

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

_____	)	
UNITED STATES OF AMERICA,	)	
	)	Civil Action No.
Plaintiff,	)	1:10-cv-00765-GBL-TRJ
	)	
v.	)	
	)	
ISHMAEL JONES, a pen name,	)	
	)	
Defendant.	)	
_____	)	

**PLAINTIFF UNITED STATES’ PROPOSED DISCOVERY PLAN**

Plaintiff United States, through the undersigned counsel, pursuant to Rules 16(b) and 26(f) of the Federal Rules of Civil Procedure and the Court’s order of September 29, 2011, respectfully submits this Proposed Discovery Plan. The parties were unable to agree on a joint proposed discovery plan. Accordingly, we respectfully submit the following proposed discovery plan on behalf of plaintiff United States:

1. **Background:** In this case, the United States sued Ishmael Jones (a pen name), a former Central Intelligence Agency (“CIA”) officer, for breaching his contractual obligations and fiduciary duties to the United States by publishing a book, entitled “The Human Factor: Inside the CIA’s Dysfunctional Intelligence Culture,” in violation of the terms of a Secrecy Agreement that he signed with the CIA. On June 20, 2011, the Court granted summary judgment to the United States as to liability and dismissed Jones’ counterclaim. Dkt. No. 45. The Court found that it was undisputed that Jones’ Secrecy Agreement required him to obtain written

permission from the CIA's Publications Review Board prior to publishing his book, and that Jones did not secure the agency's approval prior to having his book published. Transcript from June 15, 2011 Motions Hearing, at 18. The Court held that discovery was not necessary or appropriate as to any issue of liability because Jones admitted the material facts. *Id.* at 18-21. Among other things, Jones had specifically argued that he was entitled to conduct discovery on the issue of whether the United States was harmed by Jones' breach, but the Court rejected that argument by granting summary judgment for the United States as to liability. *See id.* at 7, 16; Defendant's Opposition to Plaintiff's Motion for Summary Judgment as to Liability and Motion to Dismiss Counterclaim at 10-11 (Dkt. No. 35).

As the Court acknowledged, the only remaining issue in the case is the remedy the Government is entitled to as a result of Jones' breach. Transcript from June 15, 2011 Motions Hearing at 21. The complaint seeks declaratory and injunctive relief and the imposition of a constructive trust over the proceeds that Jones derived, or will derive in the future, from the publication or republication, in any form, of his book. *See* Complaint at Prayer for Relief. The only issue as to which there is any need for discovery is the existence and amount of any proceeds that Jones derived, or will derive in the future, from the publication or republication, in any form, of his book, upon which to impose a constructive trust.

2. Pre-Discovery Disclosures: The parties agree that the initial disclosures contemplated by Fed. R. Civ. P. 26(a)(1) are not applicable to this phase of the

case and therefore stipulate to waive them. As the Government has previously stated, the complaint does not seek compensatory damages. *See* United States' Response in Opposition to Defendant Jones' Motion to Dismiss and/or Transfer Venue at 19 (Dkt. No. 14).

3. Discovery.

- A. Any discovery to be undertaken will be commenced in time to be completed by the close of discovery in this case on February 10, 2012.
- B. The United States may serve on defendant Jones a maximum of thirty interrogatories, thirty requests for production, and thirty requests for admission, without leave of court. The responses shall be due thirty days after service. Pursuant to Local Rule 26(C), objections to any interrogatory or request shall be served within fifteen days after service of the interrogatory or request. Because the only issue remaining in the case to be resolved is the remedies the Government is entitled to as a result of Jones' breach, there is no issue as to which defendant Jones is entitled to conduct discovery against the United States.
- C. The United States may take a maximum of five non-party, non-expert depositions, without leave of court. Each deposition shall be limited to a maximum of one day of seven hours of actual testimony, unless extended by agreement of the parties.
- D. Pursuant to the Court's July 21, 2010 order, defendant Jones' Secrecy Agreement obligations, and Jones' counsels' limited security approval

obligations, defendant Jones' true name and any identifying information that would reveal his true name shall be redacted from any discovery responses or documents provided to the United States.

4. Expert Witnesses.

A. The United States shall disclose any experts who may be called to testify at trial and provide reports called for in Fed. R. Civ. P. 26(a)(2)(B) on or before December 16, 2011.

B. Defendant Jones shall disclose any experts who may be called to testify at trial and provide reports called for in Fed. R. Civ. P. 26(a)(2)(B) on or before January 13, 2012.

C. The United States shall disclose any rebuttal to defendant Jones' disclosures on or before January 27, 2012.

5. Electronic Discovery: Electronic discovery in this case should not be intensive; defendant Jones should produce electronically-stored information in hard-copy, paper format. Where the printed document does not indicate information that may be important (such as the date, location and specific terminal on which the document was created or modified, the sender, and all recipients), defendant Jones should, upon request related to particular documents, determine that information from the electronic document, if technologically feasible, and provide it in paper form to the United States.

6. Issues Related to Privileged Material: The production of privileged or protected documents (including electronic documents) without the intent of waiving that

privilege or protection does not constitute a waiver, so long as the disclosing party identifies the inadvertently-disclosed documents within a reasonable time. If such documents are identified, they will be returned promptly to the disclosing party.

7. Additional Issues.

- A. At this point, the United States does not consent to trial before a magistrate judge.
- B. Since shortly after the Court entered its liability decision, the United States has sought to obtain, through informal discovery, information from defendant Jones about the proceeds he has received from the publication of his book, with an eye towards evaluating the possibility of settling this phase of the case. Despite productive discussions between counsel for the parties, the United States has yet to receive any of the requested information from defendant Jones.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of October, 2011, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to:

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