ORAL ARGUMENT NOT YET SCHEDULED

NOS. 15-7016, -7019

In the United States Court of Appeals for the District of Columbia Circuit

Rene Arturo Lopez; Aquilla A.D. Turner; Mohammed Barakatullah Abdussalaam; Bayenah Nur,
Plaintiffs-Appellants,

v.

Council on American-Islamic Relations Action Network, Inc.,
Defendant-Appellee.

Iftikhar Saiyed,
Plaintiff-Appellant,

Mohammed Barakatullah Abdussalaam, 1:10-cv-00023-PLF; Rene Arturo Lopez, 1:10-cv-00023-PLF; Bayenah Nur, 1:10-cv-00023-PLF; Aquilla A.D. Turner, 1:10-cv-00023-PLF,
Plaintiffs-Appellants,
v.

Council on American-Islamic Relations Action Network, Inc.,
Defendant-Appellee.

On Appeals from the United States District Court for the District of Columbia

APPELLANTS' BRIEF

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Plaintiffs-Appellants Rene Arturo Lopez, Aquilla A. D. Turner, Mohammed Barakatullah Abdussalaam, Bayenah Nur (No. 15-7016), and Iftikhar Saiyed (No. 15-7019) hereby submit the following certificate pursuant to Circuit Rules 12 and 28(a)(1):

1. Parties and Amici.

The following list includes all parties, intervenors, and amici who have appeared before the district court, and all persons who are parties, intervenors, or amici in this court:

Plaintiffs-Appellants: Rene Arturo Lopez, Aquilla A.D. Turner, Mohammed Barakatullah Abdussalaam, Bayenah Nur, and Iftikhar Saiyed;

Defendant-Appellee: Council on American-Islamic Relations Action Network, Inc.

2. Rulings Under Review.

Plaintiffs-Appellants are appealing from the order and supporting memorandum opinion of U.S. District Court Judge Paul L. Friedman entered on January 29, 2015, granting Defendant-Appellee's motion for summary judgment and denying Plaintiffs-Appellants' Motion for partial summary judgment. The order and supporting memorandum opinion appear on the district court's docket at

entries 92 and 93, respectively, in the lead case (1:10-cv-00022) below and at 97 and 98, respectively, in the member case (1:10-cv-00023) below.

3. Related Cases.

The instant consolidated cases were never previously before this Court or any other court, other than the district court from which this case has been appealed. Plaintiffs-Appellants are not aware of any related cases pending at the appellate court level. A case involving the same parties as in the lead case (No. 15-7016) and the same basic facts was previously before this Court, but that case involved issues arising under 18 U.S.C. § 1962(d). *Lopez v. CAIR*, Appeal No. 09-7129, appealing from *Lopez v. CAIR*, 657 F. Supp. 2d 104, 114-15 (D.D.C. 2009). These consolidated cases do not involve issues related to 18 U.S.C. § 1962(d).

Respectfully submitted,

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GLOSSARY OF TERMS

CAIR	Council on American-Islamic Relations Action Network, Inc.
CAIR-VA	CAIR chapter in Herndon, Virginia

INTRODUCTION

This is a lawsuit about a Washington, D.C.-based national civil rights organization that touted publicly the legal heroics of one of its lawyers on behalf of the organization's clients when it was useful to do so, only to distance itself and disclaim any legal responsibility when the lawyer was exposed as a fake and a fraud, a man now deceased, who was neither a hero nor an attorney. According to the organization's own promotional material, the fraudster occupied the position of Resident Attorney and Civil Rights Manager of a nearby chapter office and represented dozens if not hundreds of the organization's clients. In reality, however, the man was not a lawyer and could not have appeared in court or acted as legal counsel to anyone.

Indeed, as victims piled up and demanded compensation in February 2008, the organization learned not only that the fraudster had failed to provide legal representation to the organization's clients, but also that he had charged many of the "pro bono" clients legal fees and expenses in the name of the organization. Rather than deal with the havoc responsibly, the organization closed down the chapter office, carted off all of the legal files of the client-victims to its D.C. headquarters without making any effort to contact the victimized clients, paid off a few of the early claimants who discovered the fraud on their own, but generally denied any liability by taking the position that the organization had no

responsibility for the fraudster—either because he was a rogue "independent contractor" of the chapter office or that the chapter office, even assuming it had *respondeat superior* liability, was itself an entirely independent actor with no liability touching the national organization.

Five of the victimized clients, Plaintiffs in the matter below and Appellants herein, sued the national organization, the only defendant available since the fraudster died not long after his massive fraud was discovered and the local chapter was boarded up and shut down as soon as the national organization could take custody of all of the legal files of the victimized clients.

After the close of discovery, Defendant-Appellee moved for summary judgment. Plaintiffs-Appellants opposed the motion and asked the court to treat its opposition as a *de facto* motion for summary judgment under Rule 56(f) of the Federal Rules of Civil Procedure, given the trial court's somewhat unusual early pre-discovery scheduling order allowing only Defendant-Appellee to file a motion for summary judgment.

The trial court granted Defendant-Appellee's motion for summary judgment, concluding that, while the fraudster was indeed an employee of the chapter—that is, not an independent contractor—neither he nor the chapter itself had any agency relationship to the national organization. Plaintiffs-Appellants appeal that part of the decision that found no genuine issue of material fact as to the agency

relationship between the fraudulent lawyer and the national organization, Defendant-Appellee, and rest their respective appeals (here consolidated) on the fact that the trial court engaged in an improper weighing of the evidence.

In sum, Plaintiffs-Appellants ask this Court to credit Plaintiffs-Appellants with all (not just some) of the reasonable inferences drawn from the evidence as required by Rule 56 and thus find that the factual record sustains sufficient material fact disputes regarding Defendant-Appellee's liability, and therefore remand this matter for trial.

JURISDICTIONAL STATEMENT

This consolidated appeal arises from two separate lawsuits, which were consolidated below. (JA 44 [clerk entry dated Sept. 30, 2010]). The lead case below (1:10-cv-0022-PLF, designated herein as Case No. 15-7019) was filed on January 6, 2010, by Plaintiff-Appellant Saiyed, and subsequently amended as of right on January 13, 2010.[1] (Compl. [R/L 1]; Am. Compl. [R/L 3; JA 1633-1720]). The member case below (1:10-cv-0023-PLF, designated herein as Case No. 15-7016) was also filed on January 6, 2010, by Plaintiffs-Appellants Lopez, Turner, Barakatullah Abdussalaam, and Nur, and subsequently amended as of right on January 13, 2010. (Compl. [R/M 1]; Am. Compl. [R/M 5; JA 70-131]). All

[1] All references to the Joint Appendix filed herein shall be designated "JA __". All references to the ECF docket entries below shall be designated as "R/L __" or "R/M __", respectively referencing the ECF docket entries in the lead case below (1:10-cv-0022) and the member case below (1:10-cv-0023).

Plaintiffs-Appellants (hereinafter, "Plaintiffs") allege state law claims in excess of $75,000. The district court had jurisdiction under 28 U.S.C. § 1332. (JA 1610-34).

On December 21, 2012, Defendant-Appellee Council on American-Islamic Relations Action Network, Inc. filed its motion for summary.[2] (JA 785). And on January 29, 2015, the district court granted Defendant's motion, resolving all claims in its favor. (JA 1601-02; Order [R/M 97]; JA 1603-32; Mem. Op. [R/M 98]).

On February 2, 2015, Plaintiffs filed a timely Notice of Appeal. (Notice of Appeal [R/L 94; R/M 99]). This court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

I. Whether the district court erred in granting summary judgment for Defendant by ignoring material facts in favor of Plaintiffs, improperly weighing the evidence in favor of Defendant, failing to view the evidence in the light most favorable to Plaintiffs, and failing to draw all reasonable inferences in Plaintiffs' favor as the nonmoving party.

II. Whether the district court erred in granting Defendant summary judgment by concluding there was no agency relationship between Defendant and the tortfeasor.

[2] Hereinafter, Defendant-Appellee Council on American-Islamic Relations Action Network, Inc., will be referred to as "Defendant" or "CAIR."

STATEMENT OF PERTINENT AUTHORITIES

There are no pertinent statutory or regulatory authorities relied upon herein.

STATEMENT OF THE CASE

A. Procedural History.

This appeal arises out of Plaintiffs' consolidated lawsuits alleging that CAIR is responsible for the fraud and breaches of fiduciary duty committed by Morris Days, a non-lawyer, who carried out his bad acts in the name of CAIR and whom CAIR had held out to the public as a CAIR attorney. (Am. Compl. [R/L 3; JA 1633-1720]; Am. Compl. [R/M 5; JA 70-131]).

On September 30, 2010, the district court denied Defendant's motion to dismiss, finding that the court had subject matter diversity jurisdiction and that Plaintiffs had all properly alleged claims of fraud, breach of fiduciary duty, statutory consumer fraud, and intentional infliction of emotional distress under Virginia law.[3] The court also granted Defendant's unopposed motion to consolidate the two cases. (Mem. Op. and Order [R/L 20-21; JA 1720-29; R/M 22-23; JA 132-55]).

Soon thereafter, the district court conducted a status conference (JA 1763-80), and on February 24, 2011, issued its scheduling order. (JA 1760-62). The

[3] Having determined that Virginia law should apply to the state law claims, the district court granted Defendant's motion to dismiss the Washington, D.C. statutory consumer fraud count, while allowing the Virginia consumer fraud cause of action to continue. (JA 146-48).

district court's scheduling order did two things relevant to this appeal. One, it "bifurcated [fact discovery] from expert discovery to permit the filing of a motion for summary judgment after fact discovery has concluded and before the parties incur the expense of retaining experts." (JA 1761 [Scheduling Order at ¶ 2[). And two, the court set a schedule permitting only Defendants to file a motion for summary judgment. (JA 1761 [Scheduling Order at ¶ 2.b.]).

Following the close of discovery, Defendant filed its motion for summary judgment on October 12, 2012. (JA 785[4]). Plaintiffs filed their opposition to the motion on November 23, 2012, and asked the court to treat Plaintiffs' filing as a *de facto* cross-motion for summary judgment pursuant to Rule 56(f) of the Federal Rules of Civil Procedure. (JA 156-57). The matter was fully briefed following the filing of Plaintiffs' reply brief in support of its Rule 56(f) cross-motion on January 30, 2013. (JA 66; R/L 82).

[4] The ECF filing date of Defendant's motion for summary judgment is December 21, 2012, almost a month following Plaintiffs' opposition to the motion. The reason for this anomaly is that Defendant filed its motion for summary judgment entirely under seal. (Def.'s Notice of Filing Mot. under Seal [R/M 66]). Consequently, Plaintiffs filed a motion to lift the seal and to require Defendant to refile its motion properly. (Pls.' Mot. to Unseal [R/L 63]). The district court granted Plaintiffs' motion to unseal and required Defendant to refile the motion publicly with only proper redactions. (Mem. Op. [R/L 75]). Before the district court had ruled on the motion to unseal, however, Plaintiffs had already filed their opposition to the sealed motion. Thus, Defendant's subsequently refiled motion for summary judgment appears in the docket following Plaintiffs' opposition.

Two years later, on January 29, 2015, the district court granted Defendant's motion for summary judgment and denied Plaintiffs' Rule 56(f) cross-motion. (JA 1601-02; Order [R/M 97]; JA 1603-32; Mem. Op. [R/M 98]). This appeal follows.

B. Statement of Facts.

1. Background Facts.

Most of the contextual facts in this case are not in dispute. Defendant CAIR is a national organization based in Washington, D.C., and it holds itself out as a civil rights organization representing Muslim-Americans. (JA 880). Some part of that representation includes acting as legal counsel in courts and administrative proceedings for CAIR clients. (JA 1605; Athman Dep. at 91:14-95:7 at JA 1276-80; JA 693-703). CAIR operates nationally through its various chapters located across the United States. To gain chapter status, individuals apply to CAIR, which then grants or denies the individuals' right to open a CAIR chapter office. (JA 1065). There is no formal or written chapter agreement, nor is there a formal or written license agreement to permit the chapters to utilize the CAIR logo or intellectual property. (Iqbal Dep. at 28:18-30:20; 34:2-35:25 at JA 1321-25; Pls.' Facts ¶ 105 at JA 205-06).

CAIR approved a chapter in Bethesda, Maryland, in 2002, which ultimately relocated to Herndon, Virginia. That chapter was known as CAIR-VA, but also referred to itself as CAIR-MD/VA (referred to hereinafter as "CAIR-VA"). (JA

1605; JA 693-703). In 2006, CAIR-VA employed Morris Days (a/k/a Jamil Days) to serve as its Civil Rights Manager and Resident Attorney. (JA 1605; JA 693-703). CAIR-VA published brochures extolling Days' exploits as an attorney representing dozens if not hundreds of CAIR clients. (JA 1605; JA 693-703). CAIR itself published newspaper articles on its website that praised Days as both a CAIR lawyer and a CAIR-VA lawyer. (JA 1617-18; JA 693-698).

At various times during 2007, each of the Plaintiffs approached Days at CAIR-VA in search of legal counsel. Mohammed Barakatullah Abdussalaam, Bayenah Nur, and Iftikhar Saiyed sought Days' legal assistance to pursue their respective claims of workplace discrimination. Aquilla Turner retained Days to represent her in divorce proceedings, and Rene Arturo Lopez desired legal assistance in an immigration matter. (JA 1605-06). In each case, Plaintiffs went to CAIR-VA offices to retain Days who made it clear to each Plaintiff that he was representing them as a CAIR Attorney, with the prestige and legal reach of a national organization. (Nur. Dep. at 148:8-150:21 at JA 559-61; Turner Dep. at 12:22-25:5; 27:22-28:16; 170:9-176:20 at JA 369-85, 420-26; Lopez Dep. At 92:17-93:19 at JA 356-57; Abdussalaam Dep. at 39:20-42:12; 159:19-162:13 at JA 574-77, 590-93; Saiyed Dep. at 12:13-14:2; 50:25-52:24; 56:4-12; 58:12-19; 151:20-152:12; 155:7-156:17; 157:22-158:10; 189:15-192:15 at JA 436-38, 439-43, 471-80; Pls.' Declarations at JA 730-63; Pls.' Facts ¶¶ 64, 81 at JA 194, 199).

During each of the initial meetings with Plaintiffs, Days used various CAIR publications referring to his legal work on behalf of CAIR. (*Id*.). These CAIR publications promoting Days' legal work on behalf of the national organization were instrumental in inducing Plaintiffs to retain Days as their CAIR counsel. (*Id*.).

As it turns out, Days was neither an attorney nor had he performed the necessary legal work on Plaintiffs' respective files to preserve their claims and protect their legal interests. Each Plaintiff suffered financial loss and emotional distress as a direct result. (JA 1606).

2. The Record Provides Sufficient Evidence to Support a Reasonable Inference that Days Was CAIR's Agent.

While there is no dispute that Days was formally employed by CAIR-VA as its Civil Rights Manager and Resident Attorney, there are sufficient facts to raise a genuine issue whether Days was simultaneously serving as CAIR's agent. To begin, Days himself provided evidence of his consent to serve as CAIR's agent when he expressly stated to Plaintiffs that he was a CAIR attorney, not simply a CAIR-VA attorney. (Nur. Dep. at 148:8-150:21 at JA 559-61; Turner Dep. at 12:22-25:5; 27:22-28:16; 170:9-176:20 at JA 369-85, 420-26; Lopez Dep. At 92:17-93:19 at JA 356-57; Abdussalaam Dep. at 39:20-42:12; 159:19-162:13 at JA 574-77, 590-93; Saiyed Dep. at 12:13-14:2; 50:25-52:24; 56:4-12; 58:12-19; 151:20-152:12; 155:7-156:17; 157:22-158:10; 189:15-192:15 at JA 436-38, 439-

43, 471-80; Pls.' Declarations at JA 730-63; Pls.' Facts ¶¶ 64, 81-83 at JA 194, 199-200).

Further, CAIR's intent to have Days serve as its agent may be reasonably inferred through several facts in the record:

- Plaintiffs all testified that Days showed them publications from CAIR (not simply CAIR-VA) that spoke about Days as a CAIR lawyer. (*Id.*).

- CAIR had no qualms, as late as December 2007, publishing news articles, without correction, praising Days both as a CAIR lawyer and as a CAIR-VA lawyer. (JA 693-698; Pls.' Facts ¶¶ 82-83 at JA 199-200).

- After a firestorm of client complaints about Days in February 2008, CAIR-VA fired Days. Over the next month, CAIR took possession of all Days' client files and had CAIR personnel review them. CAIR had sought no special authority from the CAIR clients to obtain and review their confidential attorney-client documents. And CAIR made no effort at any time to reach out to the victimized clients. (Iqbal Dep. at 120:13-122:12 at JA 1352-54; Athman Dep. at 114:15-119:20 at JA 1281-86; Pls.' Facts ¶ 119-22 at JA 211-12).

- CAIR's corporate designee testified that the reason CAIR (not CAIR-VA) paid off certain of the victims of the fraud was because CAIR was "trying to right a wrong that was done by one of our employees." (Athman Dep. at 130:22-131:4 at JA 1287-88; Pls.' Facts ¶ 84 at JA 200).

CAIR had the ability, whether it exercised that ability or not, to control Days through Khalid Iqbal. CAIR's control through Iqbal may be reasonably inferred through a range of evidentiary facts:

- Iqbal, at all relevant times, served as both a director and officer of operations at CAIR while supervising Days as the executive director of CAIR-VA. (Iqbal Dep. at 17:21-24:22; 42:19-44:23 at JA 1312-19, 1329-31; Pls.' Facts ¶ 87 at JA 201).

- As CAIR's director of operations, Iqbal's duties included supervising compliance of the operations of Defendant CAIR's chapters and offices, including CAIR-VA. (Iqbal Dep. at 25:4-25; 34:22-35:25; 94:21-95:14 at JA 1320, 1324-25, 1350-51; Pls.' Facts ¶ 88 at JA 201).

- All of Days' legal civil rights cases were inputted into CAIR's database. (Iqbal Dep. at 94:21-95-14 at JA 1350-51; Pls.' Facts ¶ 89 at JA 201).

- Iqbal worked with Days to produce the brochure that identifies Days as CAIR-VA's Resident Attorney and Civil Rights Manager. The brochure includes CAIR's logo and the name "CAIR" at page one, top left margin and a CAIR logo at the bottom margin on each page but the last page. On the last page toward the bottom there is a section entitled in bold italics: "About Our Organization." This section includes the following two paragraphs:

> The Council on American Islamic Relations (CAIR) is a non-profit organization dedicated to presenting an Islamic perspective on issues

> of importance to the American public. CAIR is the largest American Muslim civil rights and advocacy organization in the United States, serving the interests of more than seven million American Muslims with 32 chapters and offices nationwide and in Canada.
>
> CAIR's vision is to be a leading advocate of social justice and mutual understanding. It is our mission to enhance a general understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims and build coalitions that promote justice and mutual understanding.

(Iqbal Dep. at 68:25-70:6 at JA 1335-37; JA 700-03). The brochure describes CAIR-VA as a CAIR chapter but does not describe or otherwise characterize that relationship.

- When Khalid Iqbal first learned in July 2007 that Days was improperly taking money from CAIR clients for legal services, he sent an email to Days informing Days that he needed to investigate the matter, demanded that Days produce a copy of the relevant file, and even sought assistance from Days to develop a written policy for Days and CAIR-VA regarding payments from CAIR clients. Iqbal sent the email from a CAIR-VA email address but specifically signed the email as "Khalid Iqbal, Director of Operations CAIR," followed by CAIR's D.C. telephone and Iqbal's CAIR email address (kiqbal@cair.com). (Iqbal Dep. at 24:1-24:22 at JA 1379; Pls.' Dep. Ex. No. 16 at JA 1391 [referenced in Iqbal Dep.]; Pls.' Facts ¶ 92 at JA 202).

- Iqbal did not inform anyone at CAIR-VA that he learned that Days improperly took money from CAIR clients following the July 2007 discovery.

(Jaka Dep. at 27:17-28:12; 31:15-32:3 at JA 1276-80; Ahmad Dep. at 15:17-16:21; 27:14-21 at 320-21,331; Pls.' Facts ¶ 104 at JA 205).

- When Iqbal learned in November 2007 that Days had once again violated CAIR's policy and had taken fees from CAIR clients, Iqbal informed no one at CAIR-VA. The CAIR-VA board only learned of any improprieties in February 2008 when the fraud exploded with client complaints and Days was terminated. (*Id.*; Iqbal Dep. at 81:25-84:6; 89:19-90:17 at JA 1340-43, 1348-49; *see also* Iqbal Dep. at 24:1-24:22 at JA 1379; Pls.' Facts ¶¶ 104, 111-13 at JA 205, 207-09).

- At all times during Iqbal's dual service as CAIR's supervisor over CAIR-VA and as CAIR-VA's executive director, Iqbal was paid only by CAIR and was considered a loan of value to CAIR-VA by CAIR. (Iqbal Dep. at 42:19-43:7 at JA 1329-30; Ltr. from CAIR chairman to CAIR-VA chairman at JA 1398; Pls.' Facts ¶¶ 98, 100 at JA 203-04).

SUMMARY OF THE ARGUMENT

Plaintiffs contend that there is a genuine issue of material fact as to whether Days acted as both an employee of CAIR-VA and, simultaneously, as an agent for Defendant CAIR. Days held himself out as CAIR's agent (*i.e.*, civil rights attorney) in addition to his role as CAIR-VA's Resident Attorney and Civil Rights Manager. CAIR was perfectly content to publish on its website stories

highlighting that Days was an attorney acting for both CAIR and CAIR-VA—at least until Days' fraud came to light. Through Iqbal, CAIR controlled Days and, in at least one example directly related to the Days' fiasco, Iqbal exerted his control over Days and did so in his formal capacity as CAIR's director of operations.

Plaintiffs argue herein that the district court overlooked relevant and material facts that would provide the basis for genuine issues of material fact regarding Days' agency and engaged in an improper balancing of the evidence, dismissing out-of-hand reasonable inferences in favor of Plaintiffs as the non-moving party, thus acting as a trier-of-fact rather than in its more limited role appropriate for summary adjudication.

STANDARD OF REVIEW

The appellate court reviews the grant of a motion for summary judgment *de novo* and applies the same standard for summary judgment as the district court. As this Court set out succinctly in *Arrington v. United States*, 473 F.3d 329 (D.C. Cir. 2006):

> We review *de novo* a district court's decision to grant summary judgment. *George v. Leavitt*, 366 U.S. App. D.C. 11, 407 F.3d 405, 410 (D.C. Cir. 2005); *Kaempe v. Myers*, 361 U.S. App. D.C. 335, 367 F.3d 958, 965 (D.C. Cir. 2004). Summary judgment may be granted only if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A dispute over a material fact is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 248. And, with respect to

> materiality, "the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Id*.
>
> Although a jury might ultimately decide to credit the version of the events described by defendants over that offered by the plaintiff, "this is not a basis upon which a court may rest in granting a motion for summary judgment." *George*, 407 F.3d at 413. "[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge" ruling on a motion for summary judgment. *Id*. at 255. And, in assessing a motion for summary judgment, a court must view all of the evidence in the light most favorable to the nonmoving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-59, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970); *Kaempe*, 367 F.3d at 965.

Arrington, 473 F.3d at 333.

ARGUMENT

I. Introductory Caveats.

We begin with two caveats.

First, Plaintiffs are only pursuing on this appeal their position that the aggregate of evidence, including all reasonable inferences, creates a genuine issue of material fact whether a direct agency existed between CAIR and Days (*i.e.*, the CAIR-Days agency) such that CAIR is liable for the harm caused by Days. At the summary judgment stage below, this was Plaintiffs' central argument. Plaintiffs had also argued, in the alternative, that the now defunct CAIR-VA, which was

clearly responsible for Days' conduct, was an agent or alter ego of CAIR at the time. Thus, liability would run from Days to CAIR-VA to CAIR. The district court rejected both arguments. On this appeal, we focus strictly on Plaintiffs' central claim: the evidence, in the aggregate, is sufficient to raise a genuine issue as to the CAIR-Days agency.

Second, Plaintiffs did not make the argument below, nor do they here, that Days was an agent of CAIR based upon a theory of ostensible agency in the absence of actual agency. *See, e.g.*, Restatement (Second) of Torts § 429 (1965); Restatement (Second) of Agency § 267 (1958). In a case of ostensible agency, an actual agency relationship does not exist but the principle says something or behaves in such a way as to give third parties the reasonable belief that they may rely upon the ostensible agency. It appears to Plaintiffs, however, that the district court confused an argument Plaintiffs did make about apparent ***authority*** under Virginia law to counter an argument raised by CAIR's motion for summary judgment and then proceeded to confuse apparent authority with ostensible agency. (JA 1616-18).

Specifically, Plaintiffs' apparent authority argument pressed below (JA 234-35) countered CAIR's assertion that even if Days had been an agent of CAIR-VA (and presumably of CAIR itself), the legal services he rendered were outside the scope of that agency (*i.e.*, as a CAIR-VA "civil rights manager," Days had no

authority to act as legal counsel to CAIR's clients). (JA 827-31). Thus, CAIR's argument was that even if Days had been an agent of CAIR-VA, he acted outside the scope of his agency because he had no authority to serve as their legal counsel. Plaintiffs countered this defense with the Virginia law that extends liability of an actual agent to include harm caused by an agent who is engaged in bad acts during the course of the agency even when the agent's bad acts were solely for the benefit of the agent. Under Virginia law, this doctrine is termed apparent authority. (JA 234-35 [quoting at length from *Allen Realty Corp. v. Holbert*, 227 Va. 441, 447-448, 318 S.E.2d 592, 596 (Va. 1984)]). Virginia's doctrine of apparent authority—the theory of apparent authority utilized by Plaintiffs—is different from the district court's discussion of ostensible agency. Plaintiffs did not raise the issue of ostensible agency at the summary judgment stage, nor do they here.

We make this point for a particular reason. In December 2007, CAIR published on its website news articles praising Days' legal work. In one of the articles, Days is explicitly identified as an attorney working on behalf of CAIR and in another news article he is more closely tied to CAIR-VA—precisely the dual positions Plaintiffs maintain Days occupied. CAIR posted both articles without a word of explanation or correction. Plaintiffs argue that this evidence, along with the aggregate of other evidence in the record (detailed above in the recitation of facts and discussed immediately below), provides a reasonable inference that Days

was in fact CAIR's agent and that CAIR had no qualms about publicizing that fact. In other words, the publication in December of 2007 *was confirmatory evidence* of the relationship created between CAIR and Days when CAIR sent Iqbal to run CAIR-VA and supervise Days.

The district court, however, misunderstood the argument for actual agency and misconstrued it as an argument for ostensible agency by misunderstanding Plaintiffs' use of apparent authority as explained above. As such, the district court focused on the reliance factor (required for an ostensible agency) and the date the articles were published. If Plaintiffs are pursuing a theory of ostensible agency between Days and CAIR, the district court explained, Plaintiffs would have to provide evidence that Plaintiffs reasonably relied upon something CAIR said or did to suggest an agency. Since Plaintiffs had all retained Days by the time the news articles were published, the court concluded it should ignore the news articles because they have no probative value to establish an ostensible agency. (JA 1616-18). Indeed, if that were the argument proffered by Plaintiffs, the court would have been correct. But it is not, as we note below, and as a result the district court's dismissal of this evidence was error.

II. The Record Establishes a Genuine Issue of Material Fact Whether Days Was CAIR's Agent.

A. The District Court's Analysis of the Evidence Was Flawed and Created an Improper Bias Against Plaintiffs' Case.

CAIR's liability for the harm caused by Days is based upon the CAIR-Days agency. Plaintiffs argue that the ***aggregate*** of evidence, along with ***all*** reasonable inferences that might be drawn from that evidence, together establish at the very least a genuine issue of material fact whether Days was CAIR's agent. In Plaintiffs' view, the district court committed three fundamental and reversible errors that led to its rejection of the CAIR-Days agency. First and foremost, the district court engaged in an improper weighing of the evidence by typically asserting that an otherwise palpably reasonable inference supporting a CAIR-Days agency was "unpersuasive" or not "consequential." In other words, the district court did not deny the reasonableness of the inference, only that when the court set out to weigh Plaintiffs' reasonable inference against CAIR's self-serving declarations of denial, the court was unpersuaded of the weight of Plaintiffs' factual case. This was improper.

Second, the district court overlooked critical evidence. In one instance, as we noted above, the court's failure to take into consideration an important piece of evidence was due to the court's confusion over the distinction between apparent authority and ostensible agency under Virginia law and how Plaintiffs were

utilizing the theory of apparent authority.

And third, the district court treated each piece of evidence as a separate and distinct case for the CAIR-Days agency. In other words, rather than gather all of the facts drawn from the evidence in the aggregate to determine whether a reasonable jury might infer a CAIR-Days agency from the whole, the court sought to determine if any individual piece of evidence alone established agency. While Plaintiffs believe there is substantial circumstantial evidence of a CAIR-Days agency both among the pieces and taken as a whole, the court's divide-and-conquer approach to its evidentiary analysis made Plaintiffs' case appear far less persuasive than it is in fact. Before launching into the specifics of the evidence in the context of this three-fold critique of the district court's grant of summary judgment, it is worthwhile to pause to recall the substantive law of agency in the Commonwealth of Virginia.

B. The Law of Agency.

To begin, agency requires (1) some mutual understanding between the principle and the putative agent to establish the agency and (2) some reservoir of control over the agent's conduct managed by the principal. *Reistroffer v. Person*, 247 Va. 45, 48, 379 S.E.2d 450, 454 (Va. 1994) ("Agency is a fiduciary relationship resulting from one person's manifestation of consent to another person that the other shall act on his behalf and subject to his control, and the other

person's manifestation of consent so to act. The power of control is an important factor in determining whether an agency relationship exists.") (citations omitted); *see also Murphy v. Holiday Inns, Inc.*, 216 Va. 490, 492, 219 S.E.2d 874, 876 (VA. 1975) (same).

It is the right to control, however, not the control actually asserted, that is dispositive. Indeed, in *Perry v. Scruggs*, 17 Fed. Appx. 81, 89 (4th Cir. 2001), the court stated, "Under Virginia law, 'agency has been defined as the relationship which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and the agreement by the other so to act.'" (quoting *Raney v. Barnes Lumber Corp.*, 195 Va. 956, 81 S.E.2d 578, 584 (Va. 1954)). "'Actual control, however, is not the test; it is the right to control which is determinative.'" *Perry*, 17 Fed. Appx. at 89 (quoting *Whitfield v. Whittaker Mem'l Hosp.*, 210 Va. 176, 169 S.E.2d 563, 567 (Va. 1969)).

Beyond the substantive elements of agency, Virginia law has a demonstrable bias toward, and interest in, reserving questions of agency for the trier-of-fact. The district court itself appeared to recognize this, at least in theory:

> Under Virginia law, "whether an agency relationship exists is a question to be resolved by the fact finder unless the existence of the relationship is shown by undisputed facts or by unambiguous written documents." *Acordia of Va. Ins. Agency, Inc. v. Genito Glenn, L.P.*, 560 S.E.2d 246, 250 (Va. 2002) (quoting *State Farm Mut. Auto. Ins. Co. v. Weisman*, 441 S.E.2d 16, 19 (Va. 1994)) (alteration and internal quotation marks omitted); *see also Reistroffer v. Person*, 439 S.E.2d at 378 ("The question of agency *vel non* is one of fact for the fact finder

> unless the existence of an agency relationship depends upon unambiguous written documents or undisputed facts."). "Agency may be inferred from the conduct of the parties and from the surrounding facts and circumstances." *Acordia of Va. Ins. Agency, Inc. v. Genito Glenn, L.P.*, 560 S.E.2d at 250 (quoting *Drake v. Livesay*, 341 S.E.2d 186, 189 (Va. 1986)) (alteration and internal quotation marks omitted). "[W]hat evidence shall be sufficient to establish agency in any given case . . . must be determined in view of the facts in each particular case." *Id*. (quoting *Bloxom v. Rose*, 144 S.E. 642, 643 (Va. 1928)). The party alleging the existence of an agency relationship bears the burden of proving it. *Id*. at 249.

(JA 1619). With the law in hand, we turn to the evidence and the lower court's treatment of it.

C. The Evidence for a CAIR-Days Agency.

1. Mutual Consent.

There is no dispute that Days himself asserted that he was a CAIR attorney, not merely CAIR-VA's Resident Attorney and Civil Rights Manager. His statements to each of the Plaintiffs certainly permit the reasonable inference of his consent to act as CAIR's agent. Nowhere in its opinion granting summary judgment for CAIR does the district court address Days' consent.

The more central question is whether CAIR itself similarly consented to have Days represent the organization as a CAIR attorney. The reasonable inferences drawn from several different evidentiary facts in the aggregate provide at the very least a genuine issue on this material fact. First, CAIR was quite content to publicize news articles highlighting the heroics of Days serving as both

a CAIR and CAIR-VA civil rights lawyer. Nowhere does CAIR seek to clarify the public record denying that Days was in fact a CAIR lawyer. As we noted above, the district court dismissed this piece evidence because it erroneously factored in reliance and the timing of the publication of the news articles in the context of the court's misplaced ostensible agency analysis. CAIR's publication of these news articles on its own website is both consistent with, and confirmation of, CAIR's earlier consent that Days act as its agent.

Moreover, each of the Plaintiffs testified that Days showed them other publications by CAIR itself similarly lauding Days as a CAIR attorney, not just as a CAIR-VA lawyer. The district court did not address this testimony at all.

Another very strong piece of evidence to allow the reasonable inference that CAIR had earlier consented to the Days' agency is the undisputed fact that after the firestorm of client complaints and threats of lawsuits in February 2008, and even before CAIR learned that Days was not an attorney, CAIR took exclusive possession and control over all of the client files and had CAIR personnel go review them without bothering to obtain client approval. And even after the file review, CAIR did not bother to reach out to notify the clients.

CAIR operates in large part as a public interest law firm. It is certainly reasonable to assume that CAIR knew that these legal files would contain highly confidential client communications and personal information that belonged to the

clients themselves. *See* Virginia Rules of Professional Conduct, § 1.16(e) (explaining that the client retains ownership over all information and materials provided to an attorney). If CAIR's position is that these were strictly Days' clients or strictly CAIR-VA's, why didn't CAIR have CAIR-VA obtain client approval for the files to be transferred to CAIR and reviewed by CAIR personnel? The fact that CAIR felt comfortable taking possession of the files and reviewing them without client approval certainly permits the reasonable inference (if not dispositive of the fact) that CAIR considered these clients its own. *That conclusion would only be possible if Days had acted as CAIR's agent*.

The district court, however, dismissed this evidence by linking it strictly to the "control" factor and simply stating, "The Court is ***unpersuaded*** that CAIR's taking possession of CAIR-VA's legal files after the events relevant to plaintiffs' complaints regarding Days' conduct somehow ***demonstrates*** that CAIR exercised control over Days. The plaintiffs are drawing an inference that simply does not follow from the facts cited." (JA 1623) (emphasis added). The problem with the court's dismissal of the probative value of this evidence is threefold.

First, while Plaintiffs certainly believe that the act of taking control of highly sensitive and proprietary client files without expressed client authorization provides inferential support for CAIR's control over Days and his work product, more important is that it provides a very strong inference that CAIR's

understanding was that its dominion over these files was proper. In the absence of some separate agreement between CAIR and the hundreds of clients involved, CAIR's dominion over the client files could not have arisen without a direct agency relationship between Days and CAIR. Indeed, this argument of "dominion" was raised in Plaintiffs' opposition to CAIR's motion for summary and in their reply brief. (JA 232, 235-36; 1593).

The second problem with the district court's dismissal of the evidence showing CAIR exercised dominion over the client files without client authorization is that the court was in effect weighing the evidence. Although the court claims there is no reasonable inference to be drawn from CAIR's conduct relative to agency, the court provides no explanation as to why that is. And while Plaintiffs accept the fact that CAIR does attempt to explain this conduct away, that explanation is simply another inference, reasonable or not. However, *that inference cannot be favored as against Plaintiffs' evidence as the non-moving party*. Indeed, one might infer that CAIR acted in haste and violated the proprietary and privacy interests of the clients by taking these files without authority. One might even infer that CAIR acted with noble purposes. But again, these are just opposing inferences to be drawn from the same evidence. For the district court to ignore a very reasonable inference of prior dominion based in agency, especially given the other reasonable evidentiary inferences of CAIR's

consent to the agency, is to usurp the role of the trier-of-fact, especially under Virginia law, which considers these vying factual inferences to be the domain of the jury. *See, e.g., Acordia of Va. Ins. Agency, Inc.*, 560 S.E.2d at 250 (stating that under Virginia law, "whether an agency relationship exists is a question to be resolved by the fact finder") (internal quotations and citation omitted).

This leads to the third problem with the district court's treatment of this evidence relating to client files: it is an example of the court's divide-and-conquer approach to its evaluation of the evidence. Rather than take CAIR's dominion and control over the client files as one part of the evidentiary whole as Plaintiffs suggest, the court rejects the reasonable inference of agency because it does not understand how this particular evidence "demonstrates" CAIR's control over Days. But the law does not require that *each piece* of inferential evidence necessarily prove agency in and of itself, *see, e.g., Acordia of Va. Ins. Agency, Inc.*, 560 S.E.2d at 250 ("[W]hether an agency relationship exists is a question to be resolved by the fact finder *unless* the existence of the relationship is shown by undisputed facts or by unambiguous written documents.") (internal quotations and citation omitted) (emphasis added)—although Plaintiffs believes this evidence comes close. Rather, all of the evidence of agency, taken as a whole, provides sufficient weight for the jury to conclude that such an agency existed. *See id.* ("Agency may be inferred *from the conduct of the parties* and from the surrounding *facts and circumstances*."

(plural)).

This is not a case where the whole is necessarily greater than the sum of its parts. This is a case where no one part equals the sum of all parts—that is, the aggregate of the evidence. The district court's piecemeal approach to the evidence was improper and created an inherent bias against Plaintiffs' case.

Finally, we come to the admission by CAIR's Rule (30)(b)(6) designee. Athman testified that the reason CAIR (not CAIR-VA) paid off certain of the victims of the fraud was because CAIR was "trying to right a wrong that was done by one of our employees." The district court dismissed this evidence in a footnote by noting that there was no evidence in the record to establish an actual employer-employee relationship between CAIR and Days. (JA 1614, n.6). Plaintiffs, however, do not, and did not below, argue that this quite evocative testimony established an employer-employee relationship. What Plaintiffs asserted below and assert now is that CAIR felt responsible to pay these victims based upon the harm done by someone who worked for CAIR in a relationship that was at the very least akin to an employee. It would certainly be a reasonable inference for a jury to draw from this testimony that CAIR considered itself vicariously liable for the harm caused by Days based upon some form of agency relationship—be that as a principal-attorney/agent relationship or master-servant. If CAIR felt it had that exposure when it was paying the settlement funds, a jury could certainly and

reasonably conclude, together with all of the other evidence, that CAIR had agreed to the agency relationship at its inception.

2. Control.

The Virginia law of agency treats the factor of agency like most other jurisdictions. The principal's ability to control the conduct of the agent is an important factor in establishing an agency relationship. *Perry, supra,* 17 Fed. Appx. at 89. Moreover, Virginia law recognizes that the evidence to establish control is more than likely to be circumstantial and must be viewed as a whole given the realities of the relationships and overall conduct of the parties. This point was emphasized recently by the Fourth Circuit:

> Regarding the right to control, "direct evidence is not indispensable — indeed frequently is not available — but instead circumstances may be relied on, such as the relation of the parties to each other and their conduct with reference to the subject matter of the contract." *Acordia of Va. Ins. Agency v. Genito Glenn, L.P.*, 263 Va. 377, 560 S.E.2d 246, 250 (Va. 2002) (alteration and internal quotation marks omitted); *see Royal Indem. Co. v. Hook*, 155 Va. 956, 157 S.E. 414, 419 (Va. 1931) ("Frequently [agency] is established and has, of necessity, to be established by circumstantial evidence."). "Agency may be inferred from the conduct of the parties and from the surrounding facts and circumstances." *Drake v. Livesay*, 231 Va. 117, 341 S.E.2d 186, 189 (Va. 1986). "Whether an agency relationship exists is a question to be resolved by the fact finder unless the existence of the relationship is shown by undisputed facts or by unambiguous written documents." *Acordia of Va. Ins. Agency*, 560 S.E.2d at 250 (alteration and internal quotation marks omitted).

Bocek v. JGA Assocs., LLC, No. 14-1208, 2015 U.S. App. LEXIS 10262, at *15-17 (4th Cir. June 18, 2015).

Plaintiffs suggest that the evidence in the record, taken as a whole, is more than sufficient to establish at the very least a genuine issue as to the control factor necessary to support a CAIR-Days agency. The factual mosaic evidencing control in this case provides the following landscape. Iqbal was employed by CAIR and served as CAIR's director of operations. His responsibilities included supervising all of CAIR's chapter offices, including CAIR-VA. CAIR paid all of Iqbal's salary and provided Iqbal to CAIR-VA to serve as executive director and manage the affairs of the chapter for no additional pay or cost. CAIR considered its payment of Iqbal's salary as a financial contribution to CAIR-VA. Iqbal often consulted with CAIR officials about what he learned of CAIR-VA's operations while serving as the chapter's executive director.

To be sure, this factual landscape does not "demonstrate" that Iqbal was supervising Days while wearing his two executive hats: one as Days' direct supervisor at CAIR-VA and one as CAIR's director of operations responsible for the supervision of CAIR's individual chapters. But it most certainly opens the door for the inference that Iqbal used both positions to supervise Days. What elevates this possible inference into a reasonable and thus legally cognizable one are the other factual tiles that fit into this mosaic.

First, CAIR had a vested interest to have Iqbal supervise Days directly for and on behalf of CAIR. Iqbal helped prepare the CAIR-VA brochure that praises

Days' legal work as CAIR-VA's Resident Attorney and Civil Rights Manager. That brochure includes a legend at the bottom that describes CAIR as a single national organization made up of chapter offices without any reference whatsoever to the "independence" or "separateness" of the chapters or any indication that the chapters were legally or organizationally distinct from the single national organization. Indeed, the opposite is true. Moreover, CAIR was publishing articles on its own website highlighting Days' legal successes as CAIR's successes. Obviously, Days' failures would come back to haunt CAIR—as indeed they did.

Second, Iqbal was not just the classic agent serving two principles. *See* Restatement (Second) Agency, § 226 ("A person may be the servant of two masters, not joint employers, at one time as to one act, if the service to one does not involve abandonment of the service to the other."). Not only were Iqbal's two roles not contradictory, they were complementary. For CAIR-VA, Iqbal was tasked with managing the day-to-day affairs of the chapter, including the supervision of Days, in accordance with the expectations of the national organization that provided CAIR-VA with an oral license to operate as a CAIR chapter. For CAIR, Iqbal was tasked to supervise CAIR-VA. Indeed, Iqbal consulted with his masters at CAIR about the operations he managed at CAIR-VA. (JA 1621, n.7). Finally, CAIR kept close tabs on Days' legal work by having all of

the files inputted into CAIR's data base.

To be sure, the broad contextual landscape and even CAIR's vested interest to control Days, together with the opportunity to control him through Iqbal, may or may not create a reasonable inference of control. From Plaintiffs' perspective, it would certainly make sense that CAIR would expect Iqbal to exercise his control over Days on behalf of CAIR and to protect CAIR's interest. Indeed, there was nothing that would prevent Iqbal from doing so. The chapter license agreement was a vague oral agreement, and CAIR could certainly have justified its control over Days so as to protect its brand and other intellectual property interests. Moreover, CAIR-VA knew full well that Iqbal served two masters and that his salary was paid by CAIR. And while certain former directors provided self-serving declarations that the CAIR-VA board acted independently from CAIR and ultimately controlled Iqbal as the chapter's executive director, nothing in that testimony, or anywhere else in the record, suggests that Iqbal was precluded from controlling Days on CAIR's behalf. (JA 1621-22).

What plainly pushes the control factor firmly into the realm of reasonable inference is what Iqbal actually does to exercise his control of Days as a CAIR official. First and foremost, in July 2007, well before the Days fraud exploded on CAIR's doorstep in February 2008, Iqbal learned from a disgruntled client that Days had taken money from the client. While it was not clear to Iqbal whether

Days had taken that money for filing costs or fees, either way it violated CAIR policy. Iqbal wrote to Days on July 30 to inform him that he was opening up an investigation into the matter. The letter also required Days to provide Iqbal with all of the relevant files. Iqbal signed the correspondence, however, not as the executive director of CAIR-VA, but as the Director of Operations CAIR, followed by all of Iqbal's CAIR contact information. The fact that Iqbal sent this correspondence from a CAIR-VA email server suggests an even more focused purpose to the position referenced in Iqbal's signature. That is, Iqbal sent this directive from the CAIR-VA server and *purposefully* affixed his CAIR title. This is not a case where Iqbal mistakenly sent the email from his CAIR email server where his CAIR signature might have been automatically affixed.

Thus, this is not merely the ability to control, this is exerting that control as the CAIR director of operations purposefully. The district court, however, was content to dismiss this critical evidence with the following: "Nor does the Court find it at all consequential . . . ." (JA 1622). That was the court's full treatment of this set of facts.

Iqbal's conduct in supervising Days evidences his ultimate loyalties to CAIR by omission as well. When Iqbal wrote to Days in July 2007 about the investigation into Days conduct, Iqbal mentioned nothing to the CAIR-VA board, notwithstanding the obvious potential liability exposure. In November 2007, when

Iqbal learned of yet another instance of Days taking monies from CAIR clients, he again keeps this information from the CAIR-VA board. It was only when the firestorm erupted in February 2008 and Days was terminated did Iqbal inform the CAIR-VA board of Days' fraudulent conduct. The district court did not address these facts.

Instead, the court improperly weighed the few facts it did take into account in support of Plaintiffs' case against the self-serving declarations provided by Iqbal and former CAIR-VA board members. For his part, Iqbal asserted that CAIR never instructed him as to how he should perform his duties at CAIR-VA. (JA 1621). For their part, the CAIR-VA board members all professed to be Iqbal's ultimate master at CAIR-VA. (JA 1621-22). The district court then concluded that Plaintiffs' evidence did not support a reasonable inference that Iqbal exerted, or had the authority to exert, control over Days for and on behalf of CAIR. (JA 1623).

Plaintiffs respectfully submit that while the district court credited the self-serving declarations of corporate fidelity, formality, and authority submitted by Defendant as true, nothing in those declarations belies the very reasonable inferences raised by Plaintiffs' facts. Did CAIR have the means, motive, and opportunity to have Iqbal control Days? Yes. Did Iqbal, as CAIR's director of operations, have the means and opportunity to exert control over Days on CAIR's

behalf? Yes. Was Iqbal motivated to control Days on behalf of his paying employer, CAIR? Yes. Did Iqbal exert his control over Days citing to his authority as a CAIR officer? Yes. Did Iqbal fail to inform the CAIR-VA board about serious and fraudulent conduct by Days twice, once in July and once in November 2007? Yes. From this perspective, the court's rejection of a reasonable inference of CAIR's control of Days through Iqbal is, Plaintiffs suggest, inexplicable and improper.

In sum, Plaintiffs respectfully request this Court to reverse the court below and remand the case for trial.

III. CONCLUSION

Plaintiffs hereby request that the Court reverse the district court on the question of the CAIR-Days agency and remand the case for further proceedings.

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. P. 32(a)(7), the foregoing Brief is proportionally spaced, has a typeface of 14 points Times New Roman, and contains 8,228 words, excluding those sections identified in Fed. R. App. P. 32(a)(7)(B)(iii).

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that all of the participants in this case are registered CM/ECF users. I further certify that eight (8) copies of this filing were sent this day via Federal Express overnight delivery to the Clerk of the Court.

/s/ David Yerushalmi
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