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7

8 ***IN THE UNITED STATES DISTRICT COURT***
9 ***FOR THE DISTRICT OF COLUMBIA***
10

11 COUNCIL ON AMERICAN-ISLAMIC
12 RELATIONS ACTION NETWORK, INC.,
13 et al.,

CIVIL NO: 1:09-cv-02030-CKK

14
15 Plaintiffs,

16 -v.-

17 PAUL DAVID GAUBATZ, et al.,
18 Defendants.

19 _____ /
20
21 **GAUBATZ DEFENDANT'S SUPPLEMENTAL BRIEFING MIL'S**
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Appendix (Summary of Exhibits & Their Relevance)

1 **TABLE OF AUTHORITIES**

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4 **UNITED STATES SUPREME COURT**

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6 *California v. Ciraolo* 4
7 476 U.S. 207 (1986)

8 *Securities and Exchange Commission v. Chenery Corp.*
9 318 U.S. 80, 85-86 (1943)

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12 **D.C. CIRCUIT**

13 *Talavera v. Shah,* 18
14 638 F.3d 303 (D.C. Cir. 2011)

15 *U.S. v. Hubbard* 4
16 650 F.2d 293 (D.C. Cir. 1980)

17
18 **9TH CIRCUIT**

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20 *Franklin Supply Co. v. Tolman* 12
21 454 F.2d 1059, 1065 (9th Cir. 1971)

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23 **10TH CIRCUIT**

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25 *Mangels v. Pena* 4
26 789 F.2d 836 (10th Cir. 1986)

F. SUPP.

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3 *Council on American-Islamic Relations Action Network, Inc.* 7
4 *v. Gaubatz* (D.D.C. 2014) 31 F.Supp.3d 237

5 *Raynor v. Richardson-Merrell, Inc.* 8
6 (D.D.C. 1986) 643 F.Supp. 238

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8 **DISTRICT OF COLUMBIA**

9 *Bolton v. Crowley, Hoge & Fein, P.C.*
10 110 A.3d 575, 584 (D.C. 2015)

11 *Croley v. Republican Nat. Committee* 8
12 759 A.2d 682 (D.C. 2000)

13 *Jonathan Woodner Co. v. Breeden* 8
14 665 A.2d 929 (D.C.1995)

1 **SUPPLEMENTAL RESPONSES**

2 **PLAINTIFF’S MOTION IN LIMINE NO. 1**

3
4 **Plaintiffs request that the Court preclude Defendants from referring to CAIR, CAIR–F**
5 **and/or CAIR–AN as a criminal organization and/or a Muslim Brotherhood front group.**

6 This response outlines the legal basis for admission followed by an anticipated context
7 based explanation as to how many of the Proposed Trial Exhibits will be used. Plaintiff’s case is
8 unclear in many respects and the Proposed Trial Exhibits have significant FRE 404(b)(1&2)
9 impeachment value as well as independent probative value to establish aspects of defenses not
10 presently contemplated. Therefore this supplemental response will have 3 parts:

- 11
- 12 1. Legal issues addressed by the Exhibits
 - 13 2. Factual outline showing how the exhibits contribute to proof of relevant, material
14 and important points (hence addressing the FRE 403 question).
 - 15 3. Each Proposed Trial Exhibit will then be attached and its basic content and use(s)
16 identified.
17

18
19 **1. FIDUCIARY RELATIONSHIP**

20 **A. Formation of Fiduciary Relationship**

21
22 “Deciding whether a fiduciary relationship exists in a particular case requires ‘a
23 searching inquiry into the nature of the relationship, the promises made, the type
24 of services or advice given and the legitimate expectations of the parties.’ CAIR
25 II, 793 F.Supp.2d at 341 (quoting Firestone v. Firestone, 76 F.3d 1205, 1211
26 (D.C.Cir.1996)).
27

1 The evidence of “CAIR’s” connection to a hidden, Hamas/Muslim Brotherhood agenda
2 is directly relevant to “the promises made” by CAIR to Chris Gaubatz as an intern. It contrasts
3 the representations made by CAIR self defining as a genuine, dedicated civil rights organization
4 with the reality that its core function was to be a hidden Hamas based operation.
5

6 A fiduciary is one who acts in a representative capacity, owing the “highest fidelity” to
7 the person whose interests he is “charged with protecting and advancing.” *Urban Invs., Inc. v.*
8 *Branham*, 464 A.2d 93, 96 (D.C. 1983) If Chris Gaubatz formed a fiduciary relationship of trust
9 was it with “CAIR” the beleaguered but strident defender of human rights? Or was it with the
10 entity that he suspected it to be ? If he breached a duty, was the breach limited to protecting
11 privacy interests of “CAIR” to the extent that this civil rights facade had some genuine
12 functions? Or did it extend to all conduct of CAIR ?
13

14 *Myers v. Finkle*, 950 F.2d 165, 168 (4th Cir. 1991) held that a fiduciary duty
15 “arises when special confidence has been reposed in one who in equity and good conscience is
16 bound to act in good faith and with due regard for the interests of the one reposing the
17 confidence”. The proof of CAIR’s genuine Hamas character and purpose at the very least puts at
18 issue whether any intern, undercover or genuinely dedicated, owed a duty t act with “due regard”
19 for the interests of Hamas.
20

21 This Court’s citation of *Firestone* appears to make these jury questions and hence the
22 evidence of CAIR’s formation, purpose and hidden functions is probative.
23

24 Given the mutual deceptions by both sides of this case, the jury will have a significant
25 task apply these facts to the basic law that “[a] fiduciary relationship is founded upon trust or
26 confidence reposed by one person in the integrity and fidelity of another.” *Bolton v. Crowley*,
27

1 Hoge & Fein, P.C., 110 A.3d 575, 584 (D.C. 2015) (quoting Gov't of Rwanda v. Rwanda
2 Working Group, 227 F.Supp.2d 45, 64 (D.D.C. 2002)).”
3
4

5 **B. Scope of Fiduciary Duty**

6 But to say that a man is a fiduciary only begins analysis; it gives direction to
7 further inquiry. To whom is he a fiduciary? What obligations does he owe as a
8 fiduciary? In what respect has he failed to discharge these obligations? And what
9 are the consequences of his deviation from duty?

10 *Securities and Exchange Commission v. Chenery Corp.* (1943) 318 U.S. 80, 85-86

11 Chris Gaubatz at his Deposition stated that he was only instructed to remove documents
12 when he believed they related fraud. (Gaubatz Deposition, 30:19-22) If he only removed
13 documents that potentially related to criminality, this is an important factor for a jury in assessing
14 whether “the” fiduciary duty was violated.
15

16
17 **2. IMPEACHMENT COMBINED WITH PROOF OF DEFENSE THEORY**

18 To the extent that CAIR attempts to portray itself as a genuine civil rights organization
19 which is owed a duty, there is also an impeachment element. As set forth below, CAIR
20 personnel frequently compare themselves to Dr. Martin Luther King, Jr.. They shroud
21 themselves in the clothing of the genuine civil rights movement. When statements are made in
22 support of this theory, specific, targeted, direct contradiction is relevant.¹ This is not simple
23
24

25 ¹Defendant’s MIL 2 asked that witnesses be barred from calling “CAIR” a civil rights
26 organization. This motion was denied: “The Court declines to preclude statements by CAIR
27 witnesses that compare the organization to other civil rights organizations, in the context of such

1 impeachment. It is targeted because it contrasts “CAIR’s” self described status as a civil rights
2 organization with the Hamas/Muslim Brotherhood reality. Hence it has two purposes.

3 **3. EXPECTATION OF PRIVACY (18 USC 2511)**

4 **A. A Criminal Has a Very Limited Expectation of Privacy**

5 Plaintiff is asserting the corporate right to privacy and in *U.S. v. Hubbard* (D.C. Cir.
6 1980) 650 F.2d 293 the court noted that corporations have a lesser interest in privacy than
7 individuals. The court stated that the “public attributes of corporations may indeed reduce pro
8 tanto the reasonability of their expectation of privacy but the nature and purposes of the corporate
9 entity and the nature of the interest sought to be protected will determine the question whether
10 under given facts the corporation per se has a protectible privacy interest.” *Hubbard* at 306 fn.
11 Omitted)

12 In the context of the Fourth Amendment, standing turns on whether a person has a
13 “constitutionally protected reasonable expectation of privacy.” *Katz v. United States*, 389 U.S.
14 347, 360. The analysis of this constitutionally-protected interest involves a two-part inquiry:
15 “First, has the individual manifested a subjective expectation of privacy in the object of the
16 challenged search? Second, is society willing to recognize that expectation as reasonable?”
17 *California v. Ciraolo*, 476 U.S. 207, 211, (1986) (citing *Smith v. Maryland*, 442 U.S. 735, 740
18 (1979) In *Mangels v. Pena* (10th Cir. 1986) 789 F.2d 836 the court recognized that in general,
19 “[i]nformation is constitutionally protected when a legitimate expectation exists that it will
20 remain confidential while in the state's possession. [citations]” However in the context of the
21
22
23
24
25

26 _____
27 witnesses proffering their opinion as to the organization and its purposes.”

1 crime of the possession of contraband drugs the 10th Circuit noted that this act “does not
2 implicate any aspect of personal identity which, under prevailing precedent, is entitled to
3 constitutional protection. [citations]” The court then stated that “[v]alidly enacted drug laws put
4 citizens on notice that this realm is not a private one.” *Id* at 839

5
6 Any proof that CAIR was engaged in criminal activities would be balanced against the
7 possibility that CAIR had a honorable side and a criminal side. But the analysis grows more
8 complex when one considers that the salutary, civil rights side may have had little subjective
9 expectation of privacy because there was nothing to hide. The nefarious side had everything to
10 hide but had little objective, societally recognized protection.
11

12 13 **4. DEFENDANT’S CHARACTER AND STATE OF MIND**

14 Plaintiff’s List of Witnesses and the summary of their testimony is contained in the JPTS
15 Doc 239 at pages 27-29. The descriptions of evidence are so sparse and vague that defendants
16 must guess at what the testimony will actually be. Other than the defendants themselves,
17 plaintiff lists only four CAIR employees as witnesses.
18

19 **Chris Gaubatz** is (in part) allegedly going to testify “related to the conspiracy between
20 Defendants to steal documents and information from Plaintiffs ...”. (JPTS 27)

21 **Paul David Gaubatz** is (in part) allegedly going to testify:

22 ... regarding the documents he instructed his son to obtain and what he did with
23 those documents. Finally, he will testify regarding the book he co-authored,
24 entitled “Muslim Mafia” and the profits he earned from the sale of that book
(JPTS 27)

25 While conspiracy is no longer part of this case, the statements and interactions of the
26 defendants are clearly the primary proof in this case. Hence, their conversations, understandings,
27

1 their state of mind is put at issue by plaintiff.

2 While plaintiffs complain of being demonized, in fact, their case depends upon
3 establishing a malicious motive on the part of defendants and plaintiff has made it clear that anti
4 Muslim bigotry is their theory of defendant's animus. Exhibit C is a complete copy of the
5 Muslim Mafia book. It never denigrates a religion. It only attacks extremism under the guise of
6 religion and that is not a "catch phrase" that hides bigotry, it is fundamental to the book.
7

8 The preface indicates that P. David Gaubatz worked with CAIR to train law enforcement
9 in diversity issues until he learned of CAIR's Hamas connections following the HLF co-
10 conspirator designation. The Proposed Trial Exhibits helped change David Gaubatz view of
11 CAIR.
12

13 The preface to the book by P. David Gaubatz reads:

14 "I dedicate this book to the innocent children of all races, religions, and cultures
15 who are the ultimate victims of the errors of adults from all races, religions, and
16 cultures.
17

18 —P. David Gaubatz"

19 Added to the book at the start is this:
20
21

22 **A NOTE OF CAUTION FROM THE AUTHORS**

23 This is not a book about Islam or Muslims in general. It is about the threat
24 from Shariah Islam and violent jihad propagated by a criminal class of Muslims
25 known as the Muslim Brotherhood or the "Ikhwan mafia." This secretive
26 organization dominates most established Muslim groups and mosques in
27 America while exploiting, manipulating, and even victimizing law-abiding
Muslim Americans. Only a small share of the world's 1.3 billion Muslims are

1 part of this dangerous group. This book is about them.

2 At deposition he made it clear that his focus was on evidence of crimes, not evidence of
3 civil rights activity.
4

5 Q. What did Chris Gaubatz tell you about boxes of documents in storage rooms at
6 CAIR National's office?

7 A. Let me think. Chris had told me that he was informed by CAIR employees that
8 he could review any document, any piece of material at CAIR to better understand
9 CAIR, and that he could take documents, materials from CAIR and then he
10 described some documents pertaining to criminal activity.
11 (Exhibit D, Paul David Gaubatz deposition 155:21-156:3)

12 Unless CAIR concedes that P. David Gaubatz is concerned about an aspect of terror that
13 wraps itself in religion and that he is not anti-Muslim, David Gaubatz' thoughts, thought process
14 and sources of information are relevant.

15 5. DAMAGES

16 Plaintiffs have specifically disclaimed any damages based on harm to their
17 reputation from Defendants' alleged actions, as well as damages based on a loss in
18 donations as well as a diminution in their ability to lobby.”

19 Council on American-Islamic Relations Action Network, Inc. v. Gaubatz (D.D.C. 2014)
20 31 F.Supp.3d 237, 275

21 In the Joint Pretrial Statement Doc. 239, at page 70, plaintiff sets forth equitable remedies
22 only. No actual damages are claimed other than nominal damages for trespass. Plaintiff then
23 seeks statutory damages and attorney's fees. The proof of CAIR's criminality is relevant to
24 equitable remedies but can reserved for a post verdict hearing on those remedies. However,
25 plaintiff does title this disclosure as “Plaintiffs' Damages (to be updated by Plaintiffs)”. If any
26
27

1 real damages are claimed, the proof of criminality will become relevant to the assessment of the
2 harm caused.

3 **6. PUNITIVE AND EXEMPLARY DAMAGES**

4
5 If this were the only justification for the proffered evidence, the trial might be bifurcated
6 to keep the material from the jury as it deliberated on liability. Punitive damages under District
7 of Columbia law requires an inquiry into the “state of mind of the defendant. See: *Croley v.*
8 *Republican Nat. Committee* (D.C. 2000) 759 A.2d 682, 695 quoting *Jonathan Woodner Co. v.*
9 *Breeden*, 665 A.2d 929, 938 (D.C.1995), reh'g denied, 681 A.2d 1097 (D.C.1996) The conduct
10 of the defendant must be “willful and outrageous, constitute gross fraud, or be aggravated by evil
11 motive, active malice, deliberate violence or oppression.” *Mariner Water Renaturalizer of*
12 *Washington, Inc. v. Aqua Purification Systems, Inc.*, 665 F.2d 1066, 1071 (D.C.Cir.1981)
13 (applying District of Columbia law).” *Raynor v. Richardson-Merrell, Inc.* (D.D.C. 1986) 643
14 F.Supp. 238, 245

15
16
17 The same is true under the federal statutes.

18 **EVIDENCE DISCUSSED IN CONTEXT OF ITS LEGAL RELEVANCE**

19 **CAIR’S PUBLIC FACE vs. CAIR’S TRUE NATURE**

20
21 To make the legal points above, defendants focus on CAIR as a criminal entity with
22 whom no intern would form a fiduciary relationship and to whom little privacy is afforded and no
23 loyalty is owed. The defense will acknowledge and even demonstrate to the jury, the public face
24 with many positive attributes but will demonstrate that this is a veneer and a subterfuge.
25 Proposed Trial Exhibit 35 is a press release where CAIR director, Mr. Nihad Awad extolls the
26 virtues of Dr. Martin Luther King, Jr.. That exhibit contains the paragraph:
27

1 As American Muslims face the challenge of rising anti-Islam sentiment in
2 American society, we can benefit from the example of Dr. Martin Luther King Jr.,
3 who used the power of truth and justice to **peacefully** overcome those who
4 promoted fear and its resulting prejudice and intolerance.

5 (Emphasis added)

6 The comparison to Dr. King and by inference analogizing “CAIR” to the SCLC appears
7 frequently in statements by “CAIR”.

8
9 When Mr. Awad testifies, the defense, if appropriate and admissible, would focus on his
10 invocation of the mantle of Dr. King but his reticence to unequivocally embrace Dr. King’s
11 rejection of violence.²

12 All emphasis to these deposition excerpts are added.

13 Q Did you hear in a vague manner that she [an FBI Agent] looked at a
14 document from 1994 and tied CAIR and the IAP and the HLF together under the
15 Palestine Committee of the Muslim Brotherhood?
16

17 MR. ABBAS: Objection, relevance. The document is not before the deponent.

18 A We are a civil rights organization. We are the most known Muslim civil
19 rights organization. And traditionally, civil rights organizations do not have the
20 best relations all the time with the FBI. And I restate what we always say, that
21

22
23 ² While all involved in this case are well aware of Dr. King’s teachings, the actual
24 wording is instructive.

25 In his book, *Stride Toward Freedom*, Dr. King addressed “True pacifism,” and “nonviolent
26 resistance,” Dr. King wrote that non-violence is “a courageous confrontation of evil by the
27 power of love” (Dr. King, *Stride*, 80). Dr. King believed that “the Christian doctrine of love
operating through the Gandhian method of nonviolence was one of the most potent weapons
available to oppressed people in their struggle for freedom” (Dr. King, *Stride*, 79).

1 Martin Luther King was not viewed favorably by the FBI during his time. And we
2 are as a major civil rights organization, we are in those footsteps of Martin Luther
3 King and other key and historic civil rights leaders in this nation.
4

5
6 BY MR. HOROWITZ:

7 Q So you support Dr. King's belief that nonviolence is the only answer to
8 political struggle?
9

10 MR. ABBAS: Objection, relevance.

11 A **Martin Luther King is my hero and my role model.** And that's why I'm
12 so proud to be one of the leaders of the civil rights movement as a historic figure.
13 He serves as a role model to me and **that's why I'm in his footsteps.**
14

15
16 BY MR. HOROWITZ:

17 Q I'm really anxious to hear, you don't have to read it back, your response to my
18 question. So you endorse without reservation the Reverend Martin Luther King's
19 belief that all political struggle should be accomplished with complete
20 nonviolence?
21

22
23 MR. ABBAS: Objection, relevance. Asked and answered.
24

25 A I respect Martin Luther King. And I believe in his values.
26

27 (Exhibit E, Deposition of Nihad Awad 122:4-124:8)
28

1 [The evasiveness continued for many pages beyond what is quoted above.]

2 The concept that Nihad Awad is in Dr. King's "footsteps" contrasts sharply with his
3 complete inability to state that he rejects violence as a political tool. This invocation of Dr. King
4 in light of criticism of CAIR's pro Hamas agenda is a repeated "CAIR" theme.
5

6 Q. Are you aware that the FBI began investigating the Global Relief Foundation
7 prior to 7/9/11, suspecting that it supported Islamic extremism, including having
8 high level affiliations with an Al-Qaeda precursor organization in Pakistan? Were
9 you aware of that?
10

11 MR. ABBAS: Objection, relevance.

12 A. I'm not. But I'm also aware the FBI was investigating Martin Luther King for
13 ties to Communism. So once again investigations --
14 (Exhibit C, Deposition of Corey Saylor, 269:5-14)
15

16 **At trial**, the defense intends to present its theory through Raabia Wazir.
17 Her testimony will contrast the beliefs and expectations of young, committed and idealistic
18 interns/employees, with the hidden CAIR underbelly. As the defendants present Ms. Wazir's
19 expectations the defense will ask the jury, "If Ms. Wazir uncovered criminal wrongdoing and
20 Hamas connections, would she be bound by a duty of silence?"
21

22 **Raabia Wazir** was a law student who started in December 2007 as a paid CAIR intern
23 and was brought on as an employee in late May or June 2008. As an employee, she was in
24 charge of Chris Gaubatz and the other interns. (Wazir 17; 20:23-24) Ms. Wazir was in charge of
25 the non-disclosure agreements with interns. (Wazir 114:17-20) She recalls Chris Gaubatz
26
27

1 taking one home but she does not state that he ever signed it. (Wazir 125:18-24)³ Whether or
2 not it was signed, their discussions relating to the scope of non-disclosure was not unique. It was
3 the standard discussion which applied to undercover interns such as Chris Gaubatz or any of the
4 others.
5

6 Ms. Wazir was unaware the activities of “CAIR” that the defense calls the Hamas
7 underbelly of the group(s). She could not have communicated those activities to Chris Gaubatz
8 and she could not have reached an agreement with him to protect such conduct. In fact, from the
9 context of her deposition, Ms. Wazir would strongly oppose such conduct. Ms. Wazir’s
10 understandings of CAIR were consistent with the contents of Exhibit 35 (the Dr. King citation)
11 and the defense would argue that this is the limit of any promise by any intern to protect
12 confidentiality.
13

14 There is also a distinction between violating a duty to act on behalf of a partner and a duty
15 not to disclose true materials. There are numerous cases in the accounting context which
16 establish that an auditor must disclose the facts and does not owe a fiduciary duty to protect the
17 entity audited. See: *Franklin Supply Co. v. Tolman*, 454 F.2d 1059, 1065 (9th Cir. 1971)
18 (finding that an auditor is not a fiduciary because its duty is to act “independently, objectively,
19 and impartially”) There is not a direct analogy the case at bar but the point is that the fiduciary
20 duty should not include a duty to deceive the public, misrepresent matters (financial or
21 otherwise) or to aid in a fraud.
22
23
24

25
26 ³In a declaration filed in this case (Proposed Defense Trial Exhibit 8) she first believed
27 that Chris Gaubatz had signed a non-disclosure agreement. However, as an intern herself, she
had not signed one. (Wazir 31:18-25)

1 At deposition, Exhibit A, 211:7-15, Ms. Wazir stated that she had no knowledge that
2 CAIR founders Nihad Awad and Omar Ahmad had attended a 1993 Hamas conference where the
3 formation of CAIR was discussed. Proposed Trial Exhibits 1-7 demonstrate that CAIR was
4 created in 1993 when Nihad Awad, Omar Ahmad and other members of Hamas met in
5 Philadelphia. Their intention was to torpedo the Oslo Peace accords as they felt that this was a
6 betrayal of the genuine interests of the Palestinian people. The transcripts from that meeting state
7 this explicitly and of course they have a right to hold those beliefs. What they do not have, is the
8 right to represent themselves as the next Dr. Martin Luther King'(s) while funneling donations
9 made by caring people to promote peace and equality and diverting those funds to promote the
10 continuation of an armed conflict.
11

12
13 Proposed Trial Exhibit 1 is a chart of Hamas leadership. CAIR founder, funder and
14 supporter, Mousa Marzook is shown on that exhibit. Proposed Trial Exhibit 2 is the unindicted
15 co-conspirator filing by the government in the Holy Land Foundation trial. It lists CAIR and
16 Mousa Marzook. The Holy Land Foundation was criminally convicted of financing terror and its
17 connection to CAIR is familial. After 9/11 CAIR's website solicited donations for the victims of
18 9/11 and one of the charities listed was the Holy Land Foundation (See: Proposed Trial Exhibits
19 12-17) Proposed Trial Exhibit 3 is Judge Solis' order keeping CAIR listed as an unindicted co-
20 conspirator in the Holy Land Foundation criminal trial. Proposed Trial Exhibit 48 is a brief by
21 CAIR where they address the harm caused by that designation. Contrary to their pleadings and
22 testimony at deposition, they attribute their losses of membership not to the disclosure of
23 materials by the Gaubatz' but by the disclosure of their Hamas connection in the Holy Land
24 Foundation case.
25
26
27

1 Proposed Trial Exhibit 4 is a CAIR tax filing from 2004 where “CAIR’S” purposes are
2 stated as follows:

3 THE ORGANIZATION WORKS WITH VARIOUS INTELLIGENCE &
4 MEDIA TO PROMOTE BETTER UNDERSTANDING OF ISLAM AND
5 MUSLIMS IN NORTH AMERICA AND IN THE SOCIETY AS A WHOLE .

6 (Grants and allocations

7 b THE ORGANIZATION ALSO RESPONDS TO REQUESTS FOR
8 INFORMATIVE BOOKS AND PUBLICATIONS ABOUT ISLAM
9 MUSLIMS FOR LIBRARIES

10 Every tax return contains similar language. Nowhere does CAIR disclose its affiliation
11 with Hamas, its support of the legal defense of persons accused of terror activity (See Proposed
12 Trial Exhibit 29 detailing such support (page from Muslim Mafia Appendix), the defense of a
13 convicted murderer of a police officer. See Proposed Trial Exhibit 28 or its primary purpose of
14 advancing Hamas’ agenda.

15 Proposed Trial Exhibit 6 is a chart of persons who attended the foundational meeting of
16 CAIR in 1993. The 990 (Proposed Trial Exhibit 4) reflects the officers of CAIR and three of
17 them also attended the 1993 Hamas formation meeting. (Omar Ahmad, Nihad Ammad). Current
18 head, Nihad Awad also attended. Proposed Trial Exhibit 6 is a transcript of a portion of that
19 meeting where the attendees agree to refer to Hamas as “Samah” in order to hide the affiliation.
20

21 My brothers. this talk is to be continued. God's willing. There are remarks now.

22 Please don't mention the name Samah in an explicit manner. We agree on saying
23 it as "sister Samah". We will talk about her honor and the session is the session
24 here is a joint workshop between the **Holy Land Foundation** and the IAP. This is
25 the official form. I mean, please, in case Some inquired.

26 (Proposed Trial Exhibit 6, p. 14, emphasis added)

1 Proposed Trial Exhibit 31 is a 1994 Muslim Brotherhood document that names “CAIR”
2 in the context of its being a part of several other Hamas identified groups including the Holy
3 Land Foundation.
4

5 Ms. Wazir knew nothing of this. Nor did Ms. Wazir know of the misdirection of civil
6 rights donations to (purportedly) support the criminal defense of Jamil Al-Amin. (Exhibit A
7 Wazir Deposition 219:6-21) Chris Gaubatz discovered that \$ 9,000 was sent by “CAIR” to the
8 lawyer/spouse of Mr. Jamil Al-Amin. Mr. Al-Amin was convicted of murdering two African
9 Police officers. Proposed Trial Exhibit 28 is taken from the Muslim Mafia book. It is an April
10 25, 2007 letter to Nihad Awad from the attorney for Jamil Al-Amin. It thanks him for CAIR’s \$
11 9,000 contribution to Mr. Al-Amin’s criminal defense, particularly a recent habeas hearing.
12 The attorney is also Mr. Al-Amin’s wife. Jamil Al-Amin was formerly H. Rap Brown and on
13 March 16, 2000 he murdered two African American police officers. He was convicted two years
14 later. The letter references a habeas hearing in “Reidsville Georgia”. The only court in
15 Reidsville, Georgia” is the Tattnall County Magistrate Court. The trial was in the Fulton County
16 Superior Court and PACER reflects no habeas filings near the time of the letter or alleged
17 appearance. Therefore despite the claim that the funds were for a habeas appearance, it appears
18 that the money is a payment for some other purpose. The letter appears more as a cover up than
19 as a genuine “thank you”.
20
21
22

23 The use of so-called “civil rights” donations for this purpose was inquired into during the
24 deposition of Corey Saylor who testified as a representative of both CAIR entities. He asked
25 about the Al-Amin expenditure and letter. He asserted that the letter was “confidential”. (Exhibit
26 B, Deposition of Corey Saylor 260:11-23. He then denied knowledge of the use of funds in that
27

1 manner. (Exhibit B, Deposition of Corey Saylor 261:20-22) He justified the money as part of
2 the defense of a person who was innocent until proven guilty. He did not address the fact that
3 Mr. Al-Amin had been convicted, his case upheld on appeal and that no habeas was pending.
4 Mr. Al-Amin is now a Muslim minister and it is likely the funding was payment for his services
5 in that capacity.
6

7 At deposition, Ms. Wazir was shown proposed trial Exhibit 7, a donation of \$ 5,000 from
8 the Holy Land Foundation to CAIR. Ms. Wazir had never seen that document (Exhibit A, Wazir
9 Deposition 224:10-225:6) She did not understand that the Holy Land Foundation had been
10 convicted of providing funds to Hamas. Exhibit A, Wazir Deposition 225:7-226:3.
11

12 Although Ms. Wazir was aware that CAIR had been named an unindicted co-conspirator to the
13 Holy Land Foundation 226-227 she rejected the contention because she spoke to Corey Saylor.
14 After hearing his explanation, she felt “like with a bit of a McCarthyist environment that
15 followed September 11th, that kind of accusation, coupled with the assurances that Corey gave
16 me, did not – made it so that I wasn't concerned about the case. (227:10-14)
17

18 These reassurances by Saylor were part of “CAIR’s” ongoing fraud. When CAIR’s
19 founders met in 1993 they discussed derailing the Oslo Peace accords. (See Proposed Trial
20 Exhibit 50) The deliberately hid their Hamas connection agreeing to refer to Hamas as “Samah”.
21 (Proposed Trial Exhibit 51) Either Mr. Saylor knew these things and lied to Ms. Wazir, or the
22 actual inner workings of CAIR are hidden even from someone at the executive level.
23

24 This evidence underscores use of “civil rights” funds was outside any contemplated
25 agreement is an argument a jury should be allowed to consider. At best, plaintiff will establish
26 an agreement to protect confidential civil rights related materials. Funding Al-Amin is far
27

1 outside such a scope of agreement. That the letter seems to reference a nonexistent purpose for
2 the money raises issues as to why the money was actually paid.

3
4 Some of the Proposed Trial Exhibits directly refute prior statements of CAIR witnesses as
5 they attempt to portray CAIR as a genuine civil rights organization. Proposed Trial Exhibit 27
6 is written testimony submitted to Congress, on behalf of CAIR by its director, Nihad Awad. He
7 devotes many pages to explaining the purpose of CAIR as a genuine civil rights organization. He
8 specifically addresses and refutes accusations that CAIR received initial funding from the Holy
9 Land Foundation.

10
11 At page 19 of this testimony, Mr. Awad states:

12 MYTH: In a recent congressional hearing, Mr. Emerson proclaimed that, "...[CAIR]
13 received some of its initial seed money from the Holy Land Foundation for Relief
14 and Development (HLFRD)..."

15 FACT: This is an outright lie. Our organization did not receive any seed money
16 from HLFRD. CAIR raises its own funds and we challenge Mr. Emerson to
17 provide even a shred of evidence to support his ridiculous claim. In fact, it is
18 known that our DC headquarters was funded largely by a loaned grant mortgage
19 from the Islamic Development Bank (IDB), a multinational financial institution
20 similar in nature to the World Bank.

21
22 This statement is demonstrably false. Proposed Trial Exhibit 7 is a check dated October
23 5, 1994 which is written to CAIR by the Holy Land Foundation. This check was issued only 3
24 months after a Muslim Brotherhood meeting of July 30, 1994 (see Proposed Trial Exhibit 31)
25 That agenda names CAIR and the HLF under the agenda item "Future suggestions to develop
26 work of the following organizations". Proposed Trial Exhibit 20 reflects ties and contacts
27

1 between Hamas senior member Mousa Mohammed Abu Marzook and one of CAIR's founding
2 members. Proposed Trial Exhibit 19 is an IRS 990 from 1993 for the Holy Land Foundation
3 (which in 1994 donated to CAIR). The 990 lists CAIR founder Baker as the Executive Director
4 of the HLF (he signed the 990). It also lists Mr. Marzook as a donor of \$ 130,000 for the years
5 1989-1992 (p. 14)
6

7 Other relevant documents are U.S. Department of Treasury press releases regarding the
8 connection of the Holy Land Foundation and the Global Relief Fund to Hamas and terror.
9 (Proposed Trial Exhibits 53 and 54) These were issued at times when "CAIR" was actively
10 working with and exchanging funding with these groups. (Proposed Trial Exhibit 56, CAIR
11 donation to the HLF documented). Proposed Trial Exhibit 57 is a January 7, 2008 "Office of
12 Foreign Assets Control Specially Designated Nationals and Blocked Persons" list that includes
13 the Holy Land Foundation and Global Relief. Musa Marzook, of Hamas and one of the initial
14 founders and funders of CAIR is also on the list.
15
16

17 It is undisputed that "CAIR" ordered Chris Gaubatz to shred documents. CAIR claims
18 these were unimportant documents. Defendants assert that these documents evidenced
19 wrongdoing by CAIR. Among these documents were "Morris Days" paperwork, documents that
20 CAIR in D.C. unlawfully took from a separate corporate entity. An inference of spoliation of
21 evidence may be "appropriate in light of the duty of preservation notwithstanding the fact that
22 the destruction was negligent" (*Talavera v. Shah*, 638 F.3d 303, 312 (D.C. Cir. 2011))
23
24 The decision to destroy evidence of the Morris Days and other matters may have been a criminal
25 coverup or just negligent. For the jury to decide it needs to understand the importance of the
26 documents that were ordered destroyed. This context requires a background of CAIR as an
27

1 Hamas organization.

2 **Plaintiffs' Motion in Limine No. 2**

3 **Plaintiffs seek to preclude Defendants from presenting evidence that the United States**
4 **Government “proved” or had knowledge that CAIR is founded by the Muslim**
5 **Brotherhood ...**

7 See No. 1 above. As phrased the defense does not intend to claim that the “government”
8 proved at trial or in a civil or administrative hearing that CAIR equals Hamas. The evidence of
9 the connection has been detailed above but the conclusion that the “government proved” the
10 point is argumentative and not supportable.
11

12
13 **Plaintiffs' Motion in Limine No. 3**

14 **Defendant Conduct on Behalf of Law Enforcement**

15 **With the concession that the Gaubatz’ had no law enforcement affiliation, is their**
16 **“intention of preserving evidence or turning evidence over to the FBI, Congress or other**
17 **governmental entity” relevant.**

18
19 This has been discussed in No. 1 above. Legally, the concepts of misprison of a felony by
20 the destruction of evidence are intertwined with the subjective belief (and arguably the objective
21 reality) that evidence of wrongful conduct must be preserved. As a matter of law, to “plausibly
22 allege a criminal or tortious purpose requires “ ‘either (1) that the primary motivation, or (2) that
23 a determinative factor in the actor's motivation in intercepting the conversation was to commit’ a
24 criminal or tortious act.” *CAIR v. Gaubatz*, 31 F.Supp.3d 237, 256–57 (D.D.C. 2014) (“CAIR
25 2014”) (quoting *United States v. Dale*, 991 F.2d 819, 841 (D.C. Cir. 1993)).
26
27

1 The state of mind of Chris and David Gaubatz is relevant to this issue.

2 **Plaintiffs' Motion in Limine No. 4**

3 **Plaintiffs seek to bar evidence of Defendant David Gaubatz's training as an Arab linguist**
4 **and prior employment with the United States Air Force as a Special Investigations Special**
5 **Agent**

7 This is relevant for many purposes. It allows an explanation as to why David Gaubatz
8 understood the meaning of various CAIR provided documents and CAIR related documents that
9 were not in English but written in Arabic. His background provided a contextual basis for him to
10 understand the ways that CAIR manipulated religious symbols, concepts and institutions for
11 nefarious purposes. This provides context to his actions and is relevant to his state of mind.

13 In context, it also refutes claims that David Gaubatz had a wrongful, wanton, willful or
14 malicious intent with respect to CAIR. As part of his experience in law enforcement, the military
15 and with the Arabic language, David Gaubatz actually worked with "CAIR" to provide diversity
16 training to law enforcement. (Deposition of David Gaubatz p. 35-36) He helped train law
17 enforcement to understand "different cultures" and "sharia law". This is relevant and it is "good
18 character" evidence. Plaintiffs are welcome to introduce "bad character" evidence, if there is
19 any.
20

21 **Plaintiffs' Motion in Limine No. 5**

22 **Plaintiffs seek to preclude Ms. Haddadi or any other former or current CAIR employee**
23 **from testifying about alleged discrimination and/or mistreatment within CAIR.**

25 This may become relevant as CAIR paints itself as a righteous, genuine civil rights
26 organization. In fact, it has a history of discrimination against competing Muslim sects and
27

1 against women. There is no need to lead with this point but CAIR personnel are very quick to
2 compare themselves to genuine civil rights leaders and if they cross a line, this material is
3 legitimately impeaching.
4

5 **Plaintiffs' Motion in Limine No. 6**

6 **Plaintiffs seek to bar any evidence that attempts to exploit and attack Islam**

7 The defense intends to honor and respect Islam. This is not simply a statement by the
8 attorney for defendants. The first page of the Muslim Mafia book is titled "A Note of Caution
9 from the Authors". It then states:
10

11 This is not a book about Islam or Muslims in general. It is about the threat
12 from Shariah Islam and violent jihad propagated by a criminal class of Muslims
13 known as the Muslim Brotherhood or the "Ikhwan mafia." This secretive
14 organization dominates most established Muslim groups and mosques in
15 America while exploiting, manipulating, and even victimizing law-abiding
16 Muslim Americans. Only a small share of the world's 1.3 billion Muslims are
17 part of this dangerous group. This book is about them.

18 **Plaintiff's Motion in Limine No. 7**

19 **Adding an Affirmative Defense**

20 The Gaubatz defendants join in CSP's Response.
21

22 **Defense Motion in Limine (Use of the Book, "Muslim Mafia")**

23 The book itself has relevance in showing what how documents obtained from CAIR were
24 used or not used. The concern is that a portion of the book describes a the plans and motivations
25 to infiltrate CAIR and obtain information. Much of this material is helpful to the defense, some
26 less so. The problem is foundation. Chris Gaubatz did not write the book. David Gaubatz is
27

1 listed as an author but would testify that the primary work was that of Paul Sperry.

2 An electronic copy of the book will be uploaded with this document (Exhibit D) so that
3 the Court has more context for ruling on this issue.
4

5 **Defense Motion in Limine Preclusion of Sarah Pavlis and Adam Savit as Witnesses**

6 The Gaubatz defendants join in CSP Response.

7 **Defense Motion to Limit Testimony of Corey Saylor**

8 The Gaubatz defendants join in CSP Response.

9 **Defense Motion to Limit Testimony of David Zimmerman and Harold C. Weatherman III**

10 The Gaubatz defendants join in CSP Response.
11

12 **CSP's Objection to Plaintiff's Exhibit 3**

13 The Gaubatz defendants join in CSP Response.

14 **Plaintiff's Exhibit 5**

15 If any portion of the Muslim Mafia is introduced, the Gaubatz Defendants seek to
16 introduce the entirety of the book under Federal Rule of Evidence 106.
17

18 **Exhibit 6**

19 **Transcript issues**

20 The Gaubatz defendants join in CSP Response.

21 **Exhibit 8**

22 **Third party materials re: SANE et al.**

23 The Gaubatz defendants join in CSP Response.
24
25
26
27

