

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

PETER B.

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Plaintiff,

\*

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v.

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Civil Action No. 06-1652 (RWR)

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CENTRAL INTELLIGENCE AGENCY

\*

et al.

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Defendants.

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**DECLARATION OF MARK S. ZAID, ESQ.**

The undersigned hereby declares as follows:

1. I am a person over eighteen (18) years of age and competent to testify. I make this Declaration on personal knowledge. This Declaration is submitted in support of the plaintiff's Opposition to Defendants' Motion to Dismiss.

2. I am an attorney for the plaintiff in this matter. I am admitted to practice law in the States of New York, Connecticut and the District of Columbia, as well as the D.C. Circuit, Second Circuit and Fourth Circuit Court of Appeals, and the United States District Courts for the District of Columbia, Maryland, Eastern District of New York, Northern District of New York and the Southern District of New York.

3. I have been litigating cases involving the federal government, and specifically the defendant Central Intelligence Agency ("CIA"), for nearly fifteen years; essentially my entire professional legal career. I have represented hundreds of federal employees and contractors who work within the United States Intelligence and Military Communities, many of whom have been employed by the CIA in a covert position.

4. In many of my cases I have been provided authorized access to classified information. I presently have what the CIA calls a "limited security access approval" to SECRET level information relevant to a particular case (which is generally limited to information shared by the individual client as the CIA, as an institutional matter, routinely

refuses to provide access to any information). To my knowledge, this term does not exist in any Executive Order governing access to classified information, or holds any statutory or regulatory origin. Essentially, it is a CIA created term that is equivalent to the granting of an interim SECRET level clearance. However, it should be noted that the documentation that I execute, copies of which are attached at Exhibit "A", in order to gain access to classified information would seem to clearly reflect I am granted the equivalent of a SECRET clearance. Indeed, the authority from which the documents primarily originate is that of Executive Order 12958. As part of this lawsuit, I have been cleared by the CIA to have access to classified information concerning the plaintiff Peter B., including his true identity and relevant work history. Whether or not I have a "need-to-know" relevant information in the possession of Peter B. lies with him, although I have no ability to handle or store classified documentation.

5. I have represented Peter B., and members of his family, since in or around 2003, in an effort to resolve numerous disputes that have arisen with the CIA. As part of my representation I have participated in at least two classified meetings that I can recall with the CIA and Peter B. At one of those meetings the CIA (I believe the individual was from the Office of General Counsel) explicitly stated that Peter B. was a contractor and that the CIA possessed a specific document that Peter B. had signed that demonstrated this to be true. At the meeting Peter B. adamantly denied that he ever executed such a document, and he reiterated that he had served as a full staff employee of the CIA.

6. Interestingly, notwithstanding the fact that I supposedly possess the requisite access (as the document was, as I recall, classified at the SECRET level), the CIA refused to allow me or even Peter B. to review the document. Indeed, the CIA refused to even allow us to solely examine the signature line at the bottom of the page so that we could at least confirm the authenticity. One cannot help but be suspicious of such conduct, and I actually stated this at the meeting. Given the extensive experience I have had representing CIA employees and dealing with its personnel, and the specific facts of this case, I can

only conclude the CIA is not being forthright in explaining the circumstances surrounding Peter B.'s status with the Agency and his termination.

7. In all the years I have represented CIA employees who have faced termination of their employment I have never encountered a situation, notwithstanding what internal CIA regulations may permit with respect to discretionary authority, where that individual is not accorded some semblance of due process through a Personnel Evaluation Board (commonly referred to as a "PEB"). The individual is made aware of the allegations against them and provided an opportunity to respond, at least in writing. I find it extremely difficult to believe that the actions taken against Peter B. in this case are typical, and before the Court considers sanctioning such activity there should be some exploration as to personnel practices of the CIA to ensure Peter B. has not been singled out for an inappropriate, and perhaps unlawful, reason. In fact, defendant Margaret Peggy Lyons has been accused on several occasions – most recently in association with her husband Donald Keyser, who was sentenced to jail for providing classified information to unauthorized persons – of violating the law or security regulations. This has included, it is my understanding, an investigation by the CIA's Office of Inspector General in relation to the office where Peter B. used to work which she ran and involved a failure to account for tens of millions of dollars. Despite all the serious problems she has encountered Ms. Lyons apparently remains protected by the Agency.

8. Peter B. has made me aware that the contractors with whom he attempted to, or did temporarily, secure employment with were invariably aware of his prior covert relationship with the CIA. This was particularly true because many of the individuals he was dealing with in the contract world were former CIA employees who had known him, or of him, while they were colleagues. It is quite common that defense contractors were previously employed by the very federal agency that they now do business with as a private individual.

9. In his First Amended Complaint, Peter B. references, among other things, that the CIA failed to “transfer” his security clearances to contractors. By this it was meant that the CIA took steps to interfere with the normal process that would occur were it not inclined to seek to harm Peter B.’s employment prospects. Peter B. had been told repeatedly by CIA officials, claims which were also repeated to me, that no security issues existed. Had that been true Peter B.’s active clearances would have been “transferred” without delay or problem from the CIA to any particular defense contractor. Or, given Peter B.’s unique background and skills, even to the extent his clearances had “lapsed”, as claimed by the CIA, it would have been well worth it, and within proper authority and a simple matter, for a contractor to sponsor him for a renewed clearance. However, I have come to witness in numerous cases I have handled representing former CIA employees who left the Agency’s employ under “unfavorable” circumstances, such as with Peter B., that the CIA will play, for lack of a better term, “games” with the individual’s clearances without ever denying or revoking them, both of which would require according the individual administrative remedies. Instead, the CIA apparently “whispers” to the contractor/prospective new employer that “something” negative exists within the file, or that the employee would *likely* be denied a clearance. In essence, if true, the CIA has discovered a method by which to deny individuals, many of whom happened to have past or ongoing disputes with the Agency, a security clearance without ever according them required due process. In the clearance world, an area in which I routinely handle cases (and have testified before Congress as an expert on multiple occasions), an unfavorable or derogatory inference regarding an individual’s clearance, especially the potential inability to have one transferred, is often interpreted by contractors to impugn the person’s moral character or reputation and they stay clear of the individual. It is my opinion that this type of situation is very likely responsible for what transpired to Peter B.

10. Finally, I am not aware of any employment lost by Peter B. that occurred because the contractor was unable to verify a prior covert relationship between the CIA and Peter

B. To the contrary, it would appear *something* specifically unfavorable or derogatory concerning Peter B. was said to the contractors by officials within CIA that led the contractors to rescind or fail to offer the offer of employment. Of course, it should come as no surprise that specifically *what* was said remains unavailable to Peter B. at this time absent the ability to conduct discovery.

I do solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge.

Date: June 17, 2007

/s/

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Mark S. Zaid