu Central Prison, and stations at Lanta Bur, Labtanjirow and Burwein. Plaintiff has clearly stated that the term "NSS Prison" refers to the National Security Service Department of Investigation Prison, "the prison located in the Headquarters of the National Security Service of Omalia Department of Investigations in Mogadishu, Somalia" and did not refer to *Godka*, or other centers such as the Mogadishu Central Prison, and stations at Lanta Bur, Labtanjirow and Burwein.

These deficiencies also include, but are not limited to:

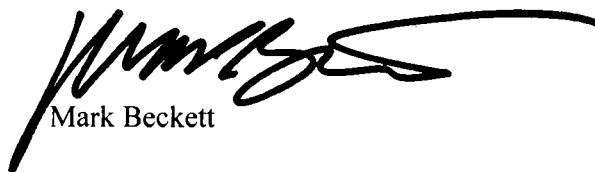
- Interrogatory Number 1: Regarding the individuals listed in the Defendant's Initial Disclosures, the Defendant must provide any known aliases or nicknames for the individuals listed. This is essential, as in Somalia, most individuals are known by their nicknames. Further, the Defendant should provide any additional addresses or contact information that he has located, provide information on which of the

witnesses require translation, and confirm which of the individuals Defendant has listed are currently located in Ohio.

- Interrogatory Number 2: Regarding the Defendant's educational and work history, the Defendant indicates that he was a student from 1986-1987 without specifying any institution at which he studied. Additionally, the Defendant does not provide any information about his employment from 1987-1988. Further, the Defendant has failed to provide information on his immediate superiors for all but his position with the National Security Service ("NSS") and information on his immediate subordinates for all positions. The Defendant failed to provide information on all aspects of his role and responsibility and did not provide information on the NSS units under his authority. For his work history in the United States, the Defendant has failed to provide all of the above.
- Interrogatory Number 6: We request updated information on the current locations, known aliases or nicknames, and contact information for the following individuals: Abdullahi Ismail Ciro, Col. Abdullahi Agojid, and Col. Abdirashid Yasin.
- Interrogatory Number 9: The Defendant has failed to provide information on interrogation techniques, how often individuals were questioned, and how information was reported to the Defendant.
- Interrogatory Number 13: The Defendant has failed to include information on the investigation procedures, documentation and reporting procedures. The Defendant has also failed to include the names of individuals authorized to carry out investigation orders (such as himself and those below him).
- Interrogatory Number 15: The Defendant has failed to provide information on documenting and reporting detentions.
- Interrogatory Number 16: The Defendant has failed to provide information on the collaboration between NSS and National Security Court.

Please let me know if you have any questions.

Sincerely,



Mark Beckett

Encl.

cc: Peter C. Ezanidis, Esq.
Christina Hioureas, Esq.
Andrea C. Evans, Esq.
Kenneth Cookson, Esq.

Exhibit I Plaintiff's Supplemental Responses and
Objections to Defendant's First Set of
Interrogatories and First Request for the Production
of Documents, dated December 16, 2011

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ABUKAR HASSAN AHMED,	:	CASE NO. 2:10-cv-00342
Plaintiff,	:	
v.	:	JUDGE SMITH
	:	MAGISTRATE ABEL
ABDI ADEN MAGAN,	:	
Defendant.	:	

**PLAINTIFF’S SUPPLEMENTAL RESPONSES AND OBJECTIONS TO
DEFENDANT’S FIRST SET OF INTERROGATORIES, AND FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26, 33, and 34 of the Federal Rules of Civil Procedure, Plaintiff Abukar Hassan Ahmed (the “Plaintiff”), through the undersigned attorneys, hereby provides the following supplemental responses and objections to Defendant’s First Set of Interrogatories and First Request for Production of Documents. Plaintiff reserves the right to supplement these responses as discovery proceeds.

I. INTERROGATORIES

1. State Plaintiff(s):

(a) full, legal name;

(b) current residential address and addresses for the past 35 years;

(c) date of birth;

(d) current marital status and marital history

Supplemental Answer:

Plaintiff has previously provided responses to points (a), (b), (c), and (d), and has provided his current residential address and all previous addresses dating back to 1989 in response to point (b). These addresses cover the pertinent period for the purposes of this litigation. Subject to and without waiving this or any other prior objection, prior to 1989, plaintiff resided at the following locations:

February 1989 – March 8, 1989 – Plaintiff was unlawfully detained in the Central Prison, Mogadishu, Somalia.

November 20, 1988 – February 1989 – Plaintiff was unlawfully detained in an NSS prison in Mogadishu, Somalia.

March 1986 – November 1988 – Mogadishu, Somalia

January 21, 1981 – March 1986 – Plaintiff was unlawfully detained in the Central Prison, Mogadishu, Somalia.

3. Provide the name and address of Plaintiffs employers for the last thirty-five (35) years, including the dates of employment, the job title and a brief description of job duties and responsibilities.

Supplemental Answer:

Plaintiff has previously provided a complete list of his employment history in Plaintiff's Response to Defendant's First Set of Interrogatories. Plaintiff now supplements his response to add a brief job description and addresses of the relevant institutions, where known:

(a) 1972 - January 1, 1973 – Somali Ministry of Foreign Affairs, Head of the International Organizations Department. Plaintiff does not recall the address.

(b) 1973 - 1989 – Somali National University, Faculty of Law Professor of International Law and Constitutional Law. The building was located near KM6, in the center of Mogadishu, but has since been destroyed and no longer exists. As a law professor, Plaintiff taught constitutional and international law classes.

(c) 1986 – 1989 – Plaintiff had his own legal firm in Mogadishu and was a practicing lawyer. Plaintiff does not recall the address.

(d) 1990-1995-Pisa University, Academic Research Fellow. Lungarno Pacinotti, 43 - 56126 Pisa. As a research fellow, Plaintiff conducted legal research.

(e) 1995 – 2000 – Rome Courts, Clerk and Interpreter. Plaintiff performed administrative duties and served as a translator in court proceedings.

(f) 2000 – present – Unemployed

4. Please identify each medical or health care institution at which the Plaintiff has received treatment or attention at any time during the past thirty-five (35) years. For each such institution please state the address, the date of care, the reason for the care and the outcome in terms of health.

Supplemental Answer:

In Plaintiff's Response to Defendant's First Set of Interrogatories, Plaintiff already provided the contact information of his medical care providers. Additionally, Plaintiff has prepared his medical records for production (document Bates stamps P-000821 – P-000829), subject to Defendant signing a confidentiality stipulation that would

protect Plaintiff's sensitive information. A draft stipulation has been provided to Defendant's counsel on several occasions, dating back to as early as Fall 2010. During a conference call with Defendant's counsel on December 15, 2011, Defendant's counsel has now stated that he requests a narrower confidentiality stipulation. Without conceding that the initial proposed stipulation was inappropriate, we have provided a revised stipulation to counsel addressing these objections. Upon Defendant's return of the signed stipulation to Plaintiff, Plaintiff will promptly produce the relevant medical records.

5. Please identify each and every individual health care provider by whom the Plaintiff has received treatment or attention at any time during the past thirty-five (35) years. For each such provider please state the date of care, the reason for the care, and the outcome in terms of health. This request includes, but is not limited to, physicians, psychiatrists or psychologists.

Supplemental Answer:

In Plaintiff's Response to Defendant's First Set of Interrogatories, Plaintiff has already provided the contact information of his medical care providers. The outcome of each medical visit is contained within the above-mentioned medical records and will be produced promptly upon Defendant's return of the signed confidentiality stipulation to Plaintiff.

11. Identify by name, address, and professional title or credentials, if any, each person known by Plaintiff to be a witness to any relevant fact or circumstances or who

claims to have knowledge of any relevant fact or circumstances concerning the within litigation.

Supplemental Answer:

Name	Address	Knowledge
Mr. Abdirizak Warsame	175 Fore Street London +44 (0)79 0481 6400	Present at Plaintiff's detention, trial, and escape from Somalia; Former Deputy Attorney General ordinary courts
Mr. Said Ahmed Kediye	4 Canterbury Court London +44(0)79 5178 5417	Plaintiff's former student who worked at the Criminal Investigation Department
Prof. Hassan Mohamed Omar	Vastgotagatan 96, 43230 Verberg, Sweden 011-46-340-64-46-23 011-46-76-23-17-02	Former law professor at Somali University and former colleague of the Plaintiff
Hassan Ga'al	Address unknown	Defendant's role in the NSS
Cpt. Hussein Sufi Derow	Believed to be deceased	Defendant's order to torture Plaintiff
Lt. Mohamed Haji Egal	Address unknown	Defendant's order to torture Plaintiff
Martin Hill	London, UK (exact address unknown)	Plaintiff's designation as an Amnesty International Prisoner of Conscience
Mr. Abdiwahid Osman	Ottawa, Ontario, Canada (exact address unknown) 613-262-9707	Plaintiff's role as a professor and practitioner; former law partner of Plaintiff
Judge Shongole (first name unknown)	Address unknown, but believed to be in Geneva, Switzerland or Mogadishu, Somalia	Plaintiff's trial and sentencing; Judge who presided at Magan's trial
Ambassador Nur Hassan Hussein	Rome, Italy; +3906-81835391 (exact address unknown)	Former Attorney General of National Security Court; Plaintiff's trial and sentencing
Abdullahi Mohamed Jimale	Nairobi, Kenya +254723738666 (exact address unknown)	Plaintiff's former student; present during Plaintiff's trial

Former Somali Deputy Attorney General Dalab (first name unknown)	London +44(0)2084 718851 (exact address unknown)	Deputy Attorney General of National Security Court; Plaintiff's detention, trial, and sentencing
--	--	--

16. State whether you are able to produce any of the individuals identified in your initial disclosures, and the plaintiff, at a deposition in Columbus, Ohio, and also state whether you are able to produce any of the individuals identified in your initial disclosures, and the plaintiff, at a trial in Columbus, Ohio:

(a) Abukar H. Ahmed

(b) Mr. Abdirizak Warsame

(c) Prof. Hassan Mohamed Omar

(d) Mr. Hassan Ga'al

(e) Cpt. Hussein Sufi Derow

(f) Lt. Mohamed Haji Egal

(g) Mr. Martin Hill

(h) Mr. Abdiwahid Osman

(i) Judge Shongole

G) Mr. Nur Hassan Hussein

(k) Mr. Abdullahi Mohamed Jimale

(l) General Dalab

Supplemental Answer:

Plaintiff Abukar Hassan Ahmed will be available for his deposition and for trial. With respect to the other listed individuals, Plaintiff will comply with the Federal Rules of Civil Procedure and Federal Rules of Evidence and Defendant is required to follow the procedures set out in the Federal Civil Procedure Rules, Federal Rules of Evidence, and the Hague Convention for conducting domestic and international depositions. Plaintiff has no control over the listed individuals or their personal decisions to participate in depositions or at trial. Additionally, Plaintiff has not been able to successfully locate some of them.

II. REQUEST FOR PRODUCTION OF DOCUMENTS

To date, Plaintiff has produced 820 pages of documents (Bates stamps P-0000001 – P-000820) responsive to Defendant's Requests for Productions, Nos. 1, 2, 10, 14, 15, and 17. With respect to No. 14, Plaintiff is also prepared to produce his medical records, as discussed above (Bates stamps P-000821 – P-000829) upon Defendant's signing of a confidentiality stipulation.

Finally, Plaintiff supplements his first production of responsive documents with the attached documents, Bates stamps P-000830 – P-000832.

Plaintiff continues to object to or has no documents responsive to Defendant's Requests for Productions, Nos. 3, 4, 5, 6, 7, 8, and 9. With respect to No. 5, as stated in Plaintiff's Response and Objections to Defendant's First Request for Production of Documents, Plaintiff does not have copies of his publications, but has provided the publication titles in Plaintiff's Response and Objections to Defendant's First Set of

Interrogatories No. 18. With respect to No. 9, Plaintiff has provided this information in Plaintiff's Response and Objections to Defendant's First Set of Interrogatories No. 14. With respect to No. 8, Plaintiff was not required to file tax returns in Italy and has been unemployed since 2000. Any prior tax returns were lost or destroyed during the conflict.

Plaintiff reasserts all objections raised in Plaintiff's Response and Objections to Defendant's First Set of Interrogatories, and First Request for Production of Documents from 21 October 2010, and reserves his right to supplement his responses and productions in the course of discovery.

Dated: December 16, 2011

Respectfully submitted,

s/ Kenneth Cookson

Kenneth Cookson (0020216)
Trial Attorney
KEGLER BROWN HILL & RITTER, LPA
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Columbus, OH 43215
Ph: (614) 462-5445
Fax: (614) 464-2634
kcookson@keglerbrown.com

Mark Beckett
Christina Hioureas
Katya Georgieva
LATHAM & WATKINS LLP
885 Third Avenue
New York, NY 10022-4834

Andrea C. Evans
Natasha E. Fain
Center for Justice & Accountability
870 Market Street, Suite 682
San Francisco, CA 94102

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of December, 2011, service of the foregoing Plaintiff's Supplemental Responses to Defendant's Interrogatories and Requests for Document Production was made this date via electronic mail and first-class mail to:

Jeffrey Donnellon, Esq., 0079472
Peter Ezanidis, Esq., 0079373

Donnellon & Ezanidis, LLC
53 Long St.
Suite 1005
Columbus, OH 43215

Dated: December 16, 2011

s/ Kenneth Cookson

Kenneth Cookson (0020216)
Trial Attorney
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Fax: (614) 464-2634
kcookson@keglerbrown.com
Attorney for Plaintiff Abukar Hassan Ahmed

Exhibit J Letter from Plaintiff's counsel to
Defendant's counsel re: Supplemental Production,
dated December 16, 2011

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Frankfurt	Rome
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Hong Kong	San Francisco
Houston	Shanghai
London	Silicon Valley
Los Angeles	Singapore
Madrid	Tokyo
Milan	Washington, D.C.

VIA ELECTRONIC MAIL

Jeffrey Donnellon, Esq.
Donnellon & Ezanidis, LLC
53 Long St.
Suite 1005
Columbus, OH 43215

jrd@columbuslegalhelp.com

December 16, 2011

Re: *Ahmed v. Magan*, Case No. 2:10-cv-342: Supplemental Discovery

Dear Mr. Donnellon:

Enclosed please find our supplemental production of documents responsive to Defendant's Document Requests, bates stamped P-000830 – P-000832.

Additionally, we have medical records, bates stamped P-000821 – P-000829, which will be produced upon your signing of the confidentiality order that we have discussed on several occasions, including in Plaintiff's Response to Defendant's First Set of Interrogatories, and First Request for Production of Documents to the Plaintiff, as well as our letters dated October 22, 2010; November 22, 2011; and our email of December 2, 2011 and our telephone call yesterday.

For reasons that should be obvious, this information is confidential. Despite our various letters to you requesting that you enter into a confidentiality agreement to protect this information dating back as early as fall 2010, you neither signed this agreement nor provided specific objections to its terms until our phone call yesterday. In fact, in your email to Kenneth Cookson on December 3, 2011, you wrote, "I do believe the proposed confidentiality stipulation is reasonable." However, you did not sign and return the agreement.

Yesterday, for the first time, you suggested that the terms of the agreement are overly broad and that they could interfere with your client's ability to defend himself. While we do not agree with that assessment, we have limited the agreement to medical information and attempted to make other modifications that are responsive to your generalized objections.

(See proposed Confidentiality Stipulation enclosed). If you could kindly sign this agreement, we will provide you with the medical records you seek.

On December 14, 2011, you sent us letters regarding your claims of “deficient” discovery and the initial disclosures pursuant to Rule 26(a)(1). As to the your first letter regarding discovery, we have, as noted above, repeatedly offered to provide you with medical records if you would agree to reasonable and customary confidentiality protections, noted above. Over the past 11 weeks you have failed to sign the agreement or propose specific modifications to its terms. In any event, we have provided you with a revised agreement based on the concerns you articulated and will promptly provide you with the records once you have signed the agreement. Also enclosed are Plaintiff’s Supplemental Responses to Defendant’s First Set of Interrogatories.

As to your second letter, we have consistently taken the position, as have you, that we will abide by our responsibilities under the Federal Rules. We have enclosed Plaintiff’s Supplemental Rule 26 Initial Disclosures. In relation to the Supplemental Initial Disclosures and the contact details for the individuals listed within, we would appreciate it if you could communicate to your client that there is a legal prohibition on intimidating witnesses. We have received information that there have been some uninvited and unannounced personal visits made by a family member of the Defendant to the Plaintiff with the stated purpose to persuade the Plaintiff to drop the case against the Defendant. While we understand that such visits may have a cultural dimension, there have been more than one such visit and it should now be clear that our client will continue to prosecute this case. We are also concerned that your client’s family members may attempt to persuade witness not to testify, which would be improper. We would appreciate your assistance in this regard.

Please feel free to contact me if you have any questions about the production.

Sincerely,

/S/

Mark Beckett

Encl.

cc: Peter C. Ezanidis, Esq.
Christina Hioureas, Esq.
Andrea C. Evans, Esq.
Kenneth Cookson, Esq.

Exhibit K Letter from Plaintiff's counsel to
Defendant's counsel re: Outstanding Discovery
Issues, dated December 16, 2011

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Dubai	Riyadh
Frankfurt	Rome
Hamburg	San Diego
Hong Kong	San Francisco
Houston	Shanghai
London	Silicon Valley
Los Angeles	Singapore
Madrid	Tokyo
Milan	Washington, D.C.

VIA ELECTRONIC MAIL

Jeffrey Donnellon, Esq.
Donnellon & Ezanidis, LLC
53 Long St.
Suite 1005
Columbus, OH 43215

jrd@columbuslegalhelp.com

December 16, 2011

Re: *Ahmed v. Magan*, Case No. 2:10-cv-342: Outstanding Discovery Issues

Dear Mr. Donnellon:

Further to my prior letters of December 9, 2011 and November 22, 2011, I am writing to supplement our meet and confer correspondence regarding the current status of written discovery. As I stated in my letter of December 9, 2011, we expect your timely response by no later than December 19, 2011.

In addition to the numerous deficient discovery items I listed in my prior correspondence, I write to supplement this list with Defendant's Response to Plaintiff's First Set of Interrogatories, Interrogatory No. 18. Interrogatory No. 18 provides that Defendant should, "Identify any litigation you have initiated or been involved with, either as a party or witness, since the date of your first entry into the United States, including the outcome of the litigation, any award of damages *and any money obtained through settlement.*" (emphasis added). As you are aware, Defendant is on a continual duty to update his responses to Plaintiff's Interrogatories.

This is in addition to Defendant's deficient response to Plaintiff's First Set of Document Requests, Document Request 22, which I outlined in my December 9, 2011 letter. Pursuant to Document Request 22, Defendant should provide "All documents filed by you or your representative, and any documents filed by prosecutors or parties or their representatives, in any country, in any judicial or administrative proceeding in which you are or have been a party, or you are or were otherwise asked or ordered to participate." As I noted in my previous correspondence, Defendant's response that he does not have any

responsive Documents is insufficient as Defendant, in his Response to Plaintiff's Interrogatory No. 18, has admitted that he is and has been involved in litigation.

With respect to these items, as mentioned during our call earlier today, we have discovered that on November 8, 2011, Defendant settled his personal injury action with Voans Capital Park Limited Partnership, *et al.*, as set out in the attached Stipulation of Dismissal and Journal Entry for Case. No. 10 CVC-06-8228. As set out above, Defendant is required to supplement his responses with information in relation to this or any other action, and in particular, any money obtained through settlement.

I look forward to hearing from you soon.

Sincerely,

/S/

Mark Beckett

Encl.

cc: Peter C. Ezanidis, Esq.
Christina Hioureas, Esq.
Andrea C. Evans, Esq.
Kenneth Cookson, Esq.

Exhibit L Letter from Plaintiff's counsel to
Defendant's counsel re: Discovery Issues, dated
March 22, 2012

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Frankfurt	Rome
Hamburg	San Diego
Hong Kong	San Francisco
Houston	Shanghai
London	Silicon Valley
Los Angeles	Singapore
Madrid	Tokyo
Milan	Washington, D.C.

VIA ELECTRONIC MAIL AND U.S. MAIL

Mr. Abdi Aden Magan
3183 Pendleton Court
Columbus, Ohio 43249
aamagan@hotmail.com

March 22, 2012

Re: *Ahmed v. Magan*, Case No. 2:10-cv-342: Representation, Deposition, Outstanding Discovery

Dear Mr. Magan:

I am writing regarding a number of outstanding responses that we require from you, mainly: (1) whether you intend to defend yourself in this case, and if so, whether you plan to hire new counsel or represent yourself without a lawyer; (2) whether you plan to attend your deposition on April 10, 2012, as required by the Federal Rules of Civil Procedure (the “**Rules**”), the rules that govern this proceedings; (3) whether you plan to sign and return Plaintiff’s proposed confidentiality stipulation so that we can provide you with copies of Mr. Abukar Hassan Ahmed’s medical files; and (4) whether you plan to provide documents and supplemental discovery, as required by the Rules.

Accordingly, we request that you make every reasonable effort to respond to these requests in a timely manner and in no event later than Wednesday, March 28, 2012. If we have not heard from you by this date, we intend to raise this with the Court.

Below please find a summary of the most recent events:

1. In Plaintiff’s Response to Defendant’s First Set of Interrogatories, and First Request for Production of Documents to the Plaintiff, as well as our letters dated October 22, 2010, we requested that you / your then counsel, Mr. Jeff Donnellon, sign and return a proposed confidentiality agreement in relation to our client’s medical files. Your counsel did not provide a signed agreement and, therefore, we were unable to produce those files to you.
2. On November 22, 2011, we again wrote to your then counsel regarding the proposed confidentiality stipulation and outstanding discovery. We did not receive a response.
3. On December 2, 2011, we, again, wrote to your then counsel and spoke with him by telephone on December 15, 2011 regarding the proposed confidentiality stipulation. He did not provide a signed agreement.
4. On December 6, 2011, your then counsel, Mr. Donnellon, moved to withdraw from your case (Doc. 70). Mr. Donnellon indicated, “The most reliable method to get documents to [the

Defendant] in a timely manner is to mail them to his U.S. residence and e-mail them to him.” He then provided your mailing and email addresses.

5. That same day, your counsel filed an Answer to Plaintiff’s Complaint (Doc. 69).
6. On December 7, 2011, your then counsel filed a Motion for Continuance of Proceedings to Obtain New Counsel and requested a sixty-day stay (Doc. 71).
7. On December 9, 2011, we wrote to your then counsel to meet and confer regarding the current status of written discovery. We set out, in detail, the deficiencies in Defendant’s Responses to Plaintiff’s Document Requests and Interrogatories. We did not receive supplemental discovery. To date, you have not produced any documents.
8. On December 16, 2011, we provided your counsel with: (1) a letter regarding Defendant’s Outstanding Discovery; (2) Letter regarding Plaintiff’s Supplemental Discovery; (3) the Proposed Confidentiality Stipulation; (4) Plaintiff’s Supplemental Initial Disclosures; (5) Plaintiff’s Supplemental Responses to Defendant’s First Set of Interrogatories and First Set of Requests for Production; and (6) Documents Bates Stamped P-000830 to P-000832. We did not receive a response to the letters. We also did not receive any supplemental discovery production from you or your then counsel.
9. That same day, we filed Plaintiff’s Opposition to Defendant’s Motion for Continuance of Proceedings (Doc. 72), opposing the length of your counsel’s requested stay and proposing a stay of no longer than three weeks.
10. On December 19, 2011, the Court granted your former defense counsel, Mr. Donnellon’s Motion of Counsel to Withdraw (Doc. 70) and denied your motion for a 60 day stay of proceedings (Doc. 71). The Court ordered you to advise the Court and Plaintiff within twenty-eight days on how you intend to proceed – whether by new counsel or represent yourself without a lawyer.
11. On January 16, 2012, we sent you a letter reminding you that the Court’s twenty-eight day deadline had passed and that you had failed to inform Plaintiff of how you intend to proceed. We requested that you do so immediately.
12. On January 19, 2012, we wrote to you by email and post to inform you of the case management conference scheduled for January 23, 2012 and provided the call-in details.
13. On January 20, 2012, after the Court’s deadline had passed, you filed a motion for a three month extension (Doc. 74), noting that you were still in Kenya. You indicated that you would return from Kenya if your mother’s health improves or if she passes away.
14. On January 23, 2012, Court held a case management conference where Plaintiff opposed your motion for a further extension (Doc. 74). You did not attend this conference call, but instead called in to our attorney conference call in number 15 minutes late and after the call had ended. We informed you that the call had ended but that we could call the Court to see if we could get the Magistrate Judge back on the phone. You then hung up the phone.
15. On January 24, 2012, the Court denied without prejudice to your right to renew the motion, supported by certain requested information, your motion for extension of time (Doc. 74). The Court ordered that any renewed motion for an extension of time / stay of proceedings must be

submitted within fourteen days of the date of the Court's order and supported by certain information regarding your mother's medical condition. You did not file such a motion.

16. On February 7, 2012, we wrote to you by post and email to remind you that on January 24, 2012, the Court denied your motion for extension of time and that you had 14 days to file a motion for a further extension /stay of the proceedings. We also reminded you that the fourteen days had passed and that you had failed to inform the Court and the Plaintiff of how you intend to proceed. We requested that you advise the Court on how you intend to proceed. You did not file such a motion or otherwise indicate how you intend to proceed.
17. On February 10, 2012, we notified you by email and post that a case management conference was to take place on February 16, 2012. We also provided you with call in details.
18. On February 16, 2012, the Court held another case management conference. You did not attend the conference call. We highlighted to the judge that you had not filed the documents required to request an extension for the stay as set out in the January 24, 2012 Order. Since you did not move for a further stay, the Court set the discovery schedule, ordering close of discovery for **June 29, 2012** and any case-dispositive motions by **July 31, 2012**.
19. On March 5, 2012, we noticed your deposition which is to take place on April 10, 2012 at 65 East State Street, Columbus, Ohio at the offices of Kegler Brown Hill & Ritter at 9:00 a.m.
20. On March 22, 2012, although as a party to the dispute and you are required to attend your noticed deposition, we served you with a subpoena to ensure that you understand that you are required, by the Rules, to attend your deposition.

We have not heard from you as to whether you plan to attend your deposition, as required by the Rules. We also have not heard from you as to whether you intend to defend your case, engage new counsel, or represent yourself. Lastly, we have not received a signed confidentiality stipulation, any supplemental discovery responses or any document production at all, as required by the Rules.

Hiring New Counsel / Representing Yourself

As set out above in points 10, 11, 15, 16 and 18, the Court has requested that you provide information on how you intend to proceed. We ask that you indicate, without delay, whether you intend to defend your claim and, if so, whether you intend to engage new counsel or represent yourself.

Deposition Scheduled for April 10, 2012

As stated above in points 19 and 20, on March 5, 2012, we noticed your deposition which is to take place on April 10, 2012. A deposition is the part of a lawsuit where, before any trial, the lawyers can ask witnesses and parties a series of questions under oath. The questions and answers are recorded by a stenographer.

To be sure that there is no misunderstanding, we also sent you a subpoena earlier today. The notice of deposition and the subpoena require you to attend your deposition scheduled for April 10, 2012 at 65 East State Street, Suite 1800, Columbus, Ohio at the offices of Kegler Brown Hill & Ritter at 9:00 a.m. As a party to the lawsuit you are required to attend your noticed deposition. We also served you with a subpoena to ensure that you understand that you are required, by the Federal Rules of Civil Procedure, which govern the lawsuit, to attend your deposition and give testimony.

As you have previously indicated that you are out of the country, we urgently request that you indicate, without delay, whether or not you plan to attend the deposition as required by the Rules.

If you fail to attend your deposition, this could result in serious consequences such as the Court issuing sanctions or even a default judgment, meaning that the Court may conclude that you do not plan to defend yourself in this case.

Please indicate whether or not you plan to attend the April 10, 2012 deposition pursuant to the notice of deposition and the subpoena.

Mr. Ahmed's Medical Files and the Proposed Confidentiality Stipulation

As set out above in points 1, 2, 3, and 8, we contacted your prior counsel on numerous occasions requesting that he obtain your consent to sign Plaintiff's proposed confidentiality order. In order to provide you with copies of Mr. Abukar Hassan Ahmed's medical files (bates stamped P-000821 – P-000829) for the purposes of this case, we request that you sign and return a copy of the proposed confidentiality order or propose alternative language if you do not agree to its terms. For reasons that should be obvious, this information is confidential.

Deficient Discovery

A number of your responses to the Plaintiff's discovery requests were and remain deficient. These deficiencies include, but are not limited to:

- **Document Request 20:** You have indicated that you do not have any responsive Documents related to your immigration and/or citizenship. However, your citizenship and asylum papers are documents expected to be within your possession or control.
- **Document Request 21:** You have indicated that you do not have responsive Documents relating to travel Documents or passports. However, since you have represented that you are currently in Kenya, this cannot be true.
- **Document Request 22:** You have indicated that you do not have any responsive Documents relating to any other court proceedings in which you have been involved. At the same time, in your Response to Plaintiff's Interrogatory No. 18, you disclosed that you were and are involved in proceedings related to your divorce and a shooting. Please provide documents relating to these events and legal proceedings, without delay.
- **Document Request 24:** You have indicated that you do not have any responsive Documents relating to your current or prior employment. However, you should be able to provide a proof of current and/or prior employment, such as pay stubs or any other Documents establishing your work history.
- **Document Request 25:** You have objected to producing Documents relating to your income and tax returns on the basis of confidentiality and irrelevance to the facts of the case. Your income statements are central to any potential settlement negotiations, among other things. Additionally, the Plaintiff would agree to confidentiality stipulation or protective order with respect of these Documents.

- **Document Request 26:** You have objected to producing Documents relating to your assets. To the extent that this information is confidential, the Plaintiff will agree to a reasonable confidentiality stipulation or protective order with respect to these Documents.
- **Document Request 27:** You have objected to providing your Social Security Number or Drivers License Number. While this information is not necessarily confidential, the Plaintiff will agree to a reasonable confidentiality stipulation with respect of these Documents. Please note that should you produce Documents relating to your income and assets, the Plaintiff would not require you to produce your Social Security Number.

Additionally, as to your response to the Plaintiff's First Set of Interrogatories, you have objected to the Plaintiff's reference to the "NSS prison" because it is a term "used in popular media sources [] usually referring to an interrogation center in Mogadishu referred to as, *Godka*, or other centers including the Mogadishu Central Prison, and stations at Lanta Bur, Labtanjirow and Burwein." Plaintiff has clearly stated that the term "NSS Prison" refers to the National Security Service Department of Investigation Prison, "the prison located in the Headquarters of the National Security Service of Omalia Department of Investigations in Mogadishu, Somalia" and did not refer to *Godka*, or other centers such as the Mogadishu Central Prison, and stations at Lanta Bur, Labtanjirow and Burwein. Therefore, you should be able to provide information on the NSS prison.

Furthermore, your responses to the Plaintiff's First Set of Interrogatories are deficient for the reasons including:

- **Interrogatory Number 1:** Regarding the individuals listed in your Initial Disclosures, you must provide any known aliases or nicknames for the individuals listed. This is essential since, as you are aware, in Somalia most individuals are known by their nicknames. Further, you should provide any additional addresses or contact information that you have located, provide information on which of the witnesses require translation, and confirm which of the individuals you have listed are currently located in Ohio.
- **Interrogatory Number 2:** Regarding your educational and work history, you indicate that you were a student from 1986-1987 without specifying any institution at which you studied. Additionally, you do not provide any information about your employment from 1987-1988. Further, you have failed to provide information on your immediate superiors for all but your position with the National Security Service ("NSS") and information on your immediate subordinates for all positions. You failed to provide information on all aspects of your role and responsibility and did not provide information on the NSS units under your authority. For your work history in the United States, you failed to provide all of the above.
- **Interrogatory Number 6:** We request updated information on the current locations, known aliases or nicknames, and contact information for the following individuals: Abdullahi Ismail Ciro, Col. Abdullahi Agojid, and Col. Abdirashid Yasin.
- **Interrogatory Number 9:** You have failed to provide information on interrogation techniques, how often individuals were questioned, and how information was reported to you.
- **Interrogatory Number 13:** You have failed to include information on the investigation procedures, documentation and reporting procedures. You have also failed to include the names of individuals authorized to carry out investigation orders (such as yourself and those below you).

- **Interrogatory Number 15:** You have failed to provide information on documenting and reporting detentions.
- **Interrogatory Number 16:** You have failed to provide information on the collaboration between NSS and National Security Court.
- **Interrogatory No. 18:** This calls for you to, “Identify any litigation you have initiated or been involved with, either as a party or witness, since the date of your first entry into the United States, including the outcome of the litigation, any award of damages *and any money obtained through settlement.*” (emphasis added). Your response that you do not have any responsive Documents is insufficient: as we previously raised with your prior counsel, we have discovered that on November 8, 2011, you settled your personal injury action with Voans Capital Park Limited Partnership, *et al.*, in the Stipulation of Dismissal and Journal Entry for Case. No. 10 CVC-06-8228. As set out above, you are required to supplement your responses with information in relation to this or any other action, and in particular, any money obtained through settlement. We ask that you do so immediately.

* * *

This letter details a number of open issues to which your response is now urgently required. We especially need to know whether you will appear for your deposition and whether you will engage a new lawyer. Should you fail to respond to these requests in a timely fashion, we reserve our right to seek costs from you and, if necessary, sanctions from the Court. Additionally, as noted above, your failure to attend your deposition could result in a default judgment, meaning that the Court may conclude that you do not plan to defend yourself in this case.

Please provide the missing information and confirmations described above as soon as possible, but in no event later than March 28, 2012.

Sincerely,

/S/

Mark Beckett

cc: Christina Hioureas, Esq.
 Natasha Fain, Esq.
 Kenneth Cookson, Esq.
 Katya Georgieva, Esq.

Exhibit 8: Transportation and lodging receipts for expenses incurred by Plaintiff's counsel for the April 10, 2012 scheduled deposition



English
12 hrs display

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Save as PDF Print eInvoice

Electronic Invoice

Prepared For:

HIOUREAS/CHRISTINA

Electronic Invoice Receipt available until Tuesday, Jul 03, 2012

Ref: 00502307-0002-0492506

SALES PERSON	QT
INVOICE NUMBER	0172746
INVOICE ISSUE DATE	04 Apr 2012
RECORD LOCATOR	JJOQOM
CUSTOMER NUMBER	A81150

Client Address

LATHAM WATKINS

Notes

THANK YOU FOR USING LAWYERS TRAVEL. HAVE A SAFE TRIP. OFFICE HOURS ARE 430AM-830PM PST MONDAY-FRIDAY FOR EMERGENCY ASSISTANCE 830PM FRI - 430AM MON CALL 858-523-5488 AND YOUR CALL WILL BE DIRECTED TO TRAVEL HELPLINE. YOUR ACCESS CODE IS *068A*

DATE: Sun, Oct 07

Others

HAVE A GREAT TRIP

DATE: Tue, Apr 09

Flight: US AIRWAYS 3523

From	NEW YORK LGA, NY	Departs	9:29am
To	COLUMBUS OH, OH	Arrives	11:26am
Departure Terminal	C		
Duration	01hr(s) :57min(s)	Class	Coach
Type		Meal	
Stop(s)	Non Stop		
Seat(s) Details	HIOUREAS/CHRISTINA	Seat(s) - 17A	
Notes	OPERATED BY US AIRWAYS EXPRESS-TRANSSTATES AIRLINES		

DATE: Tue, Apr 09

**Hotel: SHERATON HOTELS, SHERATON COLUMBUS C
75 EAST STATE STREET
COLUMBUS OH 43215**

Service City	COLUMBUS OH		
Check-In	09 Apr	Check-Out	11 Apr
Rooms(s)	1	Room Details	

Night(s)	2	Rate per Night	135.15 USD
Confirmation Number	C205291802	Frequent Traveler	
CD-	34644		
Service Information	RQST NOSMKNG	Phone	1-614-3654500
Guarantee	Guaranteed Late Arrival		
Notes	CANCEL BY 01 DAY/S PRIOR TO ARRIVAL TO AVOID A PENALTY.		

TRADITIONAL NON-SMOKING: SWEET
VIEW: COMFORTABLE
WORK AREA: HIGH

DATE: Tue, Apr 09

Others

TRANSACTION FEE
Serv Chgs

Billed to: AX XXXXXXXXXXXX1006

USD * 75.00

DATE: Thu, Apr 11

Flight: US AIRWAYS 3702

From	COLUMBUS OH, OH	Departs	9:26am
To	NEW YORK LGA, NY	Arrives	11:00am
		Arrival Terminal	C
Duration	01hr(s) :34min(s)	Class	Coach
Type		Meal	
Stop(s)	Non Stop		
Seat(s) Details	HIOUREAS/CHRISTINA	Seat(s) - 11C	
Notes	OPERATED BY US AIRWAYS EXPRESS-AIR WISCONSIN		

Ticket Information

Ticket Number	US 7048801739	Passenger	HIOUREAS CHRISTINA	
		Billed to:	AX XXXXXXXXXXXX1006	USD * 649.60

SubTotal **USD 724.60**Net Credit Card Billing *** USD 724.60**Total Amount Due **USD 0.00**

RENTAL CAR INSURANCE-WHEN NECESSARY FOR CLIENT OR FIRM BUSINESS TRAVELERS MAY RENT A MID-SIZE CAR AS A SUBSTITUTE FOR OTHER GROUND TRANSPORTATION OPTIONS. CAR RENTALS ARE NOT NECESSARY FOR FIRM BUSINESS MEETINGS AND WILL NOT BE REIMBURSED. THE FIRMS PREFERENCE IS AVIS/HERTZ.BECAUSE THE FIRM HAS INSURANCE PROVIDING COVERAGE FOR PHYSICAL DAMAGE TO RENTAL VEHICLES AND COVERAGE FOR THIRD PARTY BODILY INJURY AND PROPERTY DAMAGE THE FIRM WILL NOT REIMBURSE TRAVELERS FOR INSURANCE PURCHASED FOR U.S. RENTAL CARS USED FOR FIRM OR CLIENT BUSINESS. THE FIRMS INSURANCE IS NOT APPLICABLE TO ANY EXTENT TO RENTALS FOR PERSONAL USE REGARDLESS OF WHETHER SUCH RENTALS ARE BOOKED THROUGH THE FIRMS TRAVEL DESK OR ARE PAID FOR WITH A FIRM CREDIT CARD. TRAVELERS RENTING CARS FOR PERSONAL USE ARE URGED TO REVIEW THEIR PERSONAL AUTO LIABILITY AND COLLISION COVERAGES TO DETERMINE WHETHER OR NOT THEY HAVE ADEQUATE COVERAGE. AS A REMINDER WHEN TRAVELING INTERNATIONALLY FOR BUSINESS IT IS IMPORTANT THAT YOU READ THE FIRMS BORDER SEARCH ADVISORY AND U.S. CUSTOMS AND BORDER PROTECTION POLICY STATEMENT LOCATED ON THE FIRMS INTRANET SITE AT HTTP://HOME.LW.COM/TRAVEL. THE ADVISORY AND POLICY HAVE BEEN ESTABLISHED TO PROVIDE ADVICE AND GUIDANCE REGARDING THE INSPECTION OF BUSINESS INFORMATION CONTAINED IN DOCUMENTS AND

ELECTRONIC DEVICES THAT MAY BE CARRIED ACROSS
THE BORDER AND HOW FIRM PERSONNEL SHOULD APPROPRIATELY
ADDRESS THIS INFORMATION SECURITY RISK. IF YOU HAVE
ANY QUESTIONS CONCERNING EITHER THE ADVISORY OR
POLICY STATEMENT PLEASE CONTACT A MEMBER OF SECURITY
AND PRIVACY COMMITTEE
FARE INFO-
THIS TICKET IS NONREFUNDABLE / CHANGE SUBJECT TO FEE
AND ANY APPLICABLE FARE INCREASE.
HU*

Your travel arranger provides the information contained in this document. If you have any questions about the content, please contact your travel arranger. For Credit Card
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<http://www.sheraton.com>



Hioureas, Christina	Page Number	1	Invoice Nbr	1000003711
Latham And Watkins/sp	Guest Number	90606	Arrive Date	04-09-2012
POX W24LD	Folio ID	A	Depart Date	04-10-2012
SAN CLEMENTE, CA 92673	No. Of Guest	1		
	Room Number	1711		
	Club Account	SPG - A42510079145		
	Time	04-10-2012 11:30		

Invoice					
Date	Reference	Description	Charges	Credits	
04-09-2012	RT1711	Room Charge	\$135.15		
04-09-2012	RT1711	State Tax	\$9.12		
04-09-2012	RT1711	Occupancy/Tourism	\$13.52		
04-10-2012	VI	Visa		\$-157.79	
		** Total	\$157.79	\$-157.79	
		** Balance	\$0.00		
****			\$0.00		

0.00
 0.00
 0.00
 0.00
 0.00

EXPENSE SUMMARY REPORT
 Currency: USD

Date	Room Chgs	Food & Bev	Telephone	Other	Total	Payment
04-09-2012	\$157.79	\$0.00	\$0.00	\$0.00	\$157.79	\$0.00
04-10-2012	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$-157.79
Total	\$157.79	\$0.00	\$0.00	\$0.00	\$157.79	\$-157.79

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 Starpoints for this visit A42510079145.

Continued on the next page

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<http://www.sheraton.com>



Hioureas, Christina	Page Number	2	Invoice Nbr	1000003711
Latham And Watkins/sp	Guest Number	90606	Arrive Date	04-09-2012
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SAN CLEMENTE, CA 92673	No. Of Guest	1		
	Room Number	1711		
	Club Account	SPG - A42510079145		
	Time	04-10-2012 11:30		

Invoice

Thank you for choosing Starwood Hotels. We look forward to welcoming
you back soon!

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ABUKAR HASSAN AHMED,	:	CASE NO. 2:10-cv-00342
	:	
Plaintiff,	:	Electronically Filed
	:	
	:	District Judge: George C. Smith
	:	Magistrate Judge: Mark R. Abel
v.	:	
	:	
ABDI ADEN MAGAN,	:	PROPOSED ORDER
	:	
Defendant.	:	

THIS MATTER, having come before the Court by Plaintiff through his counsel, KEGLER BROWN HILL & RITTER, LATHAM & WATKINS LLP, and the CENTER FOR JUSTICE & ACCOUNTABILITY, by motion for Rule 37 Sanctions Against Defendant Abdi Aden Magan (“Defendant” or “Defendant Magan”); and the Court having considered the submissions of the parties in support of, and in opposition to this motion; and for good cause having been shown:

IT IS ON THIS ____ day of _____, 2012;

ORDERED that Plaintiff’s Motion for Rule 37 Sanctions Against Defendant Magan is **GRANTED**, and therefore:

ORDERED that the following facts have been deemed established:

- (1) Defendant Magan was the Chief of the Department of Criminal Investigation of the National Security Service (“NSS”) from 1988 to 1990, and Mohamed Jibril Muse was his immediate superior.

- (2) As Chief of the Department of Criminal Investigation of the NSS, Defendant Magan had command authority over NSS officers and members of the Somali armed forces working in the NSS Department of Criminal Investigation.
- (3) The NSS Department of Criminal Investigation maintained a jail at its headquarters in Mogadishu. The NSS Department of Criminal Investigation conducted interrogations at the NSS headquarters in Mogadishu as well as at detention facilities throughout Somalia, including the interrogation center in Mogadishu referred to as Godka, and the Mogadishu Central Prison.
- (4) During his tenure as Chief of the Department of Criminal Investigation, Defendant Magan was aware of the prisoners brought into the detention and interrogation facilities at the NSS headquarters in Mogadishu.
- (5) Interrogations by the NSS Department of Criminal Investigation from 1988 to 1990 were conducted by NSS agents or officers operating under Defendant Magan's command.
- (6) Interrogations at the NSS Headquarters were reported to Defendant Magan in his capacity as Chief of the Department of Criminal Investigation.
- (7) NSS interrogation procedures included the systematic abuse of prisoners, including but not limited to threats of death, beatings, sleep deprivation, food deprivation, sense deprivation (through constant exposure to light or blindfolding), tying or cuffing in stress positions, simulated drowning through pouring large quantities of water and sand into a prisoner's mouth, and sexual abuse, including squeezing a prisoner's testicles with metal

instruments. This abuse was reported to Defendant Magan by NSS agents conducting interrogations under his command.

(8) NSS detentions frequently were not reported or documented to the National Security Court.

(9) The following individuals worked at the NSS under Defendant Magan's command:

Abdullahi Ismail Ciro, Abdullahi Agojid, Abdirashid Yasin, Hussein Sufi Derow, Mohamoud Hagi Farah Igal, Mohamed Abdi, Antar, Deeq, and Hassan Ga'al.

ORDERED that adverse inferences be drawn from Defendant's failure to respond or failure to supplement, under this Court's order, his responses to Plaintiff's requests for production numbered 18, 20, 21, 22, 24, 25, 26, and 27, his failure to supplement Defendant's deficient responses to Plaintiff's interrogatories numbered 5, 6, 9, 13, 15, and 16, his failure to respond at all to Plaintiff's interrogatories numbered 21-25, and his failure to attend his scheduled deposition.

ORDERED that in the event that Defendant maintains that he possesses no relevant information or responsive documents or fails to altogether respond to the Court's Orders and Plaintiff's outstanding discovery requests by June 29, 2012, that Defendant be prevented from using any information or document not-yet-produced in any response he might file to Plaintiff's case-dispositive motions or at trial.

ORDERED that Defendant pay the reasonable expenses Plaintiff's counsel incurred due to Defendant's failure to attend his scheduled deposition, in the amount of \$882.39, plus interest.

FURTHER ORDERED that Plaintiff will serve a copy of this Order via Email and Express Mail upon Abdi Aden Magan within three (3) days of the date of receipt of this Order.

United States Magistrate Judge

Approved By:

/s/ Kenneth Cookson
Kenneth Cookson (0020216)
Trial Attorney
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