UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

James Lutcher Negley, Plaintiff,	§ § §	
vs.	§	Civil Action No. SA-12-CV-00362-OLG
Federal Bureau of Investigation, Defendant.	§ § §	

REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Summary Statement

Plaintiff has conceded, by his silence, that there is no fact issue regarding the applicability of the four separate FOIA exemptions claimed by the FBI. Notwithstanding 20 pages of briefing, Plaintiff's Response does not even address Defendant's legal argument that any documents not released in full to Mr. Negley are exempt from disclosure by one of four statutory FOIA exemptions. Any challenge to these exemptions has been waived by Plaintiff, and the Court should therefore grant summary judgment on the issue of whether the FBI properly invoked these exemptions.[1] *See* Motion for Summary Judgment at 11-17 ("The FBI Properly Invoked FOIA Exemptions 5, 6, 7(C), and 7(E)."); ***id***. at 17-19 ("EOUSA Properly Invoked FOIA Exemptions 5, 6, and 7(C)."); Hardy Declaration at ¶¶ 44-67 (explaining reliance on exemptions); Boseker Declaration at ¶¶ 11-23 (same).

This failure to challenge the exemptions claimed is also significant because "[d]iscovery has … been found to be unwarranted where the court is satisfied that the exemptions have been

[1] *See, e.g.*, ***Stone v. I.R.S.***, No. 3:11-CV-2263, 2012 WL 7186122 at *2-3 (N.D. Tex. July 16, 2012) ("[W]hile Plaintiff generally argues that Defendant must have withheld some documents from him, he does not contest Defendant's reliance on any specific FOIA exemption to withhold particular documents. Accordingly, he has waived any argument in regard to these exemptions. *See* ***Vela v. City of Houston***, 276 F.3d 659, 678-79 (5th Cir. 2001) (to defeat a motion for summary judgment, the non-movant must direct the court's attention to facts that support the essential elements of his claim, and failure to raise an argument in opposition to summary judgment constitutes abandonment). … Plaintiff's speculation that other responsive documents exist is insufficient to overcome … summary judgment …") (citations omitted).

appropriately applied."[2]

The only issue upon which Plaintiff attempts to raise a factual dispute is whether the FBI conducted an adequate search for documents. And even on this issue, Plaintiff does not challenge the Hardy Declaration's explanation of the FBI's thorough methodology for locating responsive documents. Of the six issues raised regarding the adequacy of the FBI's search, most have nothing whatsoever to do with the search itself, and raise no genuine dispute which precludes summary judgment. Finally, Negley has not come close to demonstrating the "exceptional conditions" required to support the appointment of a Special Master under Fed. R. Civ. P. 53.

Reply Argument

1. **The FBI met its summary judgment burden of showing it conducted an adequate search, and Plaintiff has failed to meet his burden of showing any bad faith.** (Motion for Summary Judgment at pp. 9-11).

Contrary to Plaintiff's assertion that the FBI is required to demonstrate "beyond material doubt that its search was reasonably calculated to uncover **all** relevant documents,"[3] controlling Fifth Circuit precedent holds that the agency "may demonstrate that it conducted an adequate search by showing that it used 'methods which can be reasonably expected to produce the information requested.'"[4] Also as set forth in the FBI's Motion for Summary Judgment, the required search must only be "reasonable," rather than "perfect."[5]

Plaintiff does not contest that the FBI satisfied its summary judgment burden by submitting a detailed declaration which is accorded "a presumption of good faith, which cannot

[2] ***Schiller v. I.N.S.***, 205 F. Supp. 2d 648, 654 (W.D. Tex. 2002) (citations omitted).
[3] Plaintiff's Response at ¶ 12 (emphasis added, citation omitted). Later in his Response, Plaintiff cites case law which is consistent with ***Batton***. *See* Response at ¶ 13 ("An agency … must search for documents in good faith, using methods that are reasonably expected to produce the requested information. … Summary judgment is inappropriate if there is **substantial doubt** about the adequacy of the search.") (emphasis added, citations omitted).
[4] ***Batton v. Evers***, 598 F.3d 169, 176 (5th Cir. 2010) (quoted at n.40 of Motion for Summary Judgment) (citation omitted).
[5] ***Schiller***, 205 F. Supp. 2d at 656 (quoted at n. 39 of Motion for Summary Judgment).

be rebutted by purely speculative claims about the existence and discoverability of other documents."[6] The FBI is entitled to this "´presumption of legitimacy' unless there is evidence of bad faith in handling the FOIA request."[7] "To prove bad faith, a plaintiff must show that the government purposefully withheld documents, not that it merely delayed or was inefficient in producing them."[8]

Plaintiff has not even attempted to meet his burden of demonstrating bad faith on the part of the FBI. Indeed, although Plaintiff and his counsel are well-versed regarding the FBI's FOIA search capabilities based upon previous litigation, they make no specific challenge to Paragraphs 32-35 of the Hardy Declaration.[9] These paragraphs detailed the numerous searches conducted of automated, manual, and electronic surveillance indices, utilizing a 6-way phonetic breakdown of Mr. Negley's name. The searches were conducted at various locations by different personnel, to double-check for accuracy, and these searches produced the same results. This unchallenged showing, in conjunction with Plaintiff's failure to meet his burden to demonstrate bad faith,[10] is

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[6] Motion for Summary Judgment at n. 42 (quoting ***SafeCard Servs., Inc. v. S.E.C.***, 926 F.2d 1197, 1200 (D.C. Cir. 1991).

[7] ***Batton***, 598 F.3d at 176 (citation omitted).

[8] ***Hildenbrand v. Fahey***, No. 3:12-CV-2959, 2012 WL 5844185, at *4 (N. D. Tex. Nov. 16, 2012) (citation omitted); *see also* ***Bay Area Lawyers Alliance for Nuclear Arms Control v. Dep't of State***, 818 F. Supp. 2d 1291, 1295 (N.D. Cal. 1992) ("Plaintiff's incredulity at the fact that no responsive documents were uncovered in response to one aspect of its search request does not constitute evidence of unreasonableness or bad faith.") (citation omitted).

[9] Plaintiff's question regarding Paragraph 12 of the Hardy Declaration concerns a 1-digit typographical error in the identification of a file that was searched (File No. "190-SA-C-14", instead of File No. "190-SA-C-1-4". (Response at ¶¶ 25-26). Plaintiff's suspicion that this file number suggested that the FBI conducted an additional "sedition" investigation of him was answered almost a year ago. No such investigation occurred, and the file in question was simply an administrative file regarding Negley's FOIA request to the FBI's San Antonio Field Office. (*See* Letter of June 19, 2012, Exhibit 5 attached). Also, as set forth *infra*, this challenge does not concern the adequacy or reasonableness of the searches conducted, but merely questions the numerical **identification** of one file which was **located** as a result of the FBI's searches of the multiple indices. The FBI has unequivocally and consistently maintained that "[t]he searches conducted to locate records responsive to plaintiff's June 15, 2009 FOIPA request … identified the same 1995 investigatory information previously produced to the plaintiff in prior FOIPA requests. The only additional responsive documents located were administrative [or litigation] files that are typically not processed as part of a FOIPA request." (Hardy Decl. at ¶ 9). The ***Negley II*** court also concluded that all investigative files had already been produced. *See* ***Negley II***, 825 F. Supp. 2d at 68-70.

[10] *See, e.g.*, ***Short v. U.S. Army Corps of Eng'rs***, 593 F. Supp. 2d 69, 73 (D.D.C. 2009) (once agency provides non-conclusory affidavits showing the adequacy of its search, summary judgment burden shifts back to plaintiff to demonstrate the lack of a good faith search) (cited at n. 41 of Motion for Summary Judgment); ***Exxon Mobil Corp. v. U.S. Dep't of Interior***, No. 09-6732, 2011 WL 39034, at *3 (E.D. La. Jan. 3, 2011) (upholding Magistrate Judge's

more than sufficient to establish as a matter of law that the FBI conducted an adequate search in this case.[11] Since Plaintiff has failed to show "substantial doubt" regarding the adequacy of the FBI's search, summary judgment should be granted.

2. Plaintiff's six enumerated arguments purporting to challenge the adequacy of the FBI's search are immaterial to the issue of adequacy and raise no fact issue for trial.

Plaintiff enumerates six issues which he claims raise "substantial questions about the adequacy of the FBI's search for records and production of records … which preclude summary judgment." (Response at ¶ 14). As shown below, almost all of these alleged factual issues have nothing to do with the scope or adequacy of the FBI's search for documents, and in no manner raise a fact issue precluding summary judgment.

a. There is no fact issue regarding the handwritten notation on Negley 437 (Exhibit 3-V). (Plaintiff's Response at ¶¶ 15-18).

This horse has already been thoroughly flogged.[12] Plaintiff is requesting that the Court authorize discovery to allow him to run down the rabbit trail of what the cryptic handwritten notations on this document **mean**, not to take discovery regarding the adequacy of the FBI's search for responsive records. The only relief a plaintiff is entitled to in a FOIA case is production of responsive records – even a successful plaintiff does not also get to conduct a further investigation regarding what the documents mean, or whether the agency conducted any

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ruling denying discovery that agency declarations explaining search were facially adequate, and that plaintiff had not carried its burden of showing bad faith).

[11] *See, e.g.*, ***Batton v. Evers***, 598 F.3d 169 (5th Cir. 2010) (affirming district court decision that agency search was adequate based upon agent declarations that available electronic databases and paper documents were searched, but reversing lower court's decision regarding application of exemptions); ***Driggers v. U.S.***, No. 3:11-CV-0229, 2011 WL 5525337, at *3 (N.D. Tex. Oct. 26, 2011) (finding that declaration of David M. Hardy explaining FBI searches of indices in its Central Records System to locate responsive records pertaining to the plaintiff, using phonetic sounds of his name and date of birth, was sufficient to establish adequacy of FBI's search) (Report & Recommendation adopted by District Court, Nov. 14, 2011); ***Negley II***, 825 F. Supp. 2d 68, 71 (D.D.C. 2011) (also finding that declarations by Mr. Hardy sufficient to establish that "Defendant's search and production in response to the 2002 [FOIA] request were reasonable under the specific circumstances of this case.").

[12] *See, e.g.*, Defendant's Response to Plaintiff's Motion for Reconsideration at ¶¶ 3-5 (doc. no. 37); Hardy Decl. at ¶ 70 (doc. no. 37-2).

other investigations of him.[13] This Court should not indulge Plaintiff's speculation that he has been the subject of other surveillance by the FBI after its brief investigation in 1995,[14] when there is no evidence to support this belief,[15] and the thorough database searches conducted by the FBI revealed no such investigative activity.[16]

b. There is no fact issue regarding the FBI's alleged failure to comply with document referral regulations. (Plaintiff's Response at ¶¶ 19-20).

This challenge shows that Plaintiff is truly grasping at straws. Plaintiff's counsel acknowledges that the regulation in question does not even create a *per se* requirement that requestors be notified, but only that such notification "ordinarily" take place. Nor does the regulation establish a mandatory time frame for such notification. Since requestors are not

[13] *See, e.g.,* ***Flowers v. IRS***, 307 F. Supp. 2d 60, 72 (D.D.C. 2004) (FOIA did not authorize plaintiff to seek discovery regarding agency's rationale for conducting tax audit: "because the defendant has demonstrated that its searches were reasonably calculated to uncover responsive documents, and because the court cannot expand FOIA to suit the plaintiff's investigatory objectives, the court grants the defendant's motion for summary judgment and denies the plaintiff's motion for discovery …") (quoted at pp. 5-6 of Defendant's Motion for Protective Order, docket no. 19).

[14] It is understandable that Plaintiff's counsel would like to distance himself from the discovery he propounded in this case and characterize any reminders about this discovery as "a hyperbolic personal attack on Mr. Negley." (Response at ¶ 2). Such discovery is a matter of record, however, and includes requests for admission and requests for production that: 1) the FBI conducted surveillance on Negley in Austin, Texas, after September 20, 1995; 2) that FBI personnel broke into his home and seized personal property, including his "Limited Collectors Edition" of a rare book about the JFK Assassination; and 3) that FBI personnel also broke into his business premises in Mill Valley, California, and seized business records. (*See* doc. no. 19-1, at pp. 7-13). Plaintiff's counsel never provided the Rule 26(g) factual basis for such discovery in response to Defendant's request. Mr. Carroll also made an April 10, 2013 e-mail request for Mr. Negley to be subpoenaed to testify in a phantom pending FBI investigation about him – an investigation he and his client imagined must be ongoing based upon the vague handwritten notes on the 2002 fax cover sheet (Negley 437). (*See* doc. no. 37-3, at p. 2). There is no such pending investigation, and hasn't been any investigation of Mr. Negley since 1995. Hardy Decl. at ¶ 70.

[15] *See, e.g.,* ***Steinberg v. U.S. Dep't of Justice***, 23 F.3d 548, 551 (D.C. Cir. 1994) (fundamental question is not "whether there might exist any other documents possibly responsive to the [FOIA] request, but rather whether the search for those documents was adequate."); ***Taylor v. Babbitt***, 673 F. Supp. 2d 20, 23 (D.D.C. 2009) ("Even if an agency's affidavits regarding its search are deficient, courts generally do not grant discovery, but instead direct the agency to supplement its affidavits."); ***Flowers v. IRS***, 307 F. Supp. 2d 60, 67 (D.D.C. 2004) ("[A] plaintiff can rebut the [presumption of good faith behind the agency's affidavits] with evidence of bad faith …, [b]ut such evidence cannot be comprised of 'purely speculative claims about the existence and discoverability of other documents.").

[16] Hardy Decl. at ¶ 70 ("[T]he only time at which plaintiff was of investigative interest to the FBI was in 1995 in connection with the UNABOMB investigation, and he was quickly dismissed as a potential subject. The records related to the FBI's limited investigatory interest into plaintiff were provided to him [as a result of his two previous FOIA requests] and consisted of approximately 163 pages. Furthermore, the many searches that have been conducted to locate records related to plaintiff have not indicated any investigatory interest in plaintiff other than in connection with the UNABOMB investigation.").

required to consent to such referrals, any delayed notification in this case (of approximately 7-12 weeks between January 31, 2013 to March 18, 2013, and then until April 23, 2013) is of no moment and did not prejudice Plaintiff. Most importantly, this alleged non-compliance is completely irrelevant to the question of whether the FBI conducted an adequate search.

c. There is no fact issue regarding the withdrawal of the Privacy Act privilege/exemption claim. (Plaintiff's Response at ¶¶ 21-23).

This issue has also been beaten to death.[17] Since the FBI is no longer withholding any documents because of the Privacy Act, whether it formerly relied upon this exemption, or why it is no longer relying on such exemption, is utterly irrelevant to whether it conducted an adequate search. Plaintiff's questions are obviously immaterial because any agency withholding decisions were necessarily made only **after** the documents were retrieved by the FBI's various searches.

d. Even if *Negley II* does not establish as a matter of *res judicata* that the FBI conducted an adequate search for all investigatory records, Plaintiff has not presented a fact issue which precludes summary judgment. (Plaintiff's Response at ¶ 24).

Plaintiff has misclassified this strictly defensive argument. Even if the Court accepts Plaintiff's position that ***Negley II*** did not make a binding determination regarding the adequacy of the FBI's search in response to the 2009 FOIA request, this does not mean that summary judgment should be denied. It would only mean that the Court would be required to review the Hardy Declaration (specifically Paragraphs 32 - 35) to independently determine whether the FBI conducted an adequate search. Since that declaration is entitled to a presumption of good faith, and Plaintiff has failed to bring forward evidence of bad faith, summary judgment should be granted in the FBI's favor in any event.

While Plaintiff is correct that ***Negley II*** was specifically adjudicating the adequacy of the

[17] *See* Defendant's Response to Plaintiff's Motion for Reconsideration at ¶ 2 (Doc. no. 37); Hardy Decl. at ¶¶ 41-43 (Doc. no. 37-2).

search for documents responsive to Plaintiff's 2002 request, the August 31, 2011 decision was cited in support of the FBI's argument that no other investigatory records existed: "[the FBI] "conducted [searches] to locate records responsive to both Plaintiff's 2002 and 2009 FOIA requests," finding that the searches "conducted pursuant to Plaintiff's 2009 request did not locate any responsive 'investigatory' records that had not previously been released."[18] The FBI submits that this determination should at least be considered highly persuasive, if not preclusive.

e. There is no fact issue regarding any erroneous file number. (Plaintiff's Response at ¶¶ 25-26).

Plaintiff offers no argument or explanation for why any error regarding the identification of one file which was **retrieved** as a result of the FBI's numerous searches demonstrates that the search was inadequate. Defendant has explained that it made a simple one digit typographical error ("14" should have been "1-4"), which was not corrected in the Hardy Declaration.[19] Once the Court finds that the FBI conducted an adequate search -- based upon the unchallenged explanation provided in the Hardy Declaration – Plaintiff's speculation and conjecture is immaterial and irrelevant. Mr. Negley "has not seen any sedition investigation files"[20] because there are none.[21] A typographical/proof-reading error of one numerical digit in a 42-page, 70-paragraph Declaration does not present a genuine issue of material fact.

f. There is no fact issue regarding the sufficiency of the representative sample.[22] (*See* Plaintiff's Response at ¶ 27; Motion for Summary Judgment at pp. 7-9).

Without citing a single case, Plaintiff makes the unsupported assertion that "where the

[18] ***Negley II***, 825 F. Supp. 2d at 66 (quoted at pp. 10-11 of Motion for Summary Judgment).
[19] *See* discussion at n. 9, *supra*.
[20] Plaintiff's Response at ¶ 25.
[21] *See, e.g.*, ***Negley II***, *supra*; Exhibit 5.
[22] Even if the Court were to agree that a representative sample should not be used in this case, no fact issue precluding summary judgment would be presented. Instead, adjudication of this dispute would be further delayed so that the FBI could submit a Vaughn Index approximately ten times as long as the one already submitted.

FBI has made such a broad use of exemptions, withholding [751][23] pages in their entirety …, utilizing a representative sample is not appropriate." (Plaintiff's Response at ¶ 27). Plaintiff provides no other basis for objecting to the representative sample. Moreover, the FBI carefully explained its methodology in selecting the representative sample (*see* Hardy Decl. at ¶¶ 36-37), and Plaintiff makes no challenge to how the documents were selected. Also, a simple review of the numbers and consideration of the types of documents involved (administrative and litigation files) does not suggest that an inordinately large number of documents have been withheld in full.[24]

Plaintiff also fails to challenge or explain why the DPIS summary pages do not provide the Court with a sufficient basis to adjudicate whether exemptions were appropriately claimed regarding the 751 pages which were withheld in full.[25] Since Plaintiff has made no specific challenge to the representative sample compiled by the FBI, and numerous courts have approved

[23] Plaintiff's assumption that the 77 pages processed by EOUSA should be reduced from the 823 pages withheld in full is correct. (*See* Hardy Decl. at ¶ 3; Boseker Decl. at ¶ 8).

[24] Of the total of approximately 7,427 pages retrieved and processed, approximately 5,198 were released in full (70%), approximately 1,478 were released in part and withheld in part (20%), and approximately 751 pages were withheld in full (10%). *See* Hardy Decl. at ¶ 3; Boseker Decl. at ¶ 8. Plaintiff mentions that the FBI's original estimate was inaccurate (*see* Plaintiff's Response at ¶ 9), but this was an estimate only, provided before the 2009 FOIA request had been fully processed. The relevant standard the Court should apply is one of "reasonableness," rather than mathematical precision. For this reason, no attempt has been made to reconcile Mr. Carroll's page count – which reflects 746 pages withheld in full – and undersigned counsel's own page count -- which reflects that 751 pages were withheld in full. The FBI submits that withholding in full 10% of all retrieved documents is not unusual, particularly given the nature of the files retrieved. Indeed, Plaintiff has acknowledged that many of the documents produced were duplicates. *See* Plaintiff's Reply to Defendant's Response to Motion for Reconsideration at ¶ 6 (doc. no. 40). Furthermore, many of the documents withheld in full were attorney work product and/or attorney client privilege. As an illustration of such appropriate withholding, the DPIS pages for Negley 4043, 4053, and 4063 (Exhibit U to the Hardy Declaration, doc. no. 39-25, at p. 26 of 147) indicate that "[t]he selected pages are the 2nd, 12th, and 22nd pages of a 22-page draft … Vaughn declaration … prepared by the FBI's FOIA Litigation Unit and forwarded to the AUSA for review and comment. The draft was forwarded as an attachment with the e-mail located at Negley II – 4040 (released in part) and both the e-mail and draft document contain headers labeling the draft as privileged attorney-client work product. The draft declaration was created in preparation for the ***Negley v. DOJ/FBI*** Civil Action 03-CV-2126-GK in the … District of Columbia." Such documents are obviously privileged, and it is no wonder that most FOIA requestors would not be interested in paying the copying costs – to say nothing of incurring attorney's fees -- to retrieve them.

[25] Although Plaintiff has failed to demonstrate the necessity of submitting pages withheld in full for *in camera* inspection, and the FBI does not believe it necessary, the FBI stands ready to submit a representative sample of pages withheld in full if deemed necessary by the Court. This is a far more sensible and recognized process than appointing a Special Master. *See* Motion for Summary Judgment at n.31 and authorities cited therein.

this technique,[26] the Court should accept the representative sample submitted by the FBI.

3. **Plaintiff has failed to show any "exceptional conditions" warranting the appointment of two hand-picked Special Masters.** (Plaintiff's Response at ¶ 27).

Plaintiff cites no authority in favor of appointing two Special Masters in this case. Fed. R. Civ. 53(a) authorizes the involuntary appointment of a special master to make or recommend findings, but only if there is "some exceptional condition," or the "need to perform an accounting." Moreover, the master "must not have a relationship to the parties."[27]

While this Court certainly has discretion to appoint a special master, Plaintiff has not shown any exceptional conditions to justify such an appointment. Particularly since Plaintiff has waived any challenge to the exemptions claimed by the FBI in this case, and has made no specific challenge to the methodology of the representative sample, there would be little if anything for a special master to do, which the Court could not do instead.

In ***Sierra Club v. Gifford***,[28] the Fifth Circuit held that it was an abuse of discretion for the district court to appoint a special master to make recommendations on cross-motions for summary judgment in a case under the Clean Water Act:

> [T]he district court abused its discretion by referring the motions to a special master. … There is no exceptional condition justifying the references. The fact that a case has been pending for two years is not so exceptional as to require the reference of … summary judgment motions to a special master. The same applies to voluminous filings containing highly technical documents and declarations, which is pretty much the norm for modern federal litigation.[29]

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[26] *See* authorities cited at n. 34 and n. 35 of Motion for Summary Judgment.
[27] Fed. R. Civ. P. 53(a)(2). Plaintiff's counsel has advised undersigned counsel that Mr. Newton is a friend and/or relative of Mr. Negley's.
[28] 257 F.3d 444 (5th Cir. 2001).
[29] ***Id***. at 447; *see also* ***Meeropol v. Meese***, 790 F.2d 942, 961 (D.C. Cir. 1986) (finding no abuse of discretion in not appointing Special Master in large volume FOIA case: "[i]f the master makes significant decisions without careful review by the trial judge, judicial authority is effectively delegated to an official who has not been appointed pursuant to article III of the Constitution; if the trial judge carefully reviews each decision made by the master, it is doubtful that judicial time or resources will have been conserved to any significant degree.").

Conclusion

Plaintiff has misconstrued the FBI's position in this litigation. The FBI has never questioned Mr. Negley's legal right to prosecute this third lawsuit,[30] but only his wisdom in doing so. It is undisputed that "[t]he FBI's search for records in response to Plaintiff's 2009 FOIA request did not locate any investigative records which had not previously been disclosed …, but only administrative or litigation files."[31] It is also undisputed that Plaintiff "[has] not present[ed] any evidence … that the FBI has engaged in illegal activity."[32] Given the redundant nature of this litigation, and the redundant nature of the documents retrieved, it is difficult to see how this case has advanced FOIA's core purpose of "contributing significantly to public understanding of the operations or activities of the government."[33]

But the Court need not even reach the issue of whether the public interest has been served by Mr. Negley's third FOIA lawsuit because there is no genuine issue of material fact in dispute. It is time for this Court to grant summary judgment, and to bury the dead horse of this serial FOIA litigation.

DATED: June 17, 2013

Respectfully submitted,

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[30] *See* Motion for Summary Judgment at n.47.
[31] Motion for Summary Judgment at p. 7 (citing Hardy Decl. at ¶ 9).
[32] Motion for Summary Judgment at p. 16 (quoting ***Negley II***, 825 F. Supp. 2d at 73 n.7).
[33] ***U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press***, 489 U.S. 749, 775 (1989) (quoted at p. 4 of Motion for Summary Judgment).

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply in Support of Defendant's Motion for Summary Judgment was electronically filed via the Court's CM/ECF system on this 17th day of June, 2013, and was served via ECF as follows:

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