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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

SULEIMAN ABDULLAH SALIM, MOHAMED AHMED BEN SOUD, OBAIDULLAH (AS PERSONAL REPRESENTATIVE OF GUL RAHMAN), Plaintiffs, v. JAMES ELMER MITCHELL and JOHN "BRUCE" JESSEN Defendants.	No. 15-CV-0286-JLQ PLAINTIFFS' REPLY TO DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS NOTE ON MOTION CALENDAR: JULY 28, 2017, 9:30 A.M., AT SPOKANE, WASHINGTON

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Plaintiffs Suleiman Abdullah Salim, Mohamed Ahmed Ben Soud, and ObaidUllah (as personal representative of Gul Rahman), pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rules 7.1 and 56.1 of the Local Rules for the United States District Court, Eastern District of Washington, file this reply to Defendants' Response to Plaintiffs' Statement of Undisputed Material Facts ("Defendants' Response"). In an effort to avoid repetition, Plaintiffs here set forth several objections that address errors Defendants repeat throughout their Response.

1. Most of Defendants' purported factual responses fail to comply with the Federal and Local Rules because they do not cite specific evidence demonstrating disputed issues of fact. *See* Fed. R. Civ. P. 56(c)(1); Local Civil Rule 56.1 (requiring a party to set forth the "specific facts which [it] asserts establish[] a genuine issue of material fact precluding summary judgment" and "refer to the specific portion of the record" establishing such disputes). Defendants repeatedly fail to even address Plaintiffs' asserted facts, and instead raise unrelated subjects in an effort to manufacture disputes. This approach is improper. To avoid repetition, Plaintiffs will refer to this objection as "Response—No record dispute."

2. Throughout their Response, Defendants object that information related to Abu Zubaydah is irrelevant. Defendants' personal use of their methods on Abu Zubaydah is, however, an integral aspect of Defendants' design and implementation of the CIA program. As this Court has observed, Defendants *themselves* requested "documents pertaining to Abu Zubaydah as

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relevant to Defendants alleged role in the design of the enhanced interrogation program," because "it appears Zubaydah was the first detainee involved in the program." 2:16-mc-00036-JLQ, ECF No. 31 at 4–5; *see also id.* at 5 (ordering production of "documents referencing Abu Zubaydah"). Indeed, Abu Zubaydah was the first CIA detainee and the first prisoner Defendants ever interrogated, and as Defendants admit, the methods they used on Abu Zubaydah were formalized as the CIA's "Enhanced Techniques." Defendants' Statement of Undisputed Facts ("Defs.' SOF"), ECF No. 170 ¶ 229. Information in the record related to Abu Zubaydah is essential to causation, establishing Defendants' test-run of the program before it was expanded to other prisoners, including Plaintiffs. Moreover, Defendants' personal implementation of their methods on Abu Zubaydah is highly relevant to Plaintiffs' claims, because it establishes Defendants' firsthand knowledge of the severe physical and mental pain and suffering their methods caused, which is directly relevant to the *mens rea* element of aiding and abetting liability. Defendants' objection therefore has no merit and should be overruled. Plaintiffs will refer to this objection as "Response—Zubaydah."

3. Defendants also repeatedly object to the relevance of documents mentioning their proposal to use and actual use of the waterboard method as part of the CIA program. This objection is groundless. As an initial matter, the record shows that Plaintiffs Salim and Ben Soud were subjected to methods that approximated waterboarding. *See infra* ¶¶ 97–98, 117–18. Also importantly, the waterboard was one component of Defendants' methods, all of which were

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part of their psychologically-based program to "instill fear and despair" in detainees. ECF No. 182-8 at U.S. Bates 001110–11. In Abu Zubaydah's case, Defendants used the waterboard; for other detainees, similar methods were used, in combination with other methods Defendants advanced. This combined program was formalized and used by Defendants and others on CIA prisoners. When examining Defendants' firsthand knowledge of the extreme suffering their program caused Abu Zubaydah, the effects of the waterboard—which Defendants combined with walling, cramped confinement, stress positions, sleep deprivation, and many other abuses—cannot be artificially isolated from the rest of their methods. Abu Zubaydah suffered on the waterboard, as he suffered in the box and against the wall, all of which establishes that Defendants knew exactly what their program consisted of, and what its effects were. Defendants claimed all their methods were safe, effective, and would not cause severe pain and suffering; they cannot retroactively eliminate a method they themselves proposed and used. Plaintiffs will refer to this response as "Response—Waterboard."

4. In their Response, Defendants repeatedly speculate that Plaintiffs were part of a "parallel" CIA program, unrelated to the program Defendants designed and implemented. Defendants present no evidence that there was a separate CIA program that used Defendants' methods, nor that Plaintiffs were subjected to a separate program. It is undisputed that in July 2002, Defendants provided the CIA with a list of twelve coercive interrogation techniques, ten of which were eventually authorized for use on the CIA's first prisoner, Abu

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Zubaydah. ECF No. 175-10 at U.S. Bates 001109–001111; ECF No. 174-10 at U.S. Bates 001760–001765. Together with "abdominal slap," which Defendants admit using on Abu Zubaydah, these techniques became known as the "enhanced interrogation techniques". *Id.* After Defendants implemented these methods on the CIA's first detainee, the CIA formalized its use of these twelve methods in guidelines sent to COBALT in January 2003. ECF No. 174-14 at U.S. Bates 001170–001174. These guidelines were directed to "all agency personnel" for "the conduct of interrogations of persons" detained by the CIA. *Id.* Consistent with the preamble to the Guidelines, John Rizzo testified that there was a single program in which the methods were used—an "enhanced interrogation program." Deposition of John Rizzo 64:8–23 (McGrady Decl., Exh. A, cited hereinafter as "Rizzo Dep."). Mr. Rizzo further testified that there was no other CIA interrogation program in which Defendants' methods were used. McGrady Decl., Exh. A, Rizzo Dep. 64:8–23; 101:20–102:15. Jose Rodriguez, the former Chief of the CIA Counterterrorism Center, described Defendant Mitchell as "the architect of the CIA interrogation program." Deposition of Jose Rodriguez 53:19–21 (McGrady Decl., Exh. B, cited hereinafter as "Rodriguez Dep."). Plaintiffs Salim and Ben Soud were detained at COBALT in April 2003. ECF No. 181 ¶ 3 (Salim Decl.); ECF No. 180 ¶ 3 (Ben Soud Decl.). CIA records verify that Plaintiffs Salim and Ben Soud were subjected to "enhanced interrogation techniques" during this period. ECF No. 183-2 at U.S. Bates 001567, 001581; Defendants have presented nothing beyond their own unsupported speculation that Plaintiffs were abused in some

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"parallel" program that—purely coincidentally—employed the exact same methods that Defendants proposed, advanced, and were approved. Accordingly, Defendants' objection is without merit. Plaintiffs will refer to this response below as "Response—Speculation about multiple programs."

Plaintiffs' Reply to Defendants' Response to Plaintiffs' Statement of Undisputed Material Facts

1. Plaintiffs' Fact: Defendants "played a significant and formative role in the development of [CIA Counterterrorism Center (CTC)''s] detention and interrogation program." Deposition of James Elmer Mitchell 335:22-24 (Ladin Decl., Exh. A, cited hereinafter as "Mitchell Dep.").

   Defendants' Response: Disputed. Plaintiffs mischaracterize the citation to the deposition of James Elmer Mitchell ("Dr. Mitchell") as testimony when it is, in fact, part of a question posed by Plaintiffs'' attorney. Dr. Mitchell did not adopt or agree with the characterization. Deposition of James Elmer Mitchell ("Mitchell Dep.") 335:22-24.

   Plaintiffs' Response: Response—No Record Dispute. Contrary to Defendants' assertion, Defendant Mitchell explicitly agreed that he and Defendant Jessen played a significant and formative role in the development of the detention and interrogation program. *See* Deposition of James Elmer Mitchell 336:10-15 (McGrady Decl., Exh. C, cited

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hereinafter as "Mitchell Dep.") ("Q. Okay. Do you agree that you played – you and Dr. Jessen played a significant and formative role in the development of CDC's [sic] detention and interrogation program? A. Yes.").

2. Plaintiffs' Fact: When the CIA captured its first prisoner, Abu Zubaydah, the CIA Counterterrorism Center had no experience or expertise on interrogation. Deposition of Jose Rodriguez 46:23-48:4 (Ladin Decl., Exh. B, cited hereinafter as "Rodriguez Dep.").

Defendants' Response: Not contested for purposes of Plaintiffs' Motion for Partial Summary Judgment ("Plaintiffs' Motion"). Objection—Zubaydah.

Plaintiffs' Response: Response—Zubaydah.

3. Plaintiffs' Fact: Defendants had never interrogated a prisoner before Abu Zubaydah. Deposition of John "Bruce" Jessen 116:3-8 (Ladin Decl., Exh. C, cited hereinafter as "Jessen Dep.").

Defendants' Response: Disputed. Plaintiffs imply that Defendants Dr. Mitchell and John "Bruce" Jessen ("Dr. Jessen") (collectively, "Defendants") were not qualified to conduct interrogations. Although

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Defendants had not "done interrogations of live terrorists before", Dr. Jessen had extensive experience designing advanced courses that specifically prepared trainees for capture by terrorist groups and Dr. Mitchell had extensive experience as part of a counterterrorism unit studying how enemy organizations approached interrogations. Defendants Statement of Undisputed Facts ("Defs.' SOF") (ECF No. 170) ¶¶ 17, 20; Jessen Dep. 116:3-8.

Plaintiffs' Response: Response—No record dispute. Defendants admit they had never interrogated a prisoner prior to Abu Zubaydah. *See* Deposition of John "Bruce" Jessen 116:3-8 (McGrady Decl., Exh. D, cited hereinafter as "Jessen Dep."); McGrady Decl. Exh. C, Mitchell Dep. 48:16-18.

4. Plaintiffs' Fact: Before the aggressive phase began, Defendant Mitchell recommended that Abu Zubaydah's sleep be disrupted, that he not be provided with any amenities, and that noise be fed into Abu Zubaydah's cell. Am. Answer, ECF No. 77 ¶ 34.

Defendants' Response: Disputed. These recommendations were made by a three-member behavioral team led by a CIA employed psychologist, of which Dr. Mitchell was merely one member. Defs.' SOF ¶¶ 46-51. Objection—Zubaydah.

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Plaintiffs' Response: Response—No record dispute. In their Amended Answer, Defendants explicitly admit "that Mitchell recommended that Zubaydah not be provided with any amenities, his sleep be disrupted and that noise be fed into his cell." Am. Answer, ECF No. 77 ¶ 34. Response—Zubaydah.

5. Plaintiffs' Fact: The plan was that "white noise generators" would disrupt Abu Zubaydah's ability to think and would "increase his sense of helplessness by highlighting his inability to alter the environment around him." The goal was to emphasize that "the only mechanism [Abu Zubaydah] has at his disposal to control the environment will be in providing vital intelligence," and that pleasing his interrogators was the only way to "earn basic privileges" and receive better conditions. Ladin Decl., Exh. D at U.S. Bates 001828.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion. Defendants further state that the interrogation plan for Zubaydah included the use of "physically non-harmful" white noise generators to "be used in variable lengths of time[.]" Ladin Decl., Exh. D at U.S. Bates 001826 at ¶ 3, 001828. Objection—Zubaydah.

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Plaintiffs' Response: Response—No record dispute. Defendants' argument that the white noise generators were "physically non-harmful" is also irrelevant, as detention conditions in the CIA program were designed to induce psychological, not physical harm. *See* ECF No. 182-4 at U.S. Bates 001826. Response—Zubaydah.

6. Plaintiffs' Fact: Defendant Mitchell took part in recommending sensory deprivation, including painting the cell white, installing halogen lights, installing sound-dampening carpeting, and "the sanding of the holding cell bars to reduce AZ's ability to stimulate his sensorium via rubbing of the bars." Ladin Decl., Exh. E at MJ00022604; Ladin Decl., Exh. F at U.S. Bates 002000.

Defendants' Response: Defendants do not contest for purposes of Plaintiffs' Motion that these recommendations were made by a three-member behavior team led by a CIA employed psychologist, of which Dr. Mitchell was merely one member. Defs.' SOF ¶¶ 46-51. Objection—Zubaydah.

Plaintiffs' Response: Response—No record dispute. Response—Zubaydah.

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7. Plaintiffs' Fact: Abu Zubaydah was subsequently kept naked in a cell lit by halogen lamps for 24 hours per day, while being subjected constantly to rock music or other noise. Am. Answer, ECF No. 77 ¶ 38.

Defendants' Response: Disputed to the extent that this implies that the music or noise was something other than "physically non-harmful" noise. Ladin Decl., Exh. D at U.S. Bates 001826 at ¶ 3. Disputed to the extent Plaintiffs imply that either Defendant played any role in determining that Zubaydah would be kept naked, as there is no support in the record for Defendants' involvement in that determination. Otherwise not contested for purposes of Plaintiffs' Motion. Objection-Zubaydah.

Plaintiffs' Response: Response—No record dispute. Defendants do not dispute that Defendant Mitchell was part of the three-person behavioral team that made recommendations for how Abu Zubaydah was to be initially treated. *See* Defs.' SOF #6. In fact, it was Defendant Mitchell who personally cut off Abu Zubaydah's clothing. McGrady Decl., Exh. E at U.S. Bates 001669. Defendants' argument that that the loud music was "physically non-harmful" is irrelevant, as the detention conditions in the CIA program were designed to induce psychological, not physical harm. *See* ECF No. 182-4 at U.S. Bates 001826. Response—Zubaydah.

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8. Plaintiffs' Fact: The "deliberate manipulation of the environment" in accordance with these recommendations was "intended to cause psychological disorientation . . . as well as an increased sense of learned helplessness." Ladin Decl., Exh. F at U.S. Bates 002000.

Defendants' Response: Disputed that "learned helplessness" as described by Dr. Martin Seligman ("Dr. Seligman") was intended. Defs.' SOF ¶¶ 53-56. Individuals affiliated with the CIA often misused the term "learned helplessness" in documents because they did not understand and appreciate the distinction between helplessness to induce cooperation—as utilized in the Survival Evasion Resistance and Escape ("SERE") training—and "learned helplessness," as described by Dr. Seligman, which would inhibit cooperation. Defs.' SOF ¶57. Defendants do not contest for purposes of Plaintiffs' Motion that the underlying document is accurately quoted. Objection—Zubaydah.

Plaintiffs' Response: Response—No record dispute; the cable speaks for itself; Response—Zubaydah.

9. Plaintiffs' Fact: During this phase, the "development of psychological dependence, learned helplessness and short term thinking" were pursued by the deliberate environmental modifications and sleep deprivation, which aimed to produce "disorientation by not allowing in natural light nor routine

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of schedule." Ladin Decl., Exh. D at U.S. Bates 001826. The desired result was that "the early phases of the process will encourage the development of the necessary mindset where [the CIA prisoner] will have difficulty concentrating, planning, and most importantly resisting the process." Ladin Decl., Exh. D at U.S. Bates 001827.

Defendants' Response: Disputed that "learned helplessness" as described by Dr. Seligman was pursued. Defs.' SOF ¶¶ 53-56. Individuals affiliated with the CIA often misused the term "learned helplessness" in documents because they did not understand and appreciate the distinction between helplessness to induce cooperation—as utilized in SERE—and "learned helplessness," as described by Dr. Seligman, which would inhibit cooperation. Defs.' SOF 1 57. Defendants do not contest for purposes of Plaintiffs' Motion that the underlying document is accurately quoted. Objection—Zubaydah.

Plaintiffs' Response: Response—No record dispute; the cable speaks for itself. Response—Zubaydah.

10. Plaintiffs' Fact: Eventually, the interrogation team "substituted a stereo to play loud rock music to enhance his sense of hopelessness." Ladin Decl., Exh. G at U.S. Bates 002146.

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Defendants' Response: Disputed. The April 25, 2002 Cable cited by Plaintiffs as support for this statement (US Bates 002146) states, "We have recently substituted a stereo to play loud rock music to enhance his sense of hopelessness." (emphasis added) Disputed that the term "we" denotes the interrogation team because the sender of the cable is redacted. Ladin Decl., Exh. G at U.S. Bates 002146. Disputed to the extent this implies that the music was something other than "physically non-harmful" noise. Ladin Decl., Exh. D at U.S. Bates 001826 at ¶ 3. Objection—Zubaydah.

Plaintiffs' Response: Response—No record dispute. Response—Zubaydah. Indeed, Defendants themselves cite this cable as evidence of what the "Zubaydah interrogation team" did in April 2002. ECF No. 170 ¶ 67 (citing cable). As Defendants know, all cables sent by the interrogation team have the sender identification redacted in accordance with the discovery stipulation into which all parties have entered. *See* ECF No. 47 ¶ 12 (Defendants agree "to explore ways in which information relevant to the claims or defenses asserted can be provided subject to the limitations expressed by the United States, including redaction of documents"). Moreover, the cable contains a firsthand description of Abu Zubaydah's interrogation that only the interrogation team could provide. Defendants' argument that the music was "physically non-harmful" is irrelevant, as detention conditions in the CIA

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program were aimed at inducing psychological, not physical harm. See ECF No. 182-4 at U.S. Bates 001826.

11. Plaintiffs' Fact: Defendant Mitchell decided that he had sufficient "qualifications to put together a psychologically based interrogation program." Ladin Decl., Exh. E at MJ00022632.

Defendants' Response: Disputed. Plaintiffs mischaracterize MJ00022632, which states "[T]he question was about my qualifications to put together a psychologically based interrogation program that would condition Abu Zubaydah to cooperate and then interrogate him using it. I knew it would need to be based on what was called 'Pavlovian Classical Conditioning' . . . and I was very familiar with it because my early training was as a behavioral psychologist." Ladin Decl., Exh. E at MJ00022632.

Plaintiffs' Response: Response—No record dispute. Plaintiffs quote directly from Defendant Mitchell's book, and Defendants merely add additional material, which does not dispute Plaintiffs' Fact. To the extent Defendants' clarification is intended to suggest that Defendants' program was somehow limited to Abu Zubaydah, *see* Response—Speculation about multiple programs.

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12. Plaintiffs' Fact: Mitchell "knew that the bulk of psychologists would probably object" to his actions. Ladin Decl., Exh. A, Mitchell Dep. 270:12-13.

Defendants' Response: Disputed. Plaintiffs mischaracterize Dr. Mitchell's cited testimony. Although the partial quotation is accurate, Plaintiffs incorrectly attribute the statement broadly to all of Dr. Mitchell's "actions." In fact, Dr. Mitchell testified that he "knew the bulk of psychologists would probably object" to him being the individual that conducted the interrogations using EITs. Mitchell Dep. 270:12-13; Mitchell Dep. Ex. 4 (Mitchell's Manuscript) at MJ00022631.Objection—Zubaydah.

Plaintiffs' Response: Response—No record dispute. Response—Zubaydah. Moreover, Defendant Mitchell admitted that after he decided "to put together an interrogation program using EITs" and to "conduct the interrogations using EITs," "I knew [that] if I agreed, my life as I knew it would be over. I would never again be able to work as a psychologist." *See* McGrady Decl., Exh. F at MJ00022631.

13. Plaintiffs' Fact: At Defendant Mitchell's recommendation, the CIA contracted his friend, Defendant Jessen to help "put together an interrogation

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program" and implement it on Abu Zubaydah. Ladin Decl., Exh. A, Mitchell Dep. 399:22-400:19; Ladin Decl., Exh. E at MJ00022631-32.

Defendants' Response: Disputed. The cited documents indicate that Dr. Jessen was contracted to help "put together an interrogation program" for "use" exclusively on Zubaydah. Ladin Decl., Exh. E at MJ00022631.

Plaintiffs' Response: Response—No record dispute. The document does not say that the program was to be applied "exclusively" on Abu Zubaydah.

14. Plaintiffs' Fact: The program was based on "Pavlovian Classical Conditioning." Ladin Decl., Exh. E at MJ00022632.

Defendants' Response: Defendants do not contest for purposes of Plaintiffs' Motion that the program that they were contracted to help develop for Zubaydah was based upon Pavlovian Classic Conditioning. Ladin Decl., Exh. E at MJ00022631-32. Objection—Zubaydah.

Plaintiffs' Response: Response—No record dispute. Response—Zubaydah. In further response, Defendants' use of "Pavlovian Classical Conditioning" was an essential part of the program and not limited to Abu Zubaydah. Defendant Mitchell specifically admitted that Defendants used

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their methods to "condition KSM and the other detainees." *See, e.g*, McGrady Decl., Exh. F at MJ00022763 ("To condition KSM and the other detainees to experience fear and emotional discomfort when they thought about being deceitful, we had to time the application of an aversive EIT, like walling, to start when they were thinking about withholding information and stop when they were thinking about *anything* else.") (emphasis in original).

15. Plaintiffs' Fact: A prisoner subjected to the program would be given "a choice, you can start talking or you can get some more physical pressure." Ladin Decl., Exh. C, Jessen Dep.161:20-162:2.

Defendants' Response: Disputed. Plaintiffs mischaracterize Dr. Jessen's cited testimony. Dr. Jessen explained how the CIA's interrogation program for HVDs (the "HVD Program") used helplessness as described in the Army Field Manual. More specifically, temporary helplessness was induced through physical pressures designed to be used in a way that did not harm, but made someone uncomfortable, and the subject knew that the pressures would stop if he cooperated in some way. Jessen Dep. 160:19-163:22. Dr. Jessen also testified that during each HVD interrogation, medical, psychological, administrative and intelligence staff were able to stop an interrogation if there was a physical or psychological threat to the

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detainee. Id. at 136:5-16. Thus, an interrogation could be stopped even if the prisoner did not cooperate.

Defendants further dispute any implication that they were part of an interrogation program that was used on Plaintiffs, or on any detainees who were not HVDs. Defs.' SOF ¶ 208-11 (the interrogation techniques proposed by Defendants were for use only on HVDs).

Plaintiffs' Response: Response—No record dispute. Response—Speculation about multiple programs. Plaintiffs quote directly from Defendant Jessen's testimony.

16. Plaintiffs' Fact: Mitchell testified that "my thinking on the subject was that, much like with a dental phobia, the time that they're going to be most motivated to get out of it is before the next time" the physical pressures were applied. Ladin Decl., Exh. A, Mitchell Dep. 358:20-24.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion.

17. Plaintiffs' Fact: Jose Rodriguez, who was then the head of CTC, explained that he heard Defendant Mitchell use the phrase "learned helplessness," and "explaining these psychological terms," but that Mr. Rodriguez's own

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interest was "in getting results, not in, you know, the psychological state of people." Ladin Decl., Exh. B, Rodriguez Dep. 85:6-86:20.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion. But, objected to as irrelevant to the resolution of the issues presented in Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402).

Plaintiffs' Response: That Jose Rodriguez relied upon Defendant Mitchell's psychological explanations in adopting the program is directly relevant because it is part of the substantial assistance Defendant Mitchell provided in aiding and abetting the program to which Plaintiffs were subjected and that caused Plaintiffs' injuries.

18. Plaintiffs' Fact: Jose Rodriguez testified that Defendant Mitchell "had a good vision for what needed to be done," which "was the use of enhanced interrogations to get Abu Zubaydah to cooperate with us." Ladin Decl., Exh. B, Rodriguez Dep. 37:8-38:4.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion. Objection—Zubaydah.

Plaintiffs' Response: Response—Zubaydah.

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19. Plaintiffs' Fact: In July 2002, Defendant Mitchell and others within the CIA assessed Abu Zubaydah as uncooperative. Am. Answer, ECF No. 77 ¶41.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion. Objection—Zubaydah.

Plaintiffs' Response: Response—Zubaydah.

20. Plaintiffs' Fact: Defendants drafted and submitted to the CIA a recommended list of 12 physically coercive methods that they claimed would "instill fear and despair": "Attention Grasp," "Walling," Facial Hold," "Facial Slap (Insult Slap)," "Cramped Confinement," "Wall Standing," "Stress Positions," Sleep Deprivation," "Water Board," "Use of Diapers," "Insects," and "Mock Burial." Ladin Decl., Exh. H at U.S. Bates 0001110-11; Ladin Decl., Exh. C, Jessen Dep. 114:20-115;11; Ladin Decl., Exh. A, Mitchell Dep. 262:5-21.

Defendants' Response: Disputed. Not contested for purposes of Plaintiffs' Motion that Defendants drafted US Bates 001110-11 (the "July 2002 Memo"). But, Plaintiffs mischaracterize the July 2002 Memo, which characterizes the 12 interrogation methods (i.e. the EITs) as "potential physical and psychological pressures" not as "physically coercive methods," as asserted by Plaintiffs. Additionally, the document states,

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"[t]he aim of using these techniques is to dislocate the subject's expectations concerning how he is apt to be treated and instill fear and despair." Defendants did not claim that the interrogation methods "would instill fear and despair," as asserted by Plaintiffs. Ladin Decl., Exh. H at U.S. Bates 0001110-11.

Plaintiffs' Response: Response—No record dispute. Defendant Mitchell himself has described the techniques as coercive. McGrady Decl., Exh. C, Mitchell Dep. 342:7–11 ("What we did, regardless of what phrase somebody else decides to use to describe it, is we provided them with a list of techniques that they should consider in our view using if they were going to use coercive techniques.").

21. Plaintiffs' Fact: Defendants based their list of coercive methods on techniques used in training in the Department of Defense's Survival, Research, Evasion and Escape ("SERE") program. Ladin Decl., Exh. A, Mitchell Dep. 186:1-187:3.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion, except that the July 2002 Memo does not characterize the EITs as "coercive methods" as asserted by Plaintiffs (as discussed immediately above).

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Plaintiffs' Response: Defendant Mitchell admitted the methods were coercive. *See* Pls.' Resp. to SUMF #20.

22. Plaintiffs' Fact: "The techniques used in SERE school, based, in part, on Chinese Communist techniques used during the Korean War to elicit false confessions, include stripping students of their clothing, placing them in stress positions, putting hoods over their heads, disrupting their sleep, treating them like animals, subjecting them to loud music and flashing lights, and exposing them to extreme temperatures." S. Comm. on Armed Servs., 110th Cong., 2d Sess., Report on Inquiry into the Treatment of Detainees in U.S. Custody (Comm. Print 2008) at xiii, xxvi (Ladin Decl., Exh. I, cited hereinafter as "SASC Report").

Defendants' Response: Defendants object to this "fact" as inadmissible hearsay and irrelevant to the resolution of the issues presented in Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 802, 401, 402). Defendants do not contest that the SASC Report is accurately quoted, although the relevant portions are not attached as part of Exhibit I to the Ladin Decl. Ladin Decl., Exh. I.

Plaintiffs' Response: Contrary to Defendants' objection, the fact is admissible as "factual findings from a legally authorized investigation." Fed. R. Evid. 803(8)(A)(iii); *see also, e.g., Barry v. Trustees of Int'l Ass'n*

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Full-Time Salaried Officers & Employees of Outside Local Unions & Dist. Counsel's (Iron Workers) Pension Plan, 467 F. Supp. 2d 91, 101 (D.D.C. 2006) ("[T]his Court concludes that the Senate Report is trustworthy and admissible as an exception to the hearsay bar"). In any event, substantially similar evidence is presentable through other admissible sources, including Defendants' testimony. *See* McGrady Decl., Exh. D, Jessen Dep. 56:20–57:14, 64:10–65:23. Fact #22 is relevant because it establishes the background and derivation of Defendants' methods, and also rebuts that Defendants thought those methods could be used safely, effectively, and lawfully.

23. Plaintiffs' Fact: Defendant Jessen admitted that techniques used in SERE training were based in part on coercive interrogation methods inflicted by enemies on American soldiers in the Korean War. He testified that he didn't "know who determines what's legal and illegal, but the techniques were to represent what we thought our enemy might do if they weren't adhering to the Geneva Conventions." Ladin Decl., Exh. C, Jessen Dep. 57:3-14; 65:10-23.

Defendants' Response: Defendants object to this fact as irrelevant to the resolution of the issues presented in Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402). Defendants further dispute that Dr. Jessen "admitted" that the SERE techniques were based on interrogation

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methods used on American soldiers during the Korean War. In response to the question "Did you ever have an understanding that the SERE techniques were based in part on Chinese Communist techniques from the Korean War?", Dr. Jessen said "I think I do remember that." Jessen Dep. 57:3-14. Defendants do not dispute for purposes of Plaintiffs' Motion that Dr. Jessen's testimony is otherwise accurately quoted.

Plaintiffs' Response: Response—No record dispute. Plaintiffs' Fact #23 is relevant to intent because Defendant Jessen knew that his proposed techniques did not comply with the Geneva Conventions, which prohibit torture and cruel, inhuman, or degrading treatment.

24. Plaintiffs' Fact: (a) SERE training differed from Defendants' proposal: Techniques were used on volunteers, not on prisoners with serious injuries and open wounds. Ladin Decl., Exh. C, Jessen Dep. 134:21-135:20. (b) SERE volunteers knew the start and end date of their training, and could end it at any time, while prisoners were made to believe that their interrogation could last for the rest of their natural lives. Ladin Decl., Exh. I, SASC Report at 31; Ladin Decl., Exh. J at U.S. Bates 001957-58.

Defendants' Response: Defendants object to this "fact" as compound.

(a) Disputed. Plaintiffs mischaracterize Dr. Jessen's testimony. Dr. Jessen testified that SERE training was voluntary and that during his experience

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at SERE, he did not witness a SERE trainee participate in the program with an open wound or gun-shot wound. Plaintiffs' remaining statements are not supported by Dr. Jessen's testimony. Ladin Decl., Exh. C, Jessen Dep. 134:21-135:20. Furthermore, record evidence indicates that the CIA was aware that the SERE techniques were safely applied to volunteers at SERE, but that there was no assurance that the same would be true if the SERE techniques were applied to detainees; and that this information was provided to the Department of Justice ("DOJ") Office of Legal Counsel ("OLC") as it was assessing the EITs' legality. Defs.' SOF ¶¶ 150-51, 153, 157.

(b) Objected to as irrelevant to the resolution of the issues presented in Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402) as there is no evidence in the record that any Plaintiff was "made to believe that [his] interrogation could last for the rest of [his] natural [life]." Disputed that US Bates 001957-58 supports the broad proposition that "prisoners were made to believe that their interrogation could last for the rest of their natural lives[.]" Rather, the document indicates that on August 12, 2002, Zubaydah was told that he would not be leaving the interrogation room for a very long time. Ladin Decl., Exh. J at U.S. Bates 001957-58. Not contested for purposes of Plaintiffs' Motion that SERE volunteers knew the start and end date of their training, and could end it at any time.

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Plaintiffs' Response:

(a) Response—No record dispute.

(b) Response—No record dispute. Plaintiffs and other CIA prisoners had no way of knowing when they would ever be released or their interrogations would end, and Gul Rahman's interrogation did last for the rest of his life, as he was killed as a result of it. ECF No. 176-25 at U.S. Bates 001407. The differences between the SERE program and real-world interrogations are directly relevant to Defendants' *mens rea*, as well as to rebut Defendants' defense that their methods were safe because they were based on SERE.

25. Plaintiffs' Fact: Waterboarding as carried out by Defendants was different from the technique used in SERE training: it involved much larger volumes of water, and Defendant Jessen or Defendant Mitchell acknowledged that Defendants' method was "different because it is 'for real' and is more poignant and convincing." Ladin Decl., Exh. K at U.S. Bates 001376.

Defendants' Response: Objection—waterboarding.

Also, disputed. Waterboarding as applied by Defendants on HVDs was consistent with that used in SERE training. In SERE, "the subject is immobilized on his back, and his forehead and eyes covered with a cloth. A stream of water is directed at the upper lip. Resistant subjects then have the cloth lowered to cover the nose and mouth, as the water continues to

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be applied, fully saturating the cloth, and precluding the passage of air . . . . this process can continue for several minutes, and involve up to 15 canteen cups of water." OIG Report at US Bates 001489. This is consistent with US Bates 001376's description of waterboarding an HVD: the Agency interrogator "continuously applied large volumes of water to a cloth that covered the detainee's mouth and nose." Ladin Decl., Exh. K at U.S. Bates 001376.

Also, the statement in US Bates 001376 cannot be attributed to Defendants. The document identifies the speaker as "one of the psychologists/interrogators", and psychologists with a SERE background other than Defendants formed part of Zubaydah's interrogation team. Defs.' SOF ¶¶ 69, 146.

Plaintiffs' Response: Response—No record dispute. The OIG Report, which Defendants cite to argue that Fact #25 is disputed, is unequivocal:

> "OIG's review of the videotapes revealed that the waterboard technique employed at [redacted] was different from the technique as described in the DoJ opinion and used in SERE training. The difference was in the manner in which the detainee's breathing was obstructed. At the SERE School and in the DoJ opinion, the subject's airflow is disrupted by the firm application of a damp cloth over the air passages; the interrogator applies a small amount of water to the cloth in a controlled manner. By contrast, the Agency interrogator [redacted] continuously applied large volumes of water to a cloth that covered the detainee's mouth and nose. One of the psychologists/interrogators acknowledged that. . . the Agency's technique is different because it is 'for real' and is more poignant and convincing.'"

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ECF No. 176-25 at U.S. Bates 001376. Whether or not there was another SERE psychologist, there were no other psychologist/interrogators who waterboarded prisoners, so the report's quotation is necessarily of Defendants. *See* , ECF No. 172 ¶ 10 (Mitchell Decl.); ECF No. 171 ¶ 5 (Jessen Decl.).

26. Plaintiffs' Fact: Coercive methods were also used on detainees in the CIA program with a higher frequency than permitted in the SERE program. Ladin Decl., Exh. C, Jessen Dep.156.

Defendants' Response: Disputed. Plaintiffs misrepresent Dr. Jessen's cited testimony. Dr. Jessen testified that the SERE pressures were applied to detainees "the same as they were applied in the SMU training, but their frequency was more in the CIA Program." Dr. Jessen does not state that the pressures were applied more "than permitted in the SERE program" and Plaintiffs present no evidence to support this statement. Ladin Decl., Exh. C, Jessen Dep. 156:14-24.

Plaintiffs' Response: Response—No record dispute.

27. Plaintiffs' Fact: (a) Defendants knew the effect of their proposed methods might be different for prisoners than for volunteers. Ladin Decl., Exh. C, Jessen Dep. 127:11-24. (b) But when Defendant Mitchell presented his

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proposal to the Director of the CIA and the head of CTC, he did not mention that fact. Ladin Decl., Exh. A, Mitchell Dep. 281:4¬16.

Defendants' Response: Defendants object to this "fact" as compound.

(a) Disputed. Plaintiffs mischaracterize Dr. Jessen's cited testimony. When asked, "In your mind, is there a difference between having these things pressures done to you by a hostile government versus in training?", Dr. Jessen responded, "In terms of how they're employed, no; in terms of where you're at emotionally, I think it is different . . . I think you'd have more concern about the outcome." Ladin Decl., Exh. C, Jessen Dep. 127:11-24.

Furthermore, the record evidence indicates that the CIA was aware that the SERE techniques were safely applied to volunteers at SERE, but that there was no assurance that the same would be true if the SERE techniques were applied to detainees; and that this information was provided to the OLC as it was assessing the EITs' legality. Defs.' SOF ¶¶150-51, 153, 157.

(b) Disputed. Plaintiffs mischaracterize Dr. Mitchell's cited testimony. Dr. Mitchell testified that in one specific meeting with the Director of the CIA and Jose Rodriguez, he did not mention that "the application of SERE techniques, which had been able to be used for many years without producing problems, might nonetheless produce problems in a different setting where the subject is not there voluntarily." The cited testimony does not indicate that Dr. Mitchell was "presenting" a "proposal" nor that this issue was not discussed at some other time. Ladin Decl., Exh. A, Mitchell Dep. 277:11¬281:16. Further, as set

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out in 27(a), the CIA was aware that the SERE techniques were safely applied to volunteers at SERE, but that there was no assurance that the same would be true if the SERE techniques were applied to detainees.

Plaintiffs' Response:

(a) Response—No record dispute.

(b) Response—No record dispute. Defendants point to no evidence supporting their speculation that Defendants actually informed the CIA of the differences between SERE and real world interrogations "at some other time." Defendants' objections to the terms "presenting" and "proposal" ignore Defendant Mitchell's own description of this meeting: "I remember illustrating some of the techniques that were harder to visualize with hand gestures and occasionally getting out of my seat to demonstrate, because that sometimes seemed like the clearest way to get across what was being *proposed*. Tenet and Rizzo listened intently and asked lots of questions. They were particularly interested in the fact that all of the techniques we were discussing had been used on thousands of high-risk of capture U.S. military personnel for fifty-plus years." McGrady Decl., Exh. F at MJ00022638 (emphasis added).

28. Plaintiffs' Fact: Defendants told the CIA that these techniques were likely to be safe to use and effective at extracting information from Abu Zubaydah.

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Ladin Decl., Exh. B, Rodriguez Dep. 98:7-11; Ladin Decl., Exh. C, Jessen Dep. 113:4-22.

Defendants' Response: Objection—Zubaydah. Also, disputed. Plaintiffs mischaracterize the cited testimony of Dr. Jessen and Rodriguez. Dr. Jessen testified that he was told Dr. Mitchell and Rodriguez had a conversation during which Dr. Mitchell said SERE techniques "had been used for decades without ill effect, and even though the students knew they were in training, they still tended to give up information they were supposed to protect and that that might be something that they could use that would provide more effectiveness and predictable safety." Exh. C, Jessen Dep. 113:4-22. Additionally, Rodriguez testified that Drs. Mitchell and Jessen told him that there was "a good chance [the SERE program techniques] could work." Ladin Decl., Exh. B, Rodriguez Dep. 98:7-11. Additionally, Dr. Mitchell did not opine on the likely safety of the techniques as applied to detainees, but told the CIA to conduct its own due diligence. Mitchell Dep. at 189:8-22. Furthermore, the record evidence indicates that the CIA was aware that the SERE techniques were safely applied to volunteers at SERE, but that there was no assurance that the same would be true if the SERE techniques were applied to detainees; and that this information was provided to the OLC as it was assessing the EITs' legality. Defs.' SOF ¶¶ 150-51, 153, 157.

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Plaintiffs' Response: Response—No record dispute. Response—Zubaydah. Further, Plaintiffs clarify that Defendant Mitchell's testimony was not that he "told the CIA to conduct its own due diligence," but that this was his "expectation." McGrady Decl., Exh. C, Mitchell Dep. 189:16-22. In his book, Defendant Mitchell explained that he did not learn about the Senate Committee on Armed Services' Report on the Inquiry into the Treatment of Detainees in U.S. Custody ("SASC") "due diligence" until 2007, when SASC investigators showed him documents stating "that SERE interrogation methods, including the waterboard, could be used on detainees with minimal risk of physical or mental harm." McGrady Decl., Exh. F at MJ00022891. He explained that he was "floored" by this conclusion and that "this was the first [he'd] heard about it." *Id.*

29. Plaintiffs' Fact: (a) Defendants inflicted many of the methods they had proposed over the 19-day "Aggressive Phase" of Abu Zubaydah's interrogation. Am. Answer, ECF No. 77 ¶ 51; Ladin Decl., Exh. L at U.S. Bates 002382. (b) These methods "were applied in varying combinations, 24 hours a day." Ladin Decl., Exh. M at U.S. Bates 002021.

Defendants' Response: Object to this "fact" as compound. Objection—Zubaydah.

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(a) Not contested for purposes of Plaintiffs' Motion that at the direction and under the supervision of the CIA, Defendants interrogated Zubaydah for 19 days using many of the EITs they had proposed to the CIA via the July 2002 Memo. Am. Answer, ECF No. 77 ¶ 51; Ladin Decl., Exh. L at U.S. Bates 002382. Defs.' SOF ¶¶ 176-181, 186-189.

(b) Disputed. US Bates 002021indicates that for the first 14 days, psychological and physical pressures were applied to Zubaydah in varying combinations, 24 hours a day. There is no evidence this occurred for 19 days. Ladin Decl., Exh. M at U.S. Bates 002021.

Plaintiffs' Response: Response—Zubaydah.

(a) None.

(b) Response—No record dispute. U.S. Bates 002382 states clearly that "following 19 days in the aggressive phase of interrogation," the "team assessment is that we have successfully broken subject's willingness to withhold threat and intelligence information." ECF No. 182-12 at U.S. Bates 002382. Moreover, contrary to Defendants' assertion, cables from after the fourteenth day indicate that the techniques continued, including, for example, waterboarding Abu Zubaydah on the sixteenth day of the aggressive phase. *See, e.g.*, ECF No. 182-23 at U.S. Bates 001807–08; ECF No. 182-24 at U.S. Bates 002380; ECF No. 182-13 at U.S. Bates 002022.

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30. Plaintiffs' Fact: (a) On the first day of the aggressive phase of Abu Zubaydah's interrogation, Defendants began using their proposed methods on him. Either Defendant Mitchell or Defendant Jessen delivered to Abu Zubaydah the "very firm and pointed message that things would continue to get worse for [him]" but that "at any time [Abu Zubaydah] could stop the situation from getting worse by providing the required information." Ladin Decl., Exh. N at U.S. Bates 001757.

(b) Abu Zubaydah "continued to deny any additional knowledge." Defendants told Abu Zubaydah "their job was to obtain information and that if [he] did not cooperate he was only going to bring more misery onto himself." Defendants then waterboarded Abu Zubaydah, who "coughed and vomited in small amounts but continued to maintain his position that he did not have any additional information other than what he had already provided" to the FBI, which had not used Defendants' methods. *Id.* at U.S. Bates 001758.

Defendants' Response: Defendants object to this "fact" as compound. Also, Objection— Zubaydah.

(a) Not contested for purposes of Plaintiffs' Motion that at the direction and under the supervision of the CIA, Defendants began interrogating Zubaydah as set out in US Bates 001755-59. Defs.' SOF ¶¶176-181, 186-189.

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(b) Objection—waterboarding. Defendants dispute what information Zubaydah provided. US Bates 001758 states Zubaydah "did not have any additional information other than what he had already provided to FBI SA [REDACTED] and [REDACTED]." Ladin Decl., Exh. N at U.S. Bates 001758. Further, Plaintiffs offer no evidence about interrogation methods used by the FBI.

Plaintiffs' Response: Response—Zubaydah.

(a) None.

(b) Response—Waterboard. Response—No record dispute. It is undisputed that FBI agents left before the "aggressive phase" began and Defendants began inflicting their methods on Abu Zubaydah, as the FBI refused to be a party to Defendants' methods. *See* Office of Professional Responsibility, Rep. on Investigation into the OLC's Memoranda Concerning Issues Relating to the CIA's Use of 'Enhanced Interrogation Techniques' on Suspected Terrorists (2009), ECF No. 176-11 at U.S. Bates 000640.

31. Plaintiffs' Fact: On the second day of the "aggressive phase," Defendants again inflicted a variety of the methods they had proposed on Abu Zubaydah, including walling, stress positions, confinement boxes, and waterboarding. Abu Zubaydah again vomited after Defendants waterboarded him, and again provided "persistent denials" that he possessed undisclosed threat

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information. The interrogation team nonetheless concluded that "there still appears to be areas that subject is withholding information on - we have not pinpointed what those areas are." Ladin Decl., Exh. O at U.S. Bates 001801.

Defendants' Response: Objection—Zubaydah and Objection—waterboarding.

Additionally, the quoted language in US Bates 001801 cannot be attributed to Defendants. The sender is redacted and the interrogation team included many individuals. Defs.' SOF ¶ 168. Furthermore, all cables went through the COB without review from Defendants and Defendants were unable to draft cables during this time period. Jessen Dep. 143:2-13; Defs.' SOF ¶ 298.

Plaintiffs' Response: Response—Zubaydah. Response—Waterboard. Response—No record dispute. Plaintiffs did not "attribute[]" the cable to Defendants. As Plaintiffs accurately described, the cable was sent by the interrogation team, of which Defendants were members—which is undisputed.

32. Plaintiffs' Fact: On the third day of the "aggressive phase," Defendants used their walling method on Abu Zubaydah while demanding "What is it that you do not want us to know?" After inflicting several more of the methods they had proposed, Defendants again told Abu Zubaydah "that he could stop the

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process at any time," while Abu Zubaydah "continued with his appeal that he has told all that he has and muttered 'help me.'" Defendants waterboarded Abu Zubaydah and placed him in a confinement box, after which he "appeared despondent" and "cried in an apparently genuine fashion." Defendants stuffed Abu Zubaydah back in a box for several hours. Afterwards, Abu Zubaydah "started crying and claimed he had given us everything." The interrogation team noted "At the risk of stating the obvious, there are potentially two reasons" that Abu Zubaydah had not provided the threat information that Defendants demanded: either he was concealing it, or actually did not have the information that his interrogators wanted. The interrogation team noted that, in their opinion, "it is premature" to decide which reason explained the lack of new threat information. Ladin Decl., Exh. P at U.S. Bates 001804-1805.

Defendants' Response: Objection—Zubaydah and Objection—waterboarding. Additionally, quoted language in US Bates 001804-05 cannot be attributed to Defendants for the reasons asserted in #31 above. Defendants do not contest for purposes of Plaintiffs' Motion that at the direction and under the supervision of the CIA, Defendants interrogated Zubaydah as set out in US Bates 001803-06. Ladin Decl., Exh. P at U.S. Bates 001803-1806; Defs.' SOF ¶¶ 176-181, 186-189.

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Plaintiffs' Response: Response—Zubaydah. Response—Waterboard. Response—No record dispute. Plaintiffs did not "attribute[]" the cable to Defendants. As Plaintiffs accurately described, the cable was sent by the interrogation team, of which Defendants were members—which is undisputed.

33. Plaintiffs' Fact: On the fourth day of the "aggressive phase," after using their walling and slapping methods on Abu Zubaydah, Defendants told him that they would stop inflicting their methods on him if he provided the threat information they demanded. They warned him not to make up an answer. Abu Zubaydah "began to whimper and was visibly trembling; he continued to deny he had any new info to give." Defendants then waterboarded Abu Zubaydah and left his cell. When they returned, they "noted that [Abu Zubaydah's] distress level increased the moment the team entered the cell, a sign that the conditioning strategy was working." Ladin Decl., Exh. Q at U.S. Bates 001943-44.

Defendants' Response: Objection—Zubaydah and Objection—waterboarding. Defendants do not contest for purposes of Plaintiffs' Motion that at the direction and under the supervision of the CIA, Defendants interrogated Zubaydah as set out in US Bates 001942-44. Ladin Decl., Exh. Q at U.S. Bates 001942-44; Defs.' SOF ¶¶ 176-181, 186-189.

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Plaintiffs' Response: Response—Zubaydah. Response—Waterboard.

34. Plaintiffs' Fact: On the fifth day of the "aggressive phase," Defendants inflicted a series of their methods on Abu Zubaydah when he told them he did not have the information they demanded. They told him "that he had the choice to stop this treatment at any time by providing the information we sought, that he should not waste our time with denials, and that he better not tell any lies." Ladin Decl., Exh. R at U.S. Bates 001946. They observed that he "continued to cry." He displayed "despair and helplessness" throughout the day. Defendants continued to inflict their methods on him. *Id.* at U.S. Bates 001947.

Defendants' Response: Objection—Zubaydah and Objection—waterboarding. Defendants do not contest for purposes of Plaintiffs' Motion that at the direction and under the supervision of the CIA, Defendants interrogated Zubaydah as set out in US Bates 001945-48. Ladin Decl., Exh. R at U.S. Bates 001945-48; Defs.' SOF ¶¶ 176-181, 186-189.

Plaintiffs' Response: Response—Zubaydah. Response—Waterboard.

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35. Plaintiffs' Fact: By the sixth day of the "aggressive interrogation phase," Defendants and the rest of the interrogation team reached a "collective preliminary assessment that it is highly unlikely [Abu Zubaydah] has actionable new information about current threats to the United States." They nonetheless resolved that "the team plans to maintain the current level of psychological pressures for the time being to develop and refine this preliminary assessment." Ladin Decl., Exh. S at U.S. Bates 002341. The medical officer at the site also assessed that "under current medical intervention subject's medical status is likely to deteriorate to an unacceptable level over the next two weeks, and thus will continue to be closely monitored." *Id.*

Defendants' Response: Objection—Zubaydah. Defendants dispute that the cited cable was sent on the sixth day of Zubaydah's interrogation. The cable was sent on August 10, 2002, which was the seventh day of Zubaydah's interrogation. Exh. S at U.S. Bates 002341; Ladin Decl., Exh. T at U.S. Bates 001955-56 ("The teams assessment remains the same [REDACTED] on 10 August 02 -day seven of the aggressive interrogation phase").

Defendants further dispute the implication that they had the ability to stop Zubaydah's interrogation. US Bates 002341 states that on the seventh day of the interrogation, the interrogation team did "not recommend escalating the pressure" on Zubaydah and requested that a team from CIA

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Headquarters ("HQS") visit the site where Zubaydah was being interrogated within the next week, or at least arrange a videoconference to "discuss the team's preliminary assessment and post-interrogation steps." Ladin Decl., Exh. S at U.S. Bates 002340-42. In response, HQS sent a cable to the site the same day demanding that Defendants "stay the course" and "the aggressive phase must continue." Defs.' SOF ¶¶ 194-95. Additionally, quoted language in US Bates 002341 cannot be attributed to Defendants for the reasons asserted in #31 above.

Plaintiffs' Response: Response—Zubaydah. Response—Waterboard. Response—No record dispute. Plaintiffs did not "attribute[]" the cable to Defendants. As Plaintiffs accurately described, the cable was sent by the interrogation team, of which Defendants were members—which is undisputed.

36. Plaintiffs' Fact: On the seventh day of the "aggressive interrogation phase," Defendants again subjected Abu Zubaydah to 24 hours of their methods, and he again did not provide any of the new threat information they demanded. Ladin Decl., Exh. T at U.S. Bates 001955-56.

Defendants' Response: Objection—Zubaydah. Defendants do not contest that at the direction and under the supervision of the CIA, Defendants interrogated Zubaydah as set out in US Bates 001955-56. Ladin Decl.,

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Exh. T at U.S. Bates 001955-56; Defs.' SOF ¶¶ 176-181, 186-189, 194-95.

Plaintiffs' Response: Response—Zubaydah.

37. Plaintiffs' Fact: On the eighth day of the "aggressive interrogation phase," Defendants again subjected Abu Zubaydah to their methods, and again acquired no new threat information. Defendants told Abu Zubaydah that "the only way he was going out of that room was in the large box in the corner. They prompted him to tell them what the box was shaped like; he whispered 'a coffin.' Interrogators then said subject would not be leaving the room for a long, long, long time, because he was in no imminent danger of dying." Ladin Decl., Exh. J at U.S. Bates 001957-58. While Defendants inflicted their methods on Abu Zubaydah, he was "trembling and shaking' and "frantically pleaded" that "he had given everything he knew." Id. at U.S. Bates 001959.

Defendants' Response: Objection—Zubaydah. Defendants further dispute the implication that Defendants had the ability to stop Zubaydah's interrogation. Exh. J at U.S. Bates 001957-60. Defs.' SOF ¶¶ 176-181, 186-189, 194-95. On this same day, the interrogation team again told HQS that they did not think Zubaydah possessed any further information about new or current threats against the United States and that they

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"looked forward to the upcoming [videoconference]" so that HQS could see the interrogation first hand. Ladin Decl., Exh. U at U.S.Bates 002345-46.

Plaintiffs' Response: Response—Zubaydah. Response—No record dispute.

38. Plaintiffs' Fact: The interrogation team reported that Defendants' use of the methods they proposed "on a 24/7 basis for the last eight days" had "produced the desired results of almost total compliance on subject's part." Ladin Decl., Exh. U at U.S. Bates 002346. However, the use of Defendants' methods on Abu Zubaydah had not produced any new threat information, and Abu Zubaydah's "persistent responses" had been "'I have no more' or 'I have nothing more' or 'I told you everything." *Id.*

Defendants' Response: Objection—Zubaydah. Defendants dispute the assertion that Zubaydah did not provide any new useful information. The document cited by Plaintiffs states that Zubaydah had begun providing "new nuggets of information" about past activities. Ladin Decl., Exh. U at U.S. Bates 002345-47; Defs.' SOF ¶¶ 176-181, 186-189, 194-95. Additionally, quoted language in US Bates 002346 cannot be attributed to Defendants for the reasons asserted in #31 above.

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Defendants do not contest that at the direction and under the supervision of the CIA, Defendants interrogated Zubaydah as set out in US Bates 002345-47.

Plaintiffs' Response: Response—Zubaydah. Response—Waterboard. Response—No record dispute. Defendants' argument that Zubaydah provided information about "past activities" does not create a dispute about whether he provided threat information; as the cable states, he did not. In addition, Plaintiffs did not "attribute[]" the cable to Defendants. As Plaintiffs accurately described, the cable was sent by the interrogation team, of which Defendants were members—which is undisputed.

39. Plaintiffs' Fact: On the eleventh day of the "aggressive phase," the interrogation team reported that "subject exhibited initial apprehension followed by complete compliance to all verbal and nonverbal commands for movement. . . . He seemed to display a desperate resignation at his inability to convince the interrogators that he was not holding back information. . . . When the interrogators told him that his protests of ignorance regarding additional information about threats against the U.S. would not stop them from using the water board, subject's eye teared, his breathing increased, and he appeared desperate." Ladin Decl., Exh. V at U.S. Bates 002364.

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Defendants' Response: Objection—Zubaydah. Defendants further dispute the implication that Defendants had the ability to stop Zubaydah's interrogation. Ladin Decl., Exh. V at U.S. Bates 002363-65; Defs.' SOF ¶¶ 176-181, 186-189, 194-95. The day before, on August 13, 2002, HQS acknowledged that the interrogation team believed that Zubaydah had no additional information on current threats and HQS participated in a videoconference during which EITs were applied to Zubaydah. HQS ordered that the interrogation team "continue with the aggressive interrogation strategy for the next 2-3 weeks" because "the HQS consensus" was that Zubaydah possessed additional information that was "critical to saving American lives." Specifically, HQS directed the interrogation team to continue waterboarding Zubaydah and apply other interrogation pressures. Defs.' SOF ¶¶ 198-99, 201-03.

Additionally, quoted language in US Bates 002364 cannot be attributed to Defendants for the reasons asserted in #31 above.

Defendants do not contest that at the direction and under the supervision of the CIA, they interrogated Zubaydah as set out in US Bates 001807-08. Ladin Decl., Exh. W at U.S. Bates 001807-08; Defs.' SOF ¶¶ 176-181, 186-189, 194-95, 198-99, 201-03.

Plaintiffs' Response: Response—Zubaydah. Response—No record dispute. Also, Plaintiffs did not "attribute[]" the cable to Defendants. As

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Plaintiffs accurately described, the cable was sent by the interrogation team, of which Defendants were members—which is undisputed.

40. Plaintiffs' Fact: On the fifteenth day of the "aggressive phase," Abu Zubaydah was "compliant and totally submissive," and "continue[d] to be fearful of the interrogators. He "continued to maintain that he knows of no threats to the United States or against United States interests beyond what he has already provided." Defendants walled Abu Zubaydah, and "repeatedly and aggressively pressed" him for new details. He "did not have any significant details on this topic beyond what he already provided," and the interrogation team noted that "thus far" the aggressive phase had not resulted in any "significant actionable info beyond previously provided details." Ladin Decl., Exh. W at U.S. Bates 001807-08.

Defendants' Response: Objection—Zubaydah and Objection—waterboarding.

Defendants further dispute the implication that Defendants had the ability to stop Zubaydah's interrogation Ladin Decl., Exh. X at U.S. Bates 002379-81; Defs.' SOF 11 176-181, 186-189, 194-95, 198-99, 201-03. At this time, in response to the request from the interrogation team to stop using EITs, HQS had sent a team to the site where Zubaydah was being interrogated, GREEN. The HQS team arrived on August 16, 2002 (three days before this cable), and the HQS team became actively involved in

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Zubaydah's interrogation, including observing this interrogation. Defs.' SOF ¶ 204-06.

Additionally, quoted language in US Bates 002380 cannot be attributed to Defendants for the reasons asserted in #31 above. Defendants do not contest that at the direction and under the supervision of the CIA, they interrogated Zubaydah as set out in US Bates 001807-08. Ladin Decl., Exh. W at U.S. Bates 001807-08; Defs.' SOF ¶¶ 176-181, 186-189, 194-95, 198-99, 201-03.

Plaintiffs' Response: Response—Zubaydah. Response—Waterboard. Response—No record dispute. Plaintiffs did not "attribute[]" the cable to Defendants. As Plaintiffs accurately described, the cable was sent by the interrogation team, of which Defendants were members—which is undisputed.

41. Plaintiffs' Fact: On the sixteenth day of the "aggressive phase," Abu Zubaydah "was repeatedly pressured and instructed that revealing the requested information would stop the procedure." He "again stated that he had no information in addition to that which he had already provided, and alternatively begged and cried that procedure be stopped." Defendants then waterboarded Abu Zubaydah to the point where he exhibited "involuntary body (leg, chest and arm) spasms." The interrogation team then resumed the questioning, while Abu Zubaydah "continued to cry, and claim ignorance of

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any additional information. This resulted in a second full-face watering. At the onset of involuntary stomach and leg spasms, subject was again elevated to clear his airway, which was followed by hysterical pleas. Subject was distressed to the level that he was unable to effectively communicate or adequately engage the team." Defendants then stuffed Abu Zubaydah into a box and bombarded him with noise to continue his "elevated level of disorientation." Ladin Decl., Exh. X at U.S. Bates 002380.

Defendants' Response: Objection—Zubaydah and Objection—waterboarding.

Defendants further dispute the implication that Defendants had the ability to stop Zubaydah's interrogation Ladin Decl., Exh. X at U.S. Bates 002379-81; Defs.' SOF ¶¶ 176-181, 186-189, 194-95, 198-99, 201-03. At this time, in response to the request from the interrogation team to stop using EITs, HQS had sent a team to the site where Zubaydah was being interrogated, GREEN. The HQS team arrived on August 16, 2002 (three days before this cable), and the HQS team became actively involved in Zubaydah's interrogation, including observing this interrogation. Defs.' SOF ¶ 204-06.

Additionally, quoted language in US Bates 002380 cannot be attributed to Defendants for the reasons asserted in #31 above. Defendants do not contest that at the direction and under the supervision of the CIA, they interrogated Zubaydah as set out in US Bates 001807-08. Ladin Decl.,

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Exh. W at U.S. Bates 001807-08; Defs.' SOF ¶¶ 176-181, 186-189,194-95, 198-99, 201-03.

Plaintiffs' Response: Response—Zubaydah. Response—Waterboard. Response—No record dispute. Plaintiffs did not "attribute[]" the cable to Defendants. As Plaintiffs accurately described, the cable was sent by the interrogation team, of which Defendants were members—which is undisputed.

42. Plaintiffs' Fact: On the seventeenth day of the aggressive phase, Abu Zubaydah "cried and begged the interrogators to believe him when he said that he was not holding back information as he was placed in position for watering. Two iterations of the watering cycle were applied. During the watering he cried, begged and pleaded; finally becoming hysterical." Ladin Decl., Exh. M at U.S. Bates 002022.

Defendants' Response: Objection—Zubaydah and Objection—waterboarding. Defendants do not contest that at the direction and under the supervision of the CIA, Defendants interrogated Zubaydah as set out in US Bates 002019-23. Ladin Decl., Exh. M at U.S. Bates 002019-23; Defs.' SOF 11 176-181, 186-189, 194-95, 198-99, 201-06.

Plaintiffs' Response: Response—Zubaydah. Response—Waterboard.

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43. Plaintiffs' Fact: After seventeen days of the aggressive phase, the interrogation team reported that "psychological and physical pressures have been applied to induce complete helplessness, compliance and cooperation from the subject. Our goal was to reach the stage where we have broken any will or ability of subject to resist or deny providing us information (intelligence) to which he had access." Ladin Decl., Exh. M at U.S. Bates 002020.

Defendants' Response: Objection—Zubaydah. Defendants further respond that the quoted language cannot be attributed to the "interrogation team" for the reasons asserted in #31 above. Also, other documents suggest that the team from HQS, not the Zubaydah interrogation team, drafted this cable. Ladin Decl., Exh. K at U.S. Bates 001423-24 ("A team of senior CTC officers traveled from Headquarters to [REDACTED] to assess Abu Zubaydah's compliance and witnessed the final waterboard session, after which, they reported back to Headquarters that the EITs were no longer needed on Abu Zubaydah.").

Plaintiffs' Response: Response—Zubaydah. Contrary to Defendants' claim, the quoted language was sent from the interrogation team (of which it is undisputed Defendants were members) *to* HQS, as indicated by the fact that the cable "request[s] HQS concurrence with the program plan."

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ECF No. 182-13 at U.S. Bates 002019. Moreover, only the interrogation team was present and could report on the full seventeen days of the "aggressive phase" that had taken place, because HQS observers arrived only at the end of phase. Finally, while Plaintiffs did not assert that Defendants sent this specific cable, the Senate Select Committee on Intelligence report titled "Committee Study of the Central Intelligence Agency's Detention and Interrogation Program" ("SSCI Report") concluded that CIA records show that it was specifically Defendants who authored this cable. *See* ECF No. 195-20 at 46 (SSCI Report).

44. Plaintiffs' Fact: (a) Defendants had previously claimed Abu Zubaydah was a skilled resistor, Ladin Decl., Exh. Y at U. S. Bates 001771; Ladin Decl., Exh. A, Mitchell Dep. 252:6-255:21, (b) and CIA Headquarters thought Abu Zubaydah might still be withholding information and that the program Defendants had recommended might yet extract new threat information from Abu Zubaydah. Ladin Decl., Exh. E at MJ00022666.

Defendants' Response: Defendants object to this "fact" as compound. Also, Objection— Zubaydah.

(a) Disputed. Plaintiffs mischaracterize Dr. Mitchell's cited testimony and US Bates 001771. Dr. Mitchell testified that Zubaydah employed resistance techniques, not that he was a "skilled resister." Exh. A, Mitchell Dep. 252:6-255:21.Furthermore, US Bates 001771 cannot be

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attributed to Defendants for the reasons asserted in #31 above. Nevertheless, all US Bates 001771 states is that Zubaydah "is an incredibly strong willed individual which is why he has resisted this long." Exh. Y at U. S. Bates 001771.

(b) Disputed. Plaintiffs mischaracterize the information in MJ00022666. This document discusses the fact that after HQS viewed the videoconference of Zubaydah's interrogation, HQS still wanted the interrogation to continue, including waterboarding, despite Defendants' opinion that further interrogation was unnecessary. The document does not discuss why HQS had this view or otherwise support Plaintiffs' implications. Ladin Decl., Exh. E at MJ00022666.

Plaintiffs' Response: Response—Zubaydah.

(a) Response—No record dispute. Defendant Mitchell testified about the resistance methods that he assessed Abu Zubaydah was employing. Defendants' claim that U.S. Bates 001771 cannot be attributed to them is disingenuous: Defendants *themselves* claim the quoted language in this specific cable as their own. *See* ECF No. 170 ¶¶ 154–55 (quoting the same language and attributing it to "The IC SERE psychologists—in this case Drs. Mitchell and Jessen").

(b) Response—No record dispute. Further, Defendant Mitchell admitted that a reason HQS chose to continue waterboarding Abu Zubaydah was because of Mitchell's statement that it would take 30 days before an

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interrogator could confirm that a detainee "either didn't have the information or was going to take it to the grave with them." McGrady Decl., Exh. F at MJ00022666. Defendant Mitchell added that his representation about a 30-day timeline had "come back to haunt us." *Id.*

45. Plaintiffs' Fact: Defendants did not believe that the final waterboarding session would result in the extraction of new threat information, but thought it would demonstrate that Abu Zubaydah was compliant. Ladin Decl., Exh. K at U.S. Bates 001423-24. Defendant Mitchell stated that "[i]t was ugly and hard to do." Ladin Decl., Exh. E at MJ00022668.

Defendants' Response: Objection—Zubaydah and Objection—waterboarding.

Dispute the implication that Defendants had the ability to stop Zubaydah's interrogation. US Bates 001423-24 goes on to state, "According to this senior officer, the decision to resume use of the waterboard on Abu Zubaydah was made by senior officers of the DO. A team of senior CTC officers traveled from Headquarters to [REDACTED] to assess Abu Zubaydah's compliance and witnessed the final waterboard session, after which, they reported back to Headquarters that the EITs were no longer needed on Abu Zubaydah. Ladin Decl., Exh. K at U.S. Bates 001423-24.

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Plaintiffs' Response: Response—Zubaydah. Response—Waterboard. Response—No record dispute.

46. Plaintiffs' Fact: After nineteen days of the aggressive phase Defendants and the rest of the interrogation team issued the "assessment that we have successfully broken subject's willingness to withhold threat and intelligence information. He is presently in a state of complete subjugation and total compliance." However, they noted that, having failed to acquire the threat information they had demanded over nineteen days, "[t]he issue of whether subject in fact has specific threat information (not already provided) will always be open to some conjecture." Ladin Decl., Exh. L at U.S. Bates 002382-83.

Defendants' Response: Objection—Zubaydah. Defendants dispute the implication that they drafted or assented to the language in this cable. The document states the "team assessment" is that "we have successfully broken subject's willingness to withhold threat and intelligence information. He is presently in a state of complete subjugation and total compliance." It also states "[t]he issue of whether subject in fact has specific threat information (not already provided) will always be open to some conjecture." Ladin Decl., Exh. L at U.S. Bates 002382-83. Defendants did not draft or review this cable. All cables went through the COB without review from Defendants and Defendants were unable to

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draft cables during this time period. Jessen Dep. 143:2-13; Defs.' SOF ¶ 298. And the interrogation team included many individuals other than Defendants. Defs.' SOF ¶ 168.

Plaintiffs' Response: Response—Zubaydah. Response—No record dispute. Plaintiffs did not assert that Defendants sent this specific cable, but that it was sent by the interrogation team, of which Defendants were members, and that the cable provides the collective "team assessment"—all of which is undisputed. Defendants elsewhere admit their role in collective team assessments that were sent by cable. *See, e.g.*, ECF No. 170 ¶ 190 (citing cable and admitting that "After six days of applying EITs to Zubaydah, on August 11, 2002, the interrogation team sent HQS an update indicating that the team collectively thought it was highly unlikely Zubaydah had actionable new information about current threats to the United States.").

47. Plaintiffs' Fact: The interrogation team proposed that, although the "aggressive phase" had been stopped, "we will carefully continue to observe [Abu Zubaydah] to ensure he remains 'compliant' and [Defendants] will stand by to 'tune him up' as required." After completion of the aggressive phase of Abu Zubaydah's interrogation, the team planned to "systematically drain him dry of any useful intelligence." Ladin Decl., Exh. Z at U.S. Bates 002390.

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Defendants' Response: Objection—Zubaydah. Disputed. The quoted language cannot be attributed to the "interrogation team" or "Defendants". The sender of US Bates 002388-90 is redacted and not otherwise identified. Ladin Decl., Exh. Z at U.S. Bates 002388-90. Also, Defendants did not draft or review this cable. All cables went through the COB without review from Defendants and Defendants were unable to draft cables during this time period. Jessen Dep. 143:2-13; Defs.' SOF ¶ 298.

Plaintiffs' Response: Response—Zubaydah. Response—No record dispute. Plaintiffs did not assert that Defendants sent this specific cable, but that it was sent by the interrogation team, of which Defendants were members—which is undisputed. The cable states "we have applied the techniques aggressively and conditioned subject," and only the interrogation team—and specifically Defendants—applied the techniques. ECF No. 182-26 at U.S. Bates 002389–90. That the cable is sent from the base, not from headquarters, is clearly demonstrated by the statement in it that "If we succeed, base will return to the aggressive phase tools and use every available technique allowed us." *Id.* at U.S. Bates 002390.

48. Plaintiffs' Fact: The aggressive interrogation of Abu Zubaydah did not end because he finally provided threat information, but because Defendants and

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the CIA determined that "it was no longer useful" to continue. Ladin Decl., Exh. C, Jessen Dep. 145:21-46:9, 148:6-12.

Defendants' Response: Objection—Zubaydah.

Disputed. Plaintiffs misrepresent the record. Dr. Jessen testified that after he and Dr. Mitchell thought further interrogation of Zubaydah was "no longer useful," the CIA "told us we had to continue" because "we worked for them and they wanted to continue." In fact, Zubaydah's interrogation did not stop until the CIA, at Defendants urging, came to GREEN where Zubaydah was being interrogated and witnessed the interrogation. Only then did the CIA allow Defendants to stop interrogating because HQS determined that Zubaydah was "total[ly] compliant". Jessen Dep. 145:21¬46:9, 147:18-149:7; Defs.' SOF ¶¶ 191-207. Furthermore, the record cited by Plaintiffs does not state whether or not Zubaydah provided threat information, and this assertion is not supported by admissible evidence.

Plaintiffs' Response: Response—Zubaydah. Response—No record dispute.

49. Plaintiffs' Fact: (a) Defendant Mitchell "had a visceral reaction to the tapes" of Defendants' using their methods on Abu Zubaydah, and "thought they were ugly." He "didn't like the fact that the tapes were out there" and

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recommended they be destroyed. Ladin Decl., Exh. A, Mitchell Dep. 386:10-A23; 389:2-22; 392:10-17.

(b) A senior CIA official, Jose Rodriguez, agreed: he believed the tapes "would make the CIA look bad," and, if released, would "almost destroy the clandestine service." Rodriguez Dep: 92:18-93:25.

(c) On Rodriguez's orders, the CIA destroyed the tapes. Mitchell Dep: 387:21-388:7.

Defendants' Response: Defendants object to this "fact" as compound. Also, Objection— Zubaydah.

(a) Disputed. Contrary to Plaintiffs' statement, Dr. Mitchell did not "recommend" that the tapes be destroyed but "thought [the tapes] should be destroyed". Ladin Decl., Exh. A, Mitchell Dep. 386:10-23; 389:2-22.

(b) Not contested for purposes of Plaintiffs' Motion. Defendants further object to this "fact" as irrelevant to the resolution of the issues presented in Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402).

(c) Not contested for purposes of Plaintiffs' Motion. Defendants further object to this "fact" as irrelevant to the resolution of the issues presented in Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402).

Plaintiffs' Response: Response—Zubaydah.

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(a) Defendants mischaracterize Defendant Mitchell's testimony. It was not his private "thought" that the tapes be destroyed. Defendant Mitchell testified that he "told . . . the Chief of Clandestine Service[] that I thought those videotapes should be destroyed." McGrady Decl., Exh. C, Mitchell Dep. 386:15–23.

(b) The conclusion of the Chief of the CIA Counterterrorism Center that the videotapes of Defendants applying their methods to Abu Zubaydah would make the CIA look bad and could destroy the CIA clandestine service is relevant to the severity of the methods Defendants employed and their firsthand knowledge of the effects of their use.

(c) The conclusion of the Chief of the CIA Counterterrorism Center that the videotapes of Defendants applying their methods could destroy the CIA clandestine service, and the fact that the tapes were destroyed, are relevant to the severity of the methods Defendants employed and their firsthand knowledge of the effects of their use.

50. Plaintiffs' Fact: Although they had failed to acquire any new threat information, the interrogation team was "satisfied" that they had "applied the techniques aggressively and conditioned subject to the point that we can assess he is compliant." The interrogation team was satisfied that Abu Zubaydah did not possess undisclosed threat information, and observed that the intelligence they had was consistent with what Abu Zubaydah had told

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them. Ladin Decl., Exh. L at U.S. Bates 002383; Ladin Decl., Exh. Z at U.S. Bates 002389-90.

Defendants' Response: Objection—Zubaydah. Disputed. The quoted language in US Bates 002388-90 cannot be attributed to the "interrogation team" or "Defendants" because the sender is redacted and not otherwise identified. Ladin Decl., Exh. Z at U.S. Bates 002388-90. All cables went through the COB without review from Defendants and Defendants were unable to draft cables during this time period. Jessen Dep. 143:2-13; Defs.' SOF ¶ 298.

Plaintiffs' Response: Response—Zubaydah. Response—No record dispute. Plaintiffs did not assert that Defendants sent this specific cable, but that it was sent by the interrogation team, of which Defendants were members. The cable states "we have applied the techniques aggressively and conditioned subject," and only the interrogation team—and specifically Defendants—applied the techniques. ECF No. 182-26 at U.S. Bates 002389–90. That the cable is sent from the base, not from headquarters, is clearly demonstrated by the statement that "If we succeed, base will return to the aggressive phase tools and use every available technique allowed us." *Id.* at U.S. Bates 002390.

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51. Plaintiffs' Fact: Defendant Mitchell later wrote in response to a question as to why Defendants had waterboarded Abu Zubaydah so many times: "As for our buddy, he capitulated the frist [sic] time. We chose to expose him over and over until we had a high degree of confidence he wouldn't hold back. He said we [sic] was ready to talk during the first exposure." Ladin Decl., Exh. AA at U.S. Bates 002581 (emphasis in original).

Defendants' Response: Objection—Zubaydah and Objection—waterboarding.

Defendants dispute the implication that Defendants had the ability to stop Zubaydah's interrogation. As set forth above, Defendants requested to stop waterboarding Zubaydah, but the CIA demanded they continue. Defs.' SOF ¶¶ 190¬207.

Plaintiffs' Response: Response—No record dispute. Response—Zubaydah. Response—Waterboard.

52. Plaintiffs' Fact: Defendant Mitchell, summing up Defendants' interrogation of Abu Zubaydah, wrote: "I left feeling good about what we had accomplished." Ladin Decl., Exh. E at MJ00022671

Defendants' Response: Objection—Zubaydah. Otherwise, not contested for purposes of Plaintiffs' Motion.

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Plaintiffs' Response: Response—Zubaydah.

53. Plaintiffs' Fact: After seventeen days of the "aggressive phase," the interrogation team, which included Defendants, who wrote to CIA headquarters that "the aggressive phase" of Abu Zubaydahs' interrogation "should be used as a template for future interrogation of high value captives." Ladin Decl., Exh. M at U.S. Bates 002023.

Defendants' Response: Objection—Zubaydah. Defendants respond that US Bates 002019-23 cannot be attributed to the "interrogation team" or "Defendants". The sender is redacted and not otherwise identified. Ladin Decl., Exh. M at U.S. Bates 002019-23. All cables went through the COB without review from Defendants and Defendants were unable to draft cables during this time period. Jessen Dep. 143:2-13; Defs.' SOF ¶ 298.

Plaintiffs' Response: Response—Zubaydah. Contrary to Defendants' claim, the quoted language was incorporated in a cable that was sent from the interrogation team (of which it is undisputed Defendants were members) *to* HQS, as indicated by the fact that the cable "request[s] HQS concurrence with the program plan." Moreover, only the interrogation team was present and could report on the full seventeen days of the "aggressive phase" that had taken place, because HQS observers arrived

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only at the end of that phase. Finally, while Plaintiffs did not assert that Defendants sent this specific cable, the SSCI Report concluded that CIA records show that it was specifically Defendants who authored this cable. *See* ECF No. 195-20 (SSCI Report) at 46.

54. Plaintiffs' Fact: Defendants' methods became the basis for the CIA's enhanced interrogation program. Ladin Decl., Exh. B, Rodriguez Dep. 59:19-60:25, 63:6-10.

Defendants' Response: Disputed that the interrogation methods posed by Defendants were of Zubaydah and later the CIA's HVD Program. Rodriguez Dep. 183:22-184:25; 186:17-20; Defs.' SOF ¶¶ 209-11.

Plaintiffs' Response: Response—Speculation about multiple programs.

55. Plaintiffs' Fact:

(a) Defendants participated in the program's initial expansion, opining on potential lessons from Abu Zubaydah's interrogation for future interrogations. Ladin Decl., Exh. BB at U.S. Bates 001611; Ladin Decl., Exh. DD at U.S. Bates 001891-92.

(b) Defendants' contracts expanded after Abu Zubaydah's interrogation as well. For example, less than two months after Abu Zubaydah's interrogation, the value of Defendant Jessen's contract had already

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doubled. Ladin Decl., Exh. CC at U.S. Bates 000086, 000092, 000094.

Defendants' Response: Defendants object to this "fact" as compound.

(a) Disputed. Plaintiffs mischaracterize the underlying documents. Contrary to Plaintiffs' statement, the documents do not indicate that Defendants participated in "the program's" initial expansion. Rather, US Bates 001611 indicates that all those involved in Zubaydah's interrogation, including CTC Legal, the incoming and outgoing Chief of Base, the Usama Bin Laden taskforce, the Office of Technical Services, IC SERE psychologists, and additional personnel, were asked for observations. Similarly, US Bates 001891-92 indicates that in December 2002, after the CIA had already designed and operated a training for "High-Value Target" interrogation techniques, Defs.' SOF ¶ 226, Dr. Mitchell, as "one data point" was asked for feedback from Zubaydah's interrogation. Ladin Decl., Exh. DD at U.S. Bates 001891-92. As stated at US Bates 001891, CTC was "[c]learly . . . in charge of the operation" and thus the CIA determined how to use the information it requested from Defendants and had complete control over any "expansion."

(b) Defendants object to this "fact" as irrelevant to the resolution of the issues presented in Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402). Disputed that Dr. Mitchell's contract value increased, as Plaintiffs present no such evidence. Not contested for purposes of Plaintiffs' Motion that Dr. Jessen's original contract amount was to be a

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maximum amount of $135,000 from July 22, 2002 until July 21, 2003 and that in October 2002, Dr. Jessen's maximum contract amount was increased to $267,500, with the same duration. Ladin Decl., Exh. CC at U.S. Bates 000086, 000092, 000094.

Plaintiffs' Response:

(a) Response—No record dispute. Defendants' assertion that others were also involved in the expansion of the program does not create a dispute.

(b) Response—No record dispute. Defendant Mitchell's contract value increased from $101,600 in April 2002 to $410,100 by September 2002. ECF No. 84-1 at U.S. Bates 000047–54. Defendants do not dispute that the value of Defendant Jessen's contract increased. The value of Defendants' contracts is relevant to Defendants' *mens rea*.

56. Plaintiffs' Fact: Defendants were aware of a phenomenon called "abusive drift": once coercion was employed, interrogators would tend to exceed any approved limits, resulting in even more severe abuse of prisoners. Ladin Decl., Exh. C, Jessen Dep. 35:24-36:17; Ladin Decl., Exh. E at MJ00022633, MJ00022857.

Defendants' Response: Defendants object to this "fact" as irrelevant to the resolution of the issues presented in Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402). Plaintiffs make no allegation that

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Defendants exceeded the legal boundaries set by DOJ for the EITs because of abusive drift or otherwise.

Disputed. Plaintiffs mischaracterize the record. Dr. Jessen testified that abusive drift is a phenomenon that occurs when, "without proper oversight and [] independent eyes on authorities, people can start to push the limits of what they're authorized to do." Dr. Jessen's role at SERE was to "make sure that [he] identified that and stopped it." He also indicated that "abusive drive" was more likely to happen in real life than in training scenarios. Ladin Decl., Exh. C, Jessen Dep. 35:24-36:17. Dr. Mitchell wrote about his similar role at SERE when he was responsible for determining what went wrong in interrogations and specifically "monitor[ing] and directly intervene[ing] to prevent escalating abusive drift . . . that could lead to increased risk of lasting mental or physical harm among students." He further wrote that when he saw photographs from Abu Ghraib—which was not part of any CIA interrogation program—he was "dismayed" and "angry" because he "had studied the psychological mechanisms that lead to that sort of abusive drift." Ladin Decl., Exh. E at MJ00022633, MJ00022857. Defendants do not contest that they were aware of "abusive drift." The remainder of Plaintiffs' statement is disputed. Plaintiffs' statement that "once coercion was employed, interrogators would tend to exceed any approved limits, resulting in even more severe abuse of prisoners" is unsupported by the

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record and contrary to Dr. Jessen's testimony explaining that abusive drift occurs when there is not proper oversight.

Plaintiffs' Response: Response—No record dispute, Defendants' response confirms that they were aware of a phenomenon called abusive drift. Defendants' knowledge is relevant to their *mens rea*, and in particular to Defendants' knowledge of the harm that would likely result from their methods.

57. Plaintiffs' Fact: Defendants "designed a program for the CIA to get prisoners to talk, but the CIA would decide which prisoners to apply it to." Ladin Decl., Exh. B, Rodriguez Dep. 244:9-12.

Defendants' Response: Disputed that the interrogation methods posed by Defendants were the basis of one overarching CIA interrogation program and, specifically, that the interrogation methods posed by Defendants were the basis for interrogation of any Plaintiff. The interrogation methods proposed by Defendants became the basis only for the CIA's interrogation of Zubaydah and later the CIA's HVD Program. Rodriguez Dep. 183:22-184:25; 186:17-20; Defs.' SOF ¶¶ 209-11. Not contested that the CIA would decide which HVDs would be interrogated and how interrogations would be conducted. Rodriguez Dep. 125:23-126:3, 167:15-19, 169:4-8, 174:6-10, 183:22-184:25, 186:17-20; US Bates

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001631-32; US Bates 001593; US Bates 001594; Rizzo Dep. 60:10-25, 85:1-12, 187:2-25, 188:1-7, 192:23-25. Also, the CIA assessed and approved all interrogation plans. US Bates 001592; US Bates 001635. The CIA

Plaintiffs' Response: Response—Speculation about multiple programs.

58. Plaintiffs' Fact: When the CIA sought approval for the program, it submitted to the Justice Department's Office of Legal Counsel only the 12 methods Defendants had proposed. Deposition of John Rizzo 47:4-15 (Ladin Decl., Exh. EE, cited hereinafter as "Rizzo Dep.").

Defendants' Response: Not contested for purposes of Plaintiffs' Motion that the CIA asked the DOJ's OLC to evaluate the legality of the EITs because they had been recommended "by CTC management[.]" Rizzo Dep. 47:4-48:1.

59. Plaintiffs' Fact: By January 2003, the methods that Defendants had proposed and used on Abu Zubaydah were standardized as the official "Enhanced Interrogation Techniques" in the "enhanced interrogation program" used on CIA prisoners. Ladin Decl., Exh. FF at U.S. Bates 001170-72; Ladin Decl., Exh. EE, Rizzo Dep. 64:8-23.

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Defendants' Response: Disputed. Contrary to Plaintiffs' statement, Mr. Rizzo, Deputy General Counsel at the CIA in January 2003, did not testify that "the methods that Defendants had proposed and used on Zubaydah were standardized as the official 'Enhanced Interrogation Techniques.'" Rather, Mr. Rizzo testified that US Bates 001170-72 represented instructions as to how interrogations were to be conducted within the legal authorization and stated that the techniques developed for Zubaydah "served as a template for the enhanced interrogation techniques that were used on a number of subsequent high value detainees." Ladin Decl., Exh. EE, Rizzo Dep. 64:8-65:15.

Defendants further respond that US Bates 00170-72 does not reflect "methods Defendants had proposed and used on Abu Zubaydah," but includes interrogation techniques not contained in the July 2002 Memo. Specifically, it includes the use of isolation, reduced caloric intake, deprivation of reading material, use of loud music or white noise (non-harmful), and the abdominal slap. Ladin Decl., Exh. FF at U.S. Bates 001170-72.

Finally, it is disputed that the interrogation methods posed by Defendants were the basis of one overarching CIA interrogation program for use on all CIA detainees and, specifically, that the interrogation methods posed by Defendants were the basis for interrogation of any Plaintiff. The EITs were proposed by Defendants for use on Zubaydah and later for use in the CIA's HVD Program. Rodriguez Dep. 183:22-184:25; 186:17-20; Defs.'

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SOF ¶¶ 209-11. Even then, EITs were applied to HVDs in only specific circumstances when the proper approvals were granted. Defs. SOF ¶¶ 216-24.

Plaintiffs' Response: Response—No record dispute. Response—Speculation about multiple programs. As Defendants admit in their response, Mr. Rizzo testified "that the techniques developed for Zubaydah 'served as a template for the enhanced interrogation techniques.'" Defendants' methods as set forth in July 2002, are identified as the "enhanced techniques" in the formalized CIA guidelines. ECF No. 182-32 at U.S. Bates 001172.

60. Plaintiffs' Fact: The list of "Enhanced Techniques" standardized in the January 2003 guidelines are "the attention grasp, walling, the facial hold, the facial slap (insult slap), the abdominal slap, cramped confinement, wall standing, stress positions, sleep deprivation beyond 72 hours, the use of diapers for prolonged periods, the use of harmless insects, [and] the waterboard." Ladin Decl., Exh. FF at U.S. Bates 001172. The list of "standard techniques" included "isolation, sleep deprivation not to exceed 72 hours, reduced caloric intake . . . use of loud music or white noise . . . and the use of diapers for limited periods." Id.

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Defendants' Response: Disputed. US Bates 001170-72 does not indicate EITs had become "standardized" but that "the use of each specific [EIT] must be approved by Headquarters in advance, and may be employed only by approved interrogators for use with the specific detainee, with appropriate medical and psychological participation in the process." Ladin Decl., Exh. FF at U.S. Bates 001170-72. Not contested for purposes of Plaintiffs' Motion that US Bates 001170-72 is accurately quoted.

Plaintiffs' Response: Response—No record dispute. Defendants' objection to the word "standardized" is immaterial. It is undisputed that CIA Director George Tenet issued a memorandum in January 2003 adopting Defendants' methods as the "enhanced techniques" to be applied to detainees. *See* ECF No. 182-32 at U.S. Bates 001170–72.

61. Plaintiffs' Fact: (a) With the exception of the "abdominal slap" technique, the standardized "Enhanced Techniques" are the methods Defendants proposed in July 2002. Ladin Decl., Exh. H at U.S. Bates 001110-11.

(b) The "abdominal slap" was a technique that Defendants used on Abu Zubaydah in an interrogation that they claimed was successful. ECF No. 77 ¶ 49.

Defendants' Response: Defendants object to this "fact" as compound.

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(a) Not contested for purposes of Plaintiffs' Motion. Ladin Decl. Exh. FF at U.S. Bates 001170-72; Exh. H at U.S. Bates 001110-11.

(b) Disputed. Defendants' Answer at ¶ 77 does not state the abdominal slap was used "in an interrogation that they claimed was successful" and this assertion is unsupported by admissible evidence. ECF No. 77 ¶ 49. Not contested for purposes of Plaintiffs' Motion that Defendants used the "abdominal slap" on Zubaydah during interrogation.

Plaintiffs' Response:

(a) None.

(b) Response—No record dispute. Defendants admit they used the abdominal slap technique on Abu Zubaydah. Defendants dispute that they claimed the interrogation of Abu Zubaydah was successful, but that is exactly what Defendant Mitchell said during his deposition. *See* McGrady Decl., Exh. C, Mitchell Dep. 283:5–13 ("Q. Okay. So the only – now, going to what occurred with respect to Abu Zubaydah, you went back and you applied these – these techniques, right? A. Yes. Q. You did, right? A. Yes. Q. Uh-huh. Was it successful? A. Yes.").

62. Plaintiffs' Fact: "As initially proposed, sleep deprivation was to be induced by shackling the subject in a standing position, with his feet chained to a ring in the floor and his arms attached to a bar at head level, with very little room for movement." Office of Professional Responsibility, Rep. on Investigation

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into the OLC's Memoranda Concerning Issues Relating to the CIA's Use of "Enhanced Interrogation Techniques" on Suspected Terrorists 36 n.35, U.S. Bates 000643 (2009) (Ladin Decl., Exh. GG, cited hereinafter as "OPR Report"). "[D]etainees were typically shackled in a standing position, naked except for a diaper." OPR Report 126, U.S. Bates 000733; Ladin Decl., Exh. C, Jessen Dep. 228:20-229:2.

Defendants' Response: Defendants deny any implication that they played a role in the development of methodologies for inducing sleep deprivation. The OPR Report does not identify who made this proposal. Otherwise, not contested for purposes of Plaintiffs' Motion.

Plaintiffs' Response: Response—No record dispute. It is undisputed that Defendants proposed the sleep deprivation method in their July 2002 memo, and that Defendant Jessen testified that the only way he ever saw it used was the way in which Defendants used it on Abu Zubaydah: "There is a tether anchored to the ceiling in the center of the detention cell. The detainee has handcuffs and they're attached to the tether in a way that they can't lie down or rest against a wall." McGrady Decl., Exh. D, Jessen Dep. 228:20–229:2. While Defendants deny—without citing any evidence—any role in developing methodologies for inducing sleep deprivation, John Rizzo testified that during a meeting with then Secretary of State Condoleezza Rice, Defendants Mitchell and Jessen "described the

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genesis of the original techniques they came up with." McGrady Decl., Exh. A, Rizzo Dep. 69:9–24. After Secretary Rice "expressed concern" regarding the method of sleep deprivation by shackling a nude detainee in a standing position, Defendants agreed to "work on alternative methods for implementing sleep deprivation[.]" *Id.* 74:5–8.

63. Plaintiffs' Fact: Defendants' list of methods was specifically sent to COBALT. Ladin Decl., Exh. FF at U.S. Bates 001170-72. Ladin Decl., Exh. B, Rodriguez Dep. 71:20-73:24.

Defendants' Response: Disputed that US Bates 001170-72 was "Defendants' list of methods," as it was drafted by the CTC Legal Department at the direction of the CIA's then General Council, Scott Muller, with no involvement from Defendants. Rizzo Dep. at 185:23-186:21. Rizzo Decl. ¶ 51. Not contested that US Bates 001170-72 was transmitted to COBALT.

Plaintiffs' Response: Response—No record dispute. Eleven of the twelve methods sent to COBALT were directly specified in Defendants' July 2002 memorandum. *See* ECF No. 182-32 at U.S. Bates 001170–72; ECF No. 182-8 at U.S. Bates 001110–11. As for the one additional method, the "abdominal slap," Defendants personally administered this technique on Abu Zubaydah. Am. Answer, ECF No. 77 ¶ 49.

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64. Plaintiffs' Fact: Prisoners at COBALT were subjected to total darkness "to disorient prisoners so they didn't know if it was day or night." Ladin Decl., Exh. HH at U.S. Bates 001126.

Defendants' Response: Disputed to the extent this implies Defendants had any involvement in determining conditions at COBALT. CIA Staff Officer stated the prisoners were kept in total darkness because "he wanted to disorient prisoners so they didn't know it was day or night." Ladin Decl., Exh. HH at U.S. Bates 001126. And because there was only one light switch for all the lights in the cell area, CIA Staff Officer decided to keep them off all the time. Defs.' SOF ¶¶ 262.

Plaintiffs' Response: Response—No record dispute. Moreover, that Defendant Mitchell joined in recommending that the CIA's first prisoner be disoriented by depriving him of natural light and disrupting his ability to perceive the passage of time is undisputed. *See supra* Fact #9; Am. Answer, ECF No. 77 ¶ 38.

65. Plaintiffs' Fact: Prisoners at COBALT were deprived of amenities: "A prisoner begins his confinement with nothing in his cell except a bucket used for human waste," but can be given "rewards for cooperation." These "rewards" included lights to cut the endless darkness, earplugs to block out

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the endless music, a mat to sleep on, and extra blankets against the cold. Id. at U.S. Bates 001127.

Defendants' Response: Disputed to the extent this implies Defendants had any involvement in setting the conditions at COBALT. CIA Staff Officer was responsible for the final construction of COBALT and for detainee affairs. Defs. SOF ¶¶ 255-57.

Plaintiffs' Response: Response—No record dispute. It is undisputed that: Defendant Mitchell recommended that the CIA's first prisoner be deprived of amenities; the "behavioral team" stated that the goal was to emphasize that "the only mechanism [Abu Zubaydah] has at his disposal, to control the environment will be in providing vital intelligence;" and pleasing his interrogators was the only way for Abu Zubaydah to "earn basic privileges" and receive better conditions. *See supra* Facts #4–5; Am. Answer, ECF No. 77 ¶¶ 34, 38.

66. Plaintiffs' Fact: Prisoners at COBALT were kept in diapers "solely to humiliate the prisoner for interrogation purposes." When guards ran out of diapers, they either used "a handcrafted diaper secured by duct tape," or kept the prisoners nude. *Id.* at U.S. Bates 001126.

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Defendants' Response: Disputed that prisoners at COBALT were kept in diapers "solely to humiliate the prisoners for interrogation purposes." There was also "hygienic reasons" for the use of diapers because there were "no drains in the cells" that would facilitate clean-up if a detainee had an accident between breaks. Tompkins Decl., Ex. 18 at US Bates 001086. Defendants do not dispute for purposes of Plaintiffs' Motion that when guards ran out of diapers, they either used "a handcrafted diaper secured by duct tape," or kept the prisoners nude. *Id.* at U.S. Bates 001126.

Plaintiffs' Response: The conclusion that diapers were used solely for humiliation at COBALT is the factual determination of the CIA's investigation into Mr. Rahman's death. ECF No. 182-34 at U.S. Bates 001126. The self-serving statement by a CIA officer that diapers also helped facilitate clean-up between interrogations was not accepted by the CIA investigators who interviewed him and concluded that diapers were used "solely to humiliate the prisoner." Defendants point to no admissible evidence contradicting this fact.

67. Plaintiffs' Fact: (a) In November 2002, Mr. Rahman was abducted and taken to COBALT.

(b) Defendants traveled to COBALT that same month, during which Defendant Jessen personally participated in multiple interrogations of Mr.

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Rahman at COBALT during which Mr. Rahman was kept naked or in a diaper, "in cold conditions with minimal food and sleep," and subjected to physical assault. Ladin Decl., Exh. II at U.S. Bates 001076; Ladin Decl., Exh. JJ at 001051; Ladin Decl., Exh. KK at 001547–49.

Defendants' Response: Defendants object to this "fact" as compound. Defendants further respond that Plaintiffs mischaracterize the record.

(a) Disputed. Mr. Rahman was captured in Pakistan in October 2002. He was transferred to COBALT in November 2002. Defs.' SOF ¶¶ 284-85; Exh. KK at 001547.

(b) Disputed that Defendants had control over Mr. Rahman's treatment at COBALT. Dr. Jessen was at COBALT when Mr. Rahman arrived. Defs.' SOF ¶ 287. It was the COBALT COB's responsibility to monitor COBALT. Defs.' SOF ¶ 288. At the request of COBALT's COB, Dr. Jessen observed interrogations of Mr. Rahman and then participated in other interrogations of Mr. Rahman. Defs.' SOF ¶¶ 289, 291-92. During this time, Mr. Rahman was sometimes naked and sometimes had clothing. When Mr. Rahman was naked, he had a blanket. Ladin Decl., Exh. JJ at 001050-51. Dr. Jessen observed Mr. Rahman being subjected to rough treatment on one occasion. Defs.' SOF ¶ 299. Dr. Mitchell arrived at COBALT later. Ladin Decl., Exh. KK at 001548. Dr. Mitchell did not interrogate Rahman or observe the application of any interrogation

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techniques on Rahman, although Dr. Mitchell did observe one custodial debriefing of Rahman. Defs.' SOF ¶ 308.

Plaintiffs' Response: Plaintiffs do not dispute Defendants' clarification that Mr. Rahman was captured in Pakistan in October 2002, and thereafter, in November 2002, transferred to COBALT. The remainder of Defendants' response is unresponsive, as Defendants do not deny Defendant Jessen's personal participation in multiple interrogations of Mr. Rahman at COBALT or in witnessing the conditions and nature of those interrogations.

68. Plaintiffs' Fact: (a) Defendant Jessen advised the CIA that Mr. Rahman displayed a "sophisticated level of resistance training," because he "complained about poor treatment," and said he couldn't think because he was so cold. Ladin Decl., Exh. LL at U.S. Bates 001073.

(b) Defendant Jessen was asked to assess Mr. Rahman for resistance methods and to design an interrogation plan. Ladin Decl., Exh. C, Jessen Dep. 238:11–241:15.

Defendants' Response: Defendants object to this "fact" as compound.

(a) Disputed. Dr. Jessen specifically testified that he did not recall Mr. Rahman complaining about poor treatment or complaining about the violation of his human rights. Jessen Dep. 211:20-213:20. He further

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testified that he did not recall ever assessing that Mr. Rahman used health and welfare behaviors as a resistance technique. Jessen Dep. 232:10-14. Furthermore, Dr. Jessen did not draft or review US Bates 001072-74 or any other cable at COBALT so the information contained in it cannot be attributed to him. Jessen Dep. 143:2-13; Defs.' SOF ¶ 298.

(b) Disputed. Jessen testified only that he was asked to look at Rahman "to give the Chief of Base recommendations on how they should continue interrogating him, try to get information." He does not state he was asked to "design" an interrogation plan.

Plaintiffs' Response: Response—No record dispute.

(a) Defendant Jessen testified that he "didn't know" whether he made assessments of Mr. Rahman, and that he "could have, in fact, made those observations to the Chief of Base who then incorporated them in his cable." McGrady Decl., Exh. D, Jessen Dep. 209:11–16. This does nothing to undermine record evidence from much closer in time to Defendant Jessen's actions. Shortly after Mr. Rahman's death, Defendant Jessen in fact admitted that the cited cable "is pretty much what he recalls," and that he was the source of "many of the bullets that were used in the cable." ECF No. 182-36 at U.S. Bates 001049. Contemporaneous record evidence confirms that Defendant Jessen advised the CIA that Mr. Rahman "continues to use 'health and welfare' behaviors and complaints as a major part of his resistance posture," ECF No. 182-35 at U.S. Bates

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001077, and that Jessen told a CIA investigator that Mr. Rahman "knew how to use physical problems or duress as a resistance tool." ECF No. 182-36 at U.S. Bates 001053. In addition, McGrady Decl., Exh. D, Jessen Dep. 143:2–13 concerns another cable sent in July 2002, not November 2002.

(b) With respect to Defendant Jessen's recommendations and decision, Defendant Jessen testified that he was asked to "make your recommendations about an interrogation plan, and tell us if you think he's okay to do that. So I did that… [and] sent the report." McGrady Decl., Exh. D, Jessen Dep. 240:22 – 241:10; 242:2–24; 243:1–6. Defendants' response to Plaintiff's Fact # 71 specifically admits: "Dr. Jessen concluded the following, 'Because of [Mr. Rahman's] remarkable physical and psychological resilience and determination to persist in his effective resistance posture employing enhanced measures is not the first or best option to yield positive interrogation results … *The most effective interrogation plan for Gul Rahman* is to continue the environmental deprivations he is experiencing and institute a concentrated interrogation exposure regimen'" quoting ECF No. 182-44 at U.S. Bates 001057–58 (emphasis added).

69. Plaintiffs' Fact: Defendant Mitchell participated in one of Defendant Jessen's sessions with Mr. Rahman. Ladin Decl., Exh. MM at U.S. Bates 001290.

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Defendants' Response: Disputed. Dr. Mitchell did not interrogate Rahman or observe the application of any interrogation techniques on Rahman, although Dr. Mitchell did observe one custodial debriefing of Rahman. Defs.' SOF ¶ 308. The document cited by Plaintiff does not indicate that Dr. Jessen was present in the debriefing that Dr. Mitchell observed, and there is no other evidence that he was. Ladin Decl., Exh. MM at U.S. Bates 001290.

Plaintiffs' Response: Response—No record dispute. The cited cable clearly states "Mitchell participated in one of Jessen's sessions with Rahman." ECF No. 182-39 at U.S. Bates 001290. *See also*, ECF No. 182-36 at U.S. Bates 001053 ("Jessen stated that he interrogated Rahman twice by himself and two or three other times with []. Jim Mitchell, another IC psychologist also interrogated him once.").

70. Plaintiffs' Fact: Defendant Jessen conducted an assessment as to whether Mr. Rahman "would be profoundly or permanently affected by continuing interrogations, to include HVT-enhanced measures." As part of his assessment, Defendant Jessen used one of the "enhanced interrogation techniques" that Defendants had proposed for use on Abu Zubaydah—a facial slap "to determine how he would respond." Defendant Jessen concluded that Mr. Rahman "was impervious to it," and assessed that Mr.

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Rahman would not be "profoundly and permanently affected" by the use of any of the methods Defendants had proposed for use on Abu Zubaydah. Ladin Decl., Exh. C, Jessen Dep. 238:22–241:15, 211:7–15.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion.

71. Plaintiffs' Fact: Defendant Jessen advised that rather than using the more active "enhanced interrogation techniques," Mr. Rahman's interrogators should instead focus on "deprivations": "it will be the consistent and persistent application of deprivations (sleep loss and fatigue) and seemingly constant interrogations which will be most effective in wearing down this subject's resistance posture." Ladin Decl., Exh. NN at U.S. Bates 001057–58.

Defendants' Response: Disputed. Plaintiffs mischaracterize US Bates 001057-58. Dr. Jessen did not characterize "enhanced interrogation techniques" as active or inactive. Rather, Dr. Jessen concluded the following, "Because of [Mr. Rahman's] remarkable physical and psychological resilience and determination to persist in his effective resistance posture employing enhanced measures is not the first or best option to yield positive interrogation results. . . The most effective interrogation plan for Gul Rahman is to continue the environmental deprivations he is experiencing and institute a concentrated interrogation

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exposure regimen. This regimen would ideally consist of repeated and seemingly constant interrogations . . . . It will be the consistent and persistent application of deprivations (sleep loss and fatigue) and seemingly constant interrogations which will be most effective in [] wearing down [] this subject's resistance posture. It will be important to manage the deprivations so as to allow the subject adequate rest and nourishment[.]" Ladin Decl., Exh. NN at U.S. Bates 001057–58.

Plaintiffs' Response: Response—No record dispute. As Defendants admit, Defendant Jessen advised the CIA that what Defendant Jessen assessed as Mr. Rahman's resistance could be broken by subjecting him to "deprivations" including sleep deprivation (one of Defendants' methods), and fatigue and constant interrogations to wear him down – as opposed to the more active methods, such as the "facial slap" method, which Defendant Jessen had used on Mr. Rahman.

72. Plaintiffs' Fact: (a) During the weeks Mr. Rahman spent in the CIA prison before his death, Rahman was mostly naked or wearing a diaper. Ladin Decl., Exh. MM at U.S. Bates 001291.

(b) Defendant Jessen admitted that Mr. Rahman's diaper and clothes were removed at the interrogators' direction. *Id.*

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Defendants' Response: Defendants object to this "fact" as compound. Defendants further respond that Plaintiffs mischaracterize the record.

(a) Not contested for purposes of Plaintiffs' Motion. Ladin Decl., Exh. MM at U.S. Bates 001291.

(b) Disputed. This information is not supported by US Bates 001291. Furthermore, the record indicates that CIA Officer, not Dr. Jessen, used Mr. Rahman's clothing "to try to manipulate and motivate Rahman." US Bates 001050.

Plaintiffs' Response: Response—No record dispute. Defendant Jessen specifically admitted that Mr. Rahman's "diaper and clothes would have been removed at the interrogators' direction." ECF No. 182-39 at U.S. Bates 001292. Plaintiffs inadvertently cite the wrong page of this record. *See also* ECF No. 182-36 at U.S. Bates 001052 ("Jessen stated that Rahman would have lost his clothes and diaper at our direction.").

73. Plaintiffs' Fact: (a) The diaper and nudity were used to humiliate Mr. Rahman, and had the intended effect: Mr. Rahman was "particularly concerned with being naked in front of . . . the guards," and "asked to be covered" during every interrogation. *Id.* at U.S. Bates 001293.

(b) This was in accord with Defendants' proposal that diapers be used to "leverage" a prisoner's being "very sensitive to situations that reflect a loss

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of status or are potentially humiliating." Ladin Decl., Exh. H at U.S. Bates 001110–11.

Defendants' Response: Defendants object to this "fact" as compound.

(a) Disputed. Plaintiffs mischaracterize US Bates 001293. The document does not discuss why CIA Staff Officer had Mr. Rahman naked. US Bates 001293 states only that "Rahman was particularly concerned with being naked in front of [REDACTED] the guards. Every time Rahman came to the interrogation room, he asked to be covered."

(b) Disputed. Plaintiffs present no evidence that CIA Staff Officer was aware of Defendants' proposals, which were specifically related to Zubaydah, in US Bates 001110-11 or that Mr. Rahman being in a diaper was related to Defendants' proposal. Also, Plaintiffs again mischaracterize US Bates 001110-11 which discusses the use of diapers specifically with Zubaydah who "spen[t] much time cleaning himself and seem[ed] to go out of his way to avoid circumstances likely to bring him in contact with potentially unclean objects or material. And who was "very sensitive to situations that reflect a loss of status or are potentially humiliating." Defendants therefore stated, as specific to Zubaydah, "One way to leverage his concerns, while helping ensure his wound doesn't become infected with human waste . . . is to place him in an adult diaper." Even if CIA Officer had knowledge of US Bates 001110-10, there is no evidence Rahman was similarly "fastidious" or that diapers were used in

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response to such fastidiousness. Ladin Decl., Exh. H at U.S. Bates 001110–11.

Plaintiffs' Response: Response—No record dispute. ECF No. 182-39 at U.S. Bates 001293, which speaks for itself, establishes that Mr. Rahman was humiliated by his nakedness during interrogation. That one of the intended effects of Defendants' diaper method was to humiliate a detainee during interrogation is undisputed, as is the fact that Defendants used diapers and nudity on Abu Zubaydah. *See also* Fact # 65.

74. Plaintiffs' Fact: According to Defendant Jessen, Mr. Rahman was subjected to consistent sleep deprivation for days, with Mr. Rahman "chained to the overhead bar in his cell," to induce "sleep deprivation right from the beginning." Ladin Decl., Exh. JJ at U.S. Bates 001049, 001051.

Defendants' Response: Disputed. Plaintiffs mischaracterize US Bates 001049 and 001051. The document states only that "Jessen stated that the use of sleep deprivation with Rahman started very early. The sleep deprivation was consistent for the first few days. He was chained to the overhead bar in his cell." The documents do not contain the second quoted excerpt. Ladin Decl., Exh. JJ at U.S. Bates 001049, 001051.

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Plaintiffs' Response: Response—No record dispute. Additionally, contrary to Defendants' response, the document contains the quoted excerpt: "Jessen stated that he thought that the sleep deprivation started right from the beginning." ECF No. 182-36 at U.S. Bates 001049.

75. Plaintiffs' Fact: According to Defendant Jessen, Mr. Rahman "was without clothes very early on in his incarceration," and "didn't have clothing more than he did have clothing." *Id.* at U.S. Bates 001050.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion.

76. Plaintiffs' Fact: Defendant Jessen observed other interrogators and guards using a "hard takedown" on Mr. Rahman: the renditions team dragged Mr. Rahman out of his cell, cut his clothes off, taped him, and put a hood over his head. They slapped him and punched him as they ran him up and down the long corridor adjacent to his cell. When Mr. Rahman stumbled, the team dragged him along the ground. Afterwards, Mr. Rahman had abrasions on his head and leg and crusty contusions on his face, leg, and hands. Defendant Jessen told a CIA interrogator at COBALT that he had not used the technique, but it was worth trying. Ladin Decl., Exh. JJ at U.S. Bates 1051. Defendant Jessen suggested to the CIA interrogator that if you do a hard takedown, you should "leverage that in some way" Ladin Decl., Exh. C, Jessen Dep. 197:12–198:7. Defendant Jessen said an interrogator should

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speak to the prisoner afterwards, to "give them something to think about." Ladin Decl., Exh. HH at U.S. Bates 001133.

Defendants' Response: Disputed to the extent that it implies Dr. Jessen approved of or otherwise ordered the hard takedown. The rough treatment/hard takedown was not one of the interrogation techniques in the July 2002 Memo. Dr. Jessen advised COBALT's COB that he should not use unauthorized techniques such as rough treatment/hard takedown. Dr. Jessen specifically told COBALT's COB that he did not use the hard takedown and that even if it was effective at dislocating Rahman's expectations, for that to be useful, Rahman would have to be interviewed after it was implemented instead of being placed back in his cell alone, which is what COBALT's COB had done with Rahman. Defs.' SOF ¶¶ 299-303.

Plaintiffs' Response: Response—No record dispute. Defendants admit that Defendant Jessen observed other interrogators and guards using a "hard takedown" on Mr. Rahman and that Defendant Jessen provided his comments on the procedure and how it might be better leveraged for interrogation purposes.

77. Plaintiffs' Fact: Defendant Jessen said the hard takedown was a "good technique, but these kinds of things need to be written down and codified

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with a stamp of approval or you're going to be liable." Ladin Decl., Exh. JJ at U.S. Bates 001049.

Defendants' Response: Disputed to the extent that it implies Dr. Jessen approved of or otherwise ordered the hard takedown. Dr. Jessen advised COBALT's COB that he should not use unauthorized techniques such as rough treatment/hard takedown. Defs.' SOF ¶¶299-300. Defendants do not contest for purposes of Plaintiffs' Motion that the underlying document is accurately quoted.

Plaintiffs' Response: Response—No record dispute.

78. Plaintiffs' Fact: After several days during which Mr. Rahman had been kept in a diaper, his hands chained to an overhead bar in accord with Defendants' sleep deprivation method, and after Defendant Jessen observed that Mr. Rahman displayed early signs of hypothermia, Defendant Jessen recommended that the CIA "continue the environmental deprivations [Mr. Rahman] is experiencing." Ladin Decl., Exh. NN at U.S. Bates 001057.

Defendants' Response: Disputed. After conducting a captivity assessment, Dr. Jessen recommended to "continue the environmental deprivations [Mr. Rahman] is experiencing" instead of enhanced interrogation techniques. US Bates 001057 does not indicate that Dr.

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Jessen's assessment occurred after Mr. Rahman had spent several days "kept in a diaper, his hands chained to an overhead bar in accord with Defendants' sleep deprivation method and after Defendant Jessen observed that Mr. Rahman displayed early signs of hypothermia." Ladin Decl., Exh. NN at U.S. Bates 001057.

Plaintiffs' Response: Response—No record dispute. In the cited cable recommending continued "environmental deprivations," which Defendant Jessen drafted, he acknowledged that he had already participated in six interrogations of Mr. Rahman. ECF No. 182-40 at U.S. Bates 001057. The record is clear that Defendant Jessen wrote this cable after he had observed both the early signs of hypothermia and the sleep deprivation of Mr. Rahman that started "from the beginning," *see* Fact #74. The record shows the chronology: a cold shower was used on Mr. Rahman during the first 48 hours of his captivity, as reflected in an earlier cable documenting that "despite 48 hours of sleep deprivation, auditory overload, total darkness, isolation, a cold shower, and rough treatment, Rahman remains steadfast." ECF No. 182-38 at U.S. Bates 001073. To the extent Defendants now attempt to dispute the chronology, CIA records confirm that Defendant Jessen's assessment occurred after the cold showers. *See* ECF No. 182-37 at U.S. Bates 001547–48 (confirming that cold showers occurred before Jessen's recommendation); OIG Report, ECF No. 195-11 at U.S. Bates 001305 ("Jessen, who was present at COBALT at the same

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time, recalled the guards administering a cold shower to Rahman as a 'deprivation technique.' Jessen subsequently checked on Rahman after he had been returned to his cell. Jessen detected that Rahman was showing the early stages of hypothermia and ordered the guards to give the detainee a blanket.").

79. Plaintiffs' Fact: (a) Defendant Jessen claimed that Mr. Rahman "continues to use 'health and welfare' behaviors and complaints as a major part of his resistance posture." Ladin Decl., Exh. II at U.S. Bates 001077

(b) Defendant Jessen explained that "health and welfare behavior" is "[a]ny complaint dealing with health and welfare," and gave as an example the complaint "I'm cold." Ladin Decl., Exh. C, Jessen Dep. 234:10–235:4.

(c) Defendant Jessen also identified as specific examples of Mr. Rahman's "sophisticated level of resistance training" that Mr. Rahman's "claimed inability to think due to conditions (cold)," that he "complained about poor treatment," and that he "complained about the violation of his human rights." Ladin Decl., Exh. LL at U.S. Bates 001073.

(d) Jessen stated that after he saw Mr. Rahman "showing the early stages of hypothermia," he "ordered the guards to give him a blanket." Ladin Decl., Exh. JJ at 1050.

Defendants' Response: Defendants object to this "fact" as compound.

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(a) Disputed. Dr. Jessen specifically testified that he did not recall ever assessing that Mr. Rahman used health and welfare behaviors as a resistance technique. Jessen Dep. 232:10-14. Furthermore, Dr. Jessen did not draft or review US Bates 001077 or any other cable at COBALT, and there is no evidence to support attributing the information to him. Jessen Dep. 143:2-13; Defs.' SOF ¶ 298.

(b) Not contested for purposes of Plaintiffs' Motion.

(c) Disputed. Dr. Jessen explained that he would assume "I'm cold" was a resistance technique if it was not cold. But, if it was cold, he would go get a doctor and ask them if it was too cold. Jessen Dep. at 234:22-235:14. Dr. Jessen specifically testified that he did not recall Mr. Rahman complaining about poor treatment or complaining about the violation of his human rights. Jessen Dep. 211:20-213:20. Furthermore, Dr. Jessen did not draft or review US Bates 001072-74 or any other cable at COBALT so the information contained within cannot be attributed to him. Jessen Dep. 143:2-13; Defs. SOF ¶ 298.

(d) Not contested for purposes of Plaintiffs' Motion.

Plaintiffs' Response to (a) & (c): Response—No record dispute. Defendant Jessen testified that he "didn't know" whether he made assessments of Mr. Rahman, and that he "could have, in fact, made those observations to the Chief of Base who then incorporated them in his cable." McGrady Decl., Exh. D, Jessen Dep. 209:11–16. This current

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testimony stating a lack of recall does nothing to undermine record evidence from much closer in time to Defendant Jessen's actions. Shortly after Mr. Rahman's death, Defendant Jessen in fact admitted that the cable "is pretty much what he recalls," and that he was the source of "many of the bullets that were used in the cable." ECF No. 182-36 at U.S. Bates 001049. Contemporaneous record evidence confirms that Defendant Jessen advised the CIA that Mr. Rahman "continues to use 'health and welfare' behaviors and complaints as a major part of his resistance posture," ECF No. 182-35 at U.S. Bates 001077, and that Defendant Jessen told a CIA investigator that Mr. Rahman "knew how to use physical problems or duress as a resistance tool." ECF No. 182-36 at U.S. Bates 001053. In addition, McGrady Decl., Exh. D, Jessen Dep. 143:2–13 concerns another cable sent in July 2002, not November 2002.

80. Plaintiffs' Fact: Four days after Defendant Jessen left COBALT, an interrogator conducted a brief question session with Mr. Rahman "based on Jessen's recommendation that Rahman be left alone and environmental deprivations continued." Ladin Decl., Exh. MM at U.S. Bates 001312.

Defendants' Response: Disputed. Dr. Jessen's recommendations had included "continue the environmental deprivations he is experiencing and institute a concentrated interrogation exposure regimen. This regimen would ideally consist of repeated and seemingly constant interrogations . .

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. . It will be important to manage the deprivations so as to allow the subject adequate rest and nourishment[.]" Ladin Decl., Exh. NN at U.S. Bates 001057–58. CIA Officer conducting one brief interrogation session four days later is not consistent with Dr. Jessen's recommendation that Mr. Rahman be subject to "repeated and seemingly constant interrogations." Ladin Decl., Exh. MM at U.S. Bates 001312.

Plaintiffs' Response: Response—No record dispute. The cited document speaks for itself.

81. Plaintiffs' Fact: Two days later, Mr. Rahman—deprived of food, sleep, clothing, and warmth died of hypothermia. *Id.* at U.S. Bates 001272–73.

Defendants' Response: Disputed. US Bates 001272-73 does not support the assertion that Mr. Rahman was deprived of food or sleep after Defendants departed COBALT. Ladin Decl., Exh. MM at U.S. Bates 001272-73. Not contested that six days after Defendants left COBALT, Mr. Rahman died of hypothermia. Ladin Decl., Exh. MM at U.S. Bates 001272-73.

Plaintiffs' Response: Response—No record dispute. Defendants do not dispute that Mr. Rahman was deprived of food, sleep, clothing, and

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warmth while they were at COBALT, nor that he died of hypothermia days after they left.

82. Plaintiffs' Fact: After Mr. Rahman's death, Defendant Jessen told an investigator that Mr. Rahman "knew how to use physical problems or duress as a resistance tool." Ladin Decl., Exh. JJ at U.S. Bates 001053.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion.

83. Plaintiffs' Fact: Defendant Jessen also told the investigator that "if a detainee is strong and resilient, you have to establish control in someway [sic] or you're not going to get anywhere. If bound by the Geneva Convention, this person would not break. You have to try different techniques to get him to open up. . . .You want to instill fear and despair." *Id.* at U.S. Bates 001050–51.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion.

84. Plaintiffs' Fact: Defendant Jessen reported that the atmosphere at COBALT "was excellent for the type of prisoners kept there—'nasty but safe,'" and that the CIA officer who had ordered that Mr. Rahman be chained during his final days, pantless, to a freezing concrete floor "was very level headed and acted in a measured manner." Defendant Jessen stated he would work with

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the CIA officer "anytime, anyday." Ladin Decl., Exh. HH at U.S. Bates 001124; Ladin Decl., Exh. JJ at U.S. Bates 001053.

Defendants' Response: Disputed. Plaintiffs mischaracterize the cited documents. Dr. Jessen described CIA Staff Officer as "very level headed and acted in a measured manner" and further stated that "he would work with [REDACTED] anytime, anyday [sic]" in reference to his experience with that officer prior to Mr. Rahman's death. The underlying documents do not discuss CIA Staff Officer ordering Mr. Rahman to be short chained, nor is there any indication that Dr. Jessen knew how Mr. Rahman died or that that CIA Staff Officer had ordered Mr. Rahman's short chained, ultimately causing Mr. Rahman's death. Ladin Decl., Exh. HH at U.S. Bates 001124; Ladin Decl., Exh. JJ at U.S. Bates 001053. Dr. Jessen left COBALT six days before Mr. Rahman's death. Ladin Decl., Exh. KK at 001549.

Plaintiffs' Response: Response—No record dispute. Defendant Jessen's statements to a CIA investigator examining the death of Mr. Rahman speak for themselves.

85. Plaintiffs' Fact: Mr. Salim was held at COBALT for two months, between March 2003 and May 2003. Salim Decl. ¶ 3.

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Defendants' Response: Not contested for purposes of Plaintiffs' Motion.

86. Plaintiffs' Fact: While he was held at COBALT, Mr. Salim was subjected to conditions that included deprivation of natural light and any ability to distinguish between day and night, continuous loud music and noise, isolation. Mr. Salim felt that he was "treated like I wasn't human, worse than an animal." Salim Decl. ¶ 6.

Defendants' Response: Defendants state that they played no role in determining the conditions under which Mr. Salim was held or the interrogation techniques employed while he was in CIA custody. Defs.' SOF ¶¶ 266-273. Not contested for purposes of Plaintiffs' Motion.

Plaintiffs' Response: Response—No record dispute.

87. Plaintiffs' Fact: Interrogators also subjected Mr. Salim to forced nudity, diapers, and sleep deprivation through shackling in a painful position that made it impossible to sleep. For about a week he was "chained[], naked except for a diaper, by [his] arms and legs to a rusty hoop that was attached to the wall, [his] arms outstretched and at eye level. The only position [he] could safely adopt was a squatting position that very quickly became uncomfortable and extremely painful. The excruciating stress position,

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together with the putrid smell and deafening noise, made it impossible for [him] to sleep." Salim Decl. ¶ 7.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion.

88. Plaintiffs' Fact: Mr. Salim was deprived of any "amenities," including clothing, a toilet, and any ability to keep himself clean. Salim Decl. ¶¶ 6, 9.

Defendants' Response: Disputed that clothing, toilet, and washing facilities were considered "amenities." Further disputed that Mr. Salim was always deprived of clothing, which he received when he was interrogated. Salim Decl. (ECF No. 181) ¶¶ 6, 9.

Plaintiffs' Response: Response—No record dispute. Mr. Salim states that he was deprived of clothing while he was held at COBALT, and not "always" deprived.

89. Plaintiffs' Fact: Forced nudity and use of diapers had the desired impact on Mr. Salim: "The forced nudity left [him] feeling vulnerable, helpless, and deeply humiliated." Salim Decl. ¶ 9.

Defendants' Response: Disputed. Plaintiffs offer no support for their characterization of the "desired impact" of forced nudity and diapers.

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Defendants do not contest the description of Mr. Salim's feelings. Salim Decl. ¶ 9.

Plaintiffs' Response: Response—No record dispute. *See also* Fact #66.

90. Plaintiffs' Fact: The "aggressive phase" of Mr. Salim's interrogation began about a week after his initial detention, once he was examined by someone he believed to be a doctor. Shortly after the examination, his torture increased in severity. Salim Decl. ¶ 8.

Defendants' Response: Disputed there was an "aggressive phase" of Mr. Salim's interrogation or that Mr. Salim was subject to "torture" because Plaintiffs offer nothing to support these statements. Defendants do not contest for purposes of Plaintiffs' Motion that Mr. Salim's interrogation began about a week after his initial detention, after he was examined by someone he believed to be a doctor, and that after the examination, interrogators increased his "ill-treatment" and "used a variety of abusive interrogation methods[.]" Salim Decl. ¶ 8.

Plaintiffs' Response: Response—No record dispute. Mr. Salim does not use the technical term "aggressive phase" or the word "torture" in his declaration, but instead provides evidence of his experience of both. "Aggressive phase" is a term used in CIA documents to describe the

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period when interrogators used Defendants' methods. *See e.g.*, ECF No. 182-13 at U.S. Bates 002019–23. Mr. Salim provides evidence about this period, which lasted for about four or five weeks. ECF No. 181 ¶¶ 8-16 (Salim Decl.). Mr. Salim also provides evidence of the severe physical and mental pain he suffered as a consequence of the methods inflicted on him, *i.e.* his torture. *Id*.

91. Plaintiffs' Fact: CIA records confirm that interrogators subjected Mr. Salim to "enhanced interrogation techniques" that included "nudity" and "sleep deprivation, water dousing, cramped confinement, facial slap, attention grasp, belly slap, and walling." Ladin Decl., Exh. PP at U.S. Bates 001567; Ladin Decl., Exh. QQ at U.S. Bates 001609.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion.

92. Plaintiffs' Fact: Mr. Salim was stuffed, while "naked, chained and shackled," inside "a small wooden box, measuring about three square feet." Once interrogators locked him in the pitch black, rancid-smelling box, he "vomited out of pain and fear." Interrogators locked him in the box only once, but used it repeatedly as a threat, stuffing him inside the box for short intervals without locking the door. "Even the threat of the small box filled [Mr. Salim] with dread." Salim Decl. ¶ 11.

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Defendants' Response: Not contested for purposes of Plaintiffs' Motion.

93. Plaintiffs' Fact: Interrogators subjected Mr. Salim to repeated walling, combined with the repeated use of the attention grasp, facial slap, and abdominal slap methods. They wrapped his neck in a cloth collar, pulled him towards them, then slammed him into a wooden wall over and over while assaulting him in the face and stomach, before interrogating him. "As the session continued, it became more and more painful," for Mr. Salim, inflicting physical pain, and "severe headache[s] and dizziness immediately after the session ended [and that] lasted for hours." Salim Decl. ¶ 12.

Defendants' Response: Disputed. Mr. Salim's declaration does not use the terms "walling," "attention grasp," "facial slap," or "abdominal slap." Salim Decl. ¶ 12. The terms "walling", "facial slap", and "attention grasp" had very specific meanings as described in the July 2002 Memo, and Mr. Salim describes actions that are different from the descriptions set forth in the July 2002 Memo. For instance, "walling" does not include being struck in the stomach and the "facial slap" was to be done in a specific way so as not to cause severe pain, but to induce shock. Furthermore, the "abdominal slap" was not included in the July 2002 Memo. US Bates 001109-1111.

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Plaintiffs' Response: Although Mr. Salim does not use the technical terms "walling," "attention grasp," "facial slap," or "abdominal slap," he provides evidence of his experience of these methods, and the severe physical and mental pain he suffered as a consequence. ECF No. 181 ¶ 12 (Salim Decl.). CIA records confirm that Mr. Salim was subjected to these methods, and identify them as "nudity" and "sleep deprivation, water dousing, cramped confinement, facial slap, attention grasp, belly slap, and walling." Fact # 91.

94. Plaintiffs' Fact: Shortly after the walling and physical assault session, interrogators subjected Mr. Salim to cramped confinement in a "tall, thin, coffin-like box." He was forced inside, and his hands were chained above his head in a painful position. He was left in darkness, with music blasting him, for two or three hours. After he was released from the box, he experienced a splitting headache, and his shoulders felt dislocated. Salim Decl. ¶ 13.

Defendants' Response: Disputed. Mr. Salim's declaration does not use the term "cramped confinement." Salim Decl. ¶ 13. "Cramped confinement," as described in the July 2002 Memo, is different from what Mr. Salim describes. Defendants, in their July 2002 Memo, described "cramped confinement" as being "placed in a confined space the dimensions of which restricts movement. The container is usually dark." Defendants did not suggest an individual should be chained to a metal rod

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in the box or that music should be blasted into the box. US Bates 001109-1111.

Plaintiffs' Response: Response—No record dispute. Although Mr. Salim does not use the technical term "cramped confinement," in his declaration he provides evidence of his experience of this method, and the severe physical and mental pain he suffered as a consequence. ECF No. 181 ¶¶ 11, 12 (Salim Decl.). CIA records confirm that Mr. Salim was subjected to this method. Plaintiffs' Fact # 91.

95. Plaintiffs' Fact: Interrogators subjected Mr. Salim to a prolonged period of sleep deprivation through forced standing in a painful position. His hands were chained above his head, and he was positioned so that his feet barely touched the floor. He was left to hang from his chains, naked, in the darkness, barraged with music played at ear-splitting levels for what seemed like four or five days. He was provided only sips of water, and remained standing with his arms chained above his head even when he had to relieve himself. He was taken down only for interrogation. Whenever he would drift into sleep, he "was immediately jolted awake from the excruciating pain that shot through [his] arms and shoulders as they momentarily supported [his] full body weight." Afterwards Mr. Salim suffered searing pain in his upper and lower back. His legs became swollen, a large cut had opened on his hand, and the cast covering his broken fingers began giving off a sickening

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smell. Mr. Salim received only limited medical treatment from a doctor or nurse for these years. Salim Decl. ¶ 15.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion.

96. Plaintiffs' Fact: Interrogators subjected Mr. Salim to various sessions in which he was subjected to "enhanced interrogation techniques" in combination without questioning, interspersed with sessions in which he was assaulted while interrogators demanded information. Salim Decl. ¶ 8.

Defendants' Response: Disputed. Mr. Salim's declaration does not use the term "enhanced interrogation techniques." Rather, it states only that after he was examined by a doctor, he was subjected to "a variety of abusive interrogation methods." Salim Decl. ¶ 8.

Plaintiffs' Response: Response—No record dispute. Mr. Salim does not use the technical term "enhanced interrogation techniques" in his declaration but provides evidence of his experience of these methods, and the severe physical and mental pain he suffered as a consequence. ECF No. 181 ¶¶ 8-16 (Salim Decl.). And CIA records confirm Mr. Salim was subjected to "enhanced interrogation techniques." Plaintiffs' Fact # 91.

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97. Plaintiffs' Fact: Interrogators also subjected Mr. Salim to water dousing that approximated the water board method. They stripped him naked and forced him to lie on a large plastic sheet, after which they repeatedly doused him with gallons of icy water. The water was so cold it stopped his breathing. In between dousings, he was subjected to slaps and other physical assault. During some of the later sessions, a hood was placed over Mr. Salim's head. When the hood was soaked, it clung to his face, causing to "choke and suffocate" and feel like he was drowning. After each 20-30 minute session, his interrogators "pulled up the corners of the freezing cold sheet and rolled [him] inside, leaving him "to shiver violently in the cold for about 10 or 15 minutes" before further interrogation. This procedure was repeated over and over for days. Salim Decl. ¶ 10.

Defendants' Response: Disputed. There is no evidentiary support for Plaintiffs' assertion that "water dousing" was similar to the "water board." The July 2002 Memo describes the water board as follows: "individuals are bound securely to an inclined bench. Initially a cloth is placed over the subject's forehead and eyes. As water is applied in a controlled manner, the cloth is slowly lowered until it also covers the mouth and nose. Once the cloth is saturated and completely covering the mouth and nose, subject would be exposed to 20 to 40 seconds of restricted airflow. Water is applied to keep the cloth saturated. After the 20 to 40 seconds of restricted airflow, the cloth is removed and the subject is allowed to breach

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unimpeded. After 3 or 4 full breaths, the procedure may be repeated. Water is usually applied from a canteen cup or small watering can with a spout." US Bates 001110-11. "Water dousing" on the other hand, as described by Mr. Salim, involved laying a detainee on a plastic sheet or towel and pouring water on the detainee from a container while the interrogator questions the detainee. Water is applied so as not to enter the nose or mouth and interrogators were not supposed to cover the detainee's face with a cloth. Water dousing was proposed by someone other than Drs. Mitchell and Jessen in March 2003. Defs.' SOF ¶ 265(b); Mitchell Dep. 374:19-375:2. Plaintiffs do not dispute that Mr. Salim was subjected to "water dousing" as described in Mr. Salim's declaration, but not waterboarding. Salim Decl. ¶ 10.

Plaintiffs' Response: Response—No record dispute. Plaintiffs do not contend that the procedures for water dousing and the waterboard were similar, but that the purpose and the physical and psychological effects of water dousing on Mr. Salim approximated those of Defendants' waterboard method. ECF No. 181 ¶ 10 (Salim Decl.) ("I felt like I was drowning").

98. Plaintiffs' Fact: Interrogators also strapped Mr. Salim to a water board and threatened to pour water directly into his mouth and nose. But instead they

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spun him around 360 degrees several times, until he was "dizzy, nauseous, and completely disoriented." Salim Decl. ¶ 14.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion.

99. Plaintiffs' Fact: The use of all these abuses, applied repeatedly and in combination produced in Mr. Salim "a constant state of terror." Salim Decl. 17.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion.

100. Plaintiffs' Fact: Mr. Salim also suffered severe physical and mental pain as a result of interrogators subjecting him to Defendants' methods. Salim Decl. ¶ 18; Deposition of Suleiman Abdullah Salim 162:3–12, 167:7–19, 168:24–169:14, 171:9–21 (Ladin Decl., Exh. OO, cited hereinafter as "Salim Dep.").

Defendants' Response: Disputed. Plaintiffs present no evidence that "Defendants' methods" were used on Mr. Salim. Defendants had no involvement with how detainees were treated at COBALT. Defs.' SOF ¶¶ 253-265. Defendants had no involvement with how detainees were treated at COBALT. Defs.' SOF ¶¶ 253-265. In fact, as stated above, the interrogation methods used on Mr. Salim differed from those proposed by

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Defendants. Plaintiffs' also mischaracterize Mr. Salim's testimony. Mr. Salim testified that his long term injuries include "dizziness," "pain in [his] arms," and "pains in [his] back and around [his] waist." Mr. Salim also claimed that he has an "eye problem" but admitted that no doctor ever told him his eye problem was related to his detention at COBALT. Furthermore, Mr. Salim does not categorize any of these injuries as "severe" and was unable to describe the level of pain he allegedly endured. Salim Dep. at 162:3-12, 167:7-19, 168:24-169:14, 171:9-21. Additionally, Mr. Salim admitted to experiencing flashbacks, but those flashbacks were not limited to his time at COBALT, but included his time at Bagram in military custody. Salim Dep. at 265:22-266:17.

Plaintiffs' Response: Response—Speculation about multiple programs. Response—No record dispute. CIA records confirm that Mr. Salim was subjected to Defendants' methods. Plaintiffs' Fact # 91. Although in the cited deposition testimony, Mr. Salim does not use the specific word "severe," he describes the abuse he suffered at COBALT, and its consequences, including PTSD symptoms (flashbacks). Deposition of Suleiman Abdullah Salim 265:22–266:17 (McGrady Decl., Exh. H). Mr. Salim's deposition testimony in no way undermines evidence provided by him in his declaration on the severity of his injuries, which describe the "excruciating physical and mental effects of [his] time in the Darkness and the interrogators' abusive treatment of [him]. My whole body still

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aches, my upper and lower back especially. I regularly suffer crippling flashbacks and nightmares. They're a constant reminder of that place and the terrible things that were done to me there." ECF No. 181 ¶ 18 (Salim Decl.).

101. Plaintiffs' Fact: Interrogators' repeated application of Defendants' methods broke Mr. Salim physically and mentally to the point that he attempted to take his own life by overdosing on painkillers that CIA medics had given to him and that he had stockpiled over the weeks of his confinement at COBALT. Salim Decl. ¶ 17.

Defendants' Response: Disputed. Plaintiffs present no evidence that "Defendants' methods" were used on Mr. Salim. Defendants had no involvement with how detainees were treated at COBALT. Defs.' SOF ¶¶ 253-265. In fact, as stated above, the interrogation methods used on Mr. Salim differed from those proposed by Defendants. Plaintiffs also misrepresent Mr. Salim's declaration. Mr. Salim states that as a result of the "interrogators' abusive methods and the inhumane conditions" he decided to end his life and he attempted to swallow painkillers that he had stockpiled. Mr. Salim does not connect Defendants to his treatment at COBALT nor does he claim that he was "broke[n] physically or mentally[.]" Salim Decl. ¶ 17.

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Plaintiffs' Response: Response—Speculation about multiple programs. Response—No record dispute. CIA records confirm Mr. Salim was subjected to Defendants' methods. Plaintiffs' Fact # 91. Contrary to Defendants' response, which completely mischaracterizes the record evidence, Mr. Salim draws a direct link between Defendants' methods, how they broke him physically and mentally, and his suicide attempt. ECF No. 181 ¶17 (Salim Decl.).

102. Plaintiffs' Fact: Interrogators stopped the "aggressive phase" of Mr. Salim's immediately after his unsuccessful suicide attempt and transferred him from the interrogation cell at COBALT to another CIA facility nearby. Ladin Decl., Exhibit OO, Salim Dep. 180:12–181:12.

Defendants' Response: Disputed. Mr. Salim testified only that he was at the other CIA facility, which he called "Salt Pit," for one year and some months. The testimony does not state there was an "aggressive phase" of Mr. Salim's interrogation nor does it state Mr. Salim was transferred to the "Salt Pit" immediately after he unsuccessfully attempted to commit suicide. Plaintiffs do not provide any other admissible evidence to support these statements. Salim Dep. 180:12-181:12.

Plaintiffs' Response: Response—No record dispute. As explained in Plaintiffs' Response to Fact #90, "aggressive phase" is a term used in CIA

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documents to describe the period when interrogators used Defendants' methods. *See e.g.*, ECF No. 182-13 at U.S. Bates 002019–23. Mr. Salim specifically explains that interrogators stopped using Defendants' methods after he attempted to commit suicide, and before he was transferred to another prison nearby. ECF No. 181 ¶ 17 (Salim Decl.).

103. Plaintiffs' Fact: Mr. Salim was detained by the CIA without charge or trial for another year and several months. Salim Decl. ¶ 17.

Defendants' Response: Disputed. Mr. Salim's declaration states only that he was transferred to another CIA prison nearby. Salim Decl. ¶ 17.

Plaintiffs' Response: Response—No record dispute. As Defendants admit in their response to Fact #102, Mr. Salim testified "that he was at the other CIA facility, which he called 'Salt Pit,' for one year and some months."

104. Plaintiffs' Fact: On June 9, 2004, the CIA transferred Mr. Salim from its custody to the custody of the U.S. Department of Defense at Bagram Air Force Base, where Mr. Salim was held without charge or trial, until August 2008. Ladin Decl., Exh. PP at U.S. Bates 001567; Ladin Decl., Exhibit OO, Salim Dep. 218:12–16.

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Defendants' Response: Not contested for purposes of Plaintiffs' Motion.

105. Plaintiffs' Fact: While he was detained at Bagram, the Department of Defense determined that Mr. Salim had not been involved in terrorist operations, and that there was no basis to detain him. Ladin Decl., Exh. RR at U.S. Bates 001529.

Defendants' Response: Disputed. US Bates 001529 states a "review led to the conclusion that although [Salim] was an associate of the conspirators, he was uniformly considered too addicted to drugs to be trusted with operations." US Bates 001529 does not support Plaintiffs' statements that the DoD determined he "had not been involved in terrorist operations" or that there had been "no basis to detain him." Ladin Decl., Exh. RR at U.S. Bates 001529.

Plaintiffs' Response: Response—No record dispute. The cited document concludes that Mr. Salim had not been involved with "operations" prior to his detention, and reclassifies him as an "NLEC"—a designation that requires that the prisoner be released. *See* ECF No. 121-2 at 000163.

106. Plaintiffs' Fact: In August 2008, the Department of Defense released Mr. Salim with a certification that he "has been determined to pose no threat to

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the United States Armed Forces or its interests in Afghanistan." Ladin Decl., Exh. SS.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion.

107. Plaintiffs' Fact: Mr. Ben Soud was held at COBALT for over a year, between April 2003 and April 2004. Ben Soud Decl. ¶ 3.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion.

108. Plaintiffs' Fact: At COBALT, Mr. Ben Soud was subjected to conditions that included deprivation of natural light and any ability to distinguish between day and night, continuous loud music and noise, isolation, and deprivation of amenities beyond a bucket for human waste. These "extremely harsh and debilitating" conditions caused him "severe mental anguish and distress." Ben Soud Decl. ¶ 6.

Defendants' Response: Defendants state that they played no role in determining the conditions under which Mr. Ben Soud was held or the interrogation techniques employed while he was in CIA custody. Defs.' SOF ¶¶ 274-282. Not contested for purposes of Plaintiffs' Motion.

Plaintiffs' Response: Response—Speculation about multiple programs.

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109. Plaintiffs' Fact: Mr. Ben Soud was deprived of sleep by being chained and shackled in painful positions. Guards chained him in three different stress positions, which caused him acute back and knee pain and exacerbated the pain in his broken left foot. Ben Soud Decl. ¶ 7. When Mr. Ben Soud could not be forced to stand because of his broken foot, guards would bang loudly on the door to his cell to keep him awake. Once the cast on his leg was removed, guards would unchain him and forcibly march him around the prison, naked, every half-hour throughout the night. Mr. Ben Soud found the experience "extremely humiliating and degrading," and "incredibly painful, especially in [his] foot, which had only recently healed." Ben Soud Decl. ¶ 8.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion

110. Plaintiffs' Fact: For the first two months at COBALT, Mr. Ben Soud was kept naked or in diapers. In May 2003, after the worst of his torture was over, interrogators finally provided Mr. Ben Soud with clothing for the first time. Ben Soud Decl. ¶ 11.

Defendants' Response: Disputed. Mr. Soud's declaration states only that Mr. Soud was kept naked until May 2003. The declaration does not indicate Mr. Soud was subject to "torture." Plaintiffs do not provide any

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other admissible evidence to support this additional statement. Ben Soud Decl. (ECF No. 180) ¶ 11.

Plaintiffs' Response: Response—No record dispute. In the cited declaration paragraph, Mr. Ben Soud states: "Until about the end of May 2003, I was kept naked or in diapers." Mr. Ben Soud states that he was held at COBALT from April 2003 to April 2004, ECF No. 180 ¶ 3 (Ben Soud Decl.), meaning he was kept naked or in diapers for the first two months at COBALT. Although Mr. Ben Soud does not use the word "torture," throughout his declaration he describes the physical and mental pain and suffering he suffered as a consequence of his abuse at COBALT. *Id.* ¶¶ 5, 6-19.

111. Plaintiffs' Fact: Deprivation of clothing and use of diapers had the desired impact on Mr. Ben Soud, who, as a devout man, found the forced nudity "especially humiliating and degrading," and felt "vulnerable and helpless." Ben Soud Decl. ¶ 11.

Defendants' Response: Disputed. Plaintiffs offer no admissible evidence to support their assertion as to the "desired impact" on Mr. Ben Soud. Ben Soud Decl. ¶ 11. Defendants do not contest the description of Mr. Salim's feelings. Ben Soud Decl. ¶ 11.

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Plaintiffs' Response: Response—No record dispute. *See also* Fact #66.

112. Plaintiffs' Fact: The "aggressive phase" of Mr. Ben Soud's interrogation began some two weeks after his initial detention at COBALT, after CIA interrogators had repeatedly asked him the same questions. Ben Soud Decl. ¶ 9, 10.

Defendants' Response: Disputed. Mr. Ben Soud's declaration states only that Mr. Ben Soud's interrogation increased in severity about two weeks after his initial detention at COBALT, after CIA interrogators had repeatedly asked him the same questions. The declaration does not indicate there was an "aggressive phase" of Mr. Ben Soud's interrogation. Plaintiffs do not provide any other admissible evidence to support this assertion. Ben Soud Decl. ¶¶ 9, 10.

Plaintiffs' Response: Response—No record dispute. Although Mr. Ben Soud does not use the technical term "aggressive phase" in his declaration, he provides evidence of his experience of it. "Aggressive phase" is a term used in CIA documents to describe the period when interrogators used Defendants' methods on a detainee. *See e.g.*, ECF No. 182-13 at U.S. Bates 002019–23. Mr. Ben Soud provides evidence of this period, which lasted for about five or six weeks when CIA interrogators

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used Defendants' methods on him. ECF No. 180 ¶¶ 10–19 (Ben Soud Decl.).

113. Plaintiffs' Fact: CIA records confirm that interrogators subjected Mr. Ben Soud to "enhanced interrogation techniques" that included "nudity, sleep deprivation, insult slap, abdominal slap, attention grasp, cramped confinement, water dousing, walling, stress positions," dietary manipulation, and "facial hold." Ladin Decl., Exh. PP at U.S. Bates 001581; Ladin Decl., Exh. QQ at U.S. Bates 001609.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion.

114. Plaintiffs' Fact: Interrogators subjected Mr. Ben Soud to repeated sessions of the walling method in combination with facial slap and abdominal slap methods over a four or five week-long period. The sessions followed a methodical procedure: an interrogator would place a foam collar around Mr. Ben Soud's neck, slap him firmly in the face and then the stomach, and then throw him repeatedly against a wooden wall. Each time he was smashed into the wall, the noise was "deafening and terrifying." The process would be repeated for 20 or 30 minute sessions, and was interspersed with questioning. The walling method and questioning were repeated over and over, "on a daily basis for many hours. As the sessions continued, they became increasingly painful. [Mr. Ben Soud] developed a severe headache and dizziness immediately after a session ended, which lasted for hours

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thereafter." As Mr. Ben Soud's interrogations became more aggressive, the sessions increased in ferocity resulting in "more acute pain in [his] body, headaches and dizziness." Ben Soud Decl. ¶ 12.

Defendants' Response: Disputed. Mr. Ben Soud's declaration does not use the terms "walling," "facial slap," or "abdominal slap." Terms "walling," "facial slap," or "abdominal slap" had very specific meanings described in the July 2002 Memo, and Mr. Ben Soud describes actions that are different from the descriptions for the EITs in the July 2002 Memo. For instance, "walling" does not include being struck in the stomach and the "facial slap" was to be done in a specific way so as not to cause severe pain, but to induce shock. Furthermore, the "abdominal slap" was not included in the July 2002 Memo. US Bates 001109-1111.

Plaintiffs' Response: Response—No record dispute. Although Mr. Ben Soud does not use the technical terms "walling," "attention grasp," "facial slap," or "abdominal slap," he provides evidence of his experience of these methods, and the severe physical and mental pain he suffered as a consequence. ECF No. 180 ¶ 12 (Ben Soud Decl.). CIA records confirm that Mr. Ben Soud was subjected to these methods. Plaintiffs' Fact # 113.

115. Plaintiffs' Fact: Interrogators subjected Mr. Ben Soud to cramped confinement in a tall thin wooden box, with his arms chained over his head

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and loud music blasting in his ears. Ben Soud Decl. ¶ 15. Interrogators also subjected Mr. Ben Soud to cramped confinement in a significantly smaller box, measuring approximately 3 ft by 3 ft. He was locked inside for roughly forty-five minutes, and experienced physical and mental pain, including "acute lower back pain," severe leg pain—particularly in the leg with the broken foot, and in his knees, neck, and elbows. He was filled with dread when interrogators would later repeatedly threaten to stuff him back inside the box. Ben Soud Decl. ¶ 16.

Defendants' Response: Disputed. Mr. Ben Soud's declaration does not use the term "cramped confinement." The "Cramped confinement" as described in the July 2002 Memo is different from what Mr. Ben Soud experienced. Defendants, in the July 2002 Memo, described "cramped confinement" as being "placed in a confined space the dimensions of which restricts movement. The container is usually dark." Defendants did not suggest an individual should be chained to a metal rod in the box or that music should be blasted into the box. US Bates 001109-1111.

Plaintiffs' Response: Response—No record dispute. Although Mr. Ben Soud does not use the technical term "cramped confinement," he provides evidence of his experience of this method, and the severe physical and mental pain he suffered as a consequence. ECF No. 180 ¶¶ 15, 16 (Ben

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Soud Decl.). CIA records confirm that Mr. Ben Soud was subjected to this method. Plaintiffs' Fact # 113.

116. Plaintiffs' Fact: Towards the end of the "aggressive phase" of Mr. Ben Soud's interrogation, interrogators subjected Mr. Ben Soud to a new sleep deprivation method, involving a painful standing stress position. For roughly 36 hours he was hung by the arms from a metal rod, naked and positioned so that the balls of his feet (one of which was broken) barely touched the ground. Although the room was pitch-black it was impossible to fall asleep, and loud music was blasted for the duration of his time in the sleep deprivation cell. "After a very short time, alone in that room and unable to sleep, [Mr. Ben Soud] began to hallucinate and slowly became hysterical." Once he was released, he was unable to walk and guards had to carry him to an examination room for treatment. His legs "had become engorged and swollen with fluid," in particular the leg that had been broken. "Both limbs were excruciatingly painful," as were his arms and back. The pain lasted for many days, and remains with him. Ben Soud Decl. ¶ 17.

Defendants' Response: Disputed that Mr. Ben Soud's declaration states there was an "aggressive phase" of Mr. Ben Soud's interrogation. Ben Soud Decl. ¶ 17. Further disputed that the pain Mr. Ben Soud experiences has remained the same, when Mr. Ben Soud testified that the pain he feels in his back has lessened over time. Soud Dep. at 250:11-252:1.

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Plaintiffs' Response: Response—No record dispute. "Aggressive phase" is a technical term used in CIA documents to describe the period when interrogators used Defendants' methods. *See e.g*. ECF No. 182-13 at U.S. Bates 002019–23. Mr. Ben Soud provides evidence of this period, which lasted for about five or six weeks. ECF No. 180 ¶¶ 8–16, (Ben Soud Decl.). Defendants do not dispute that Mr. Ben Soud's pain lasted several days, that it was severe, or that it remains; Mr. Ben Soud has said it has lessened.

117. Plaintiffs' Fact: During the "aggressive phase," interrogators subjected Mr. Ben Soud to additional coercive methods, including water dousing and another approximation of waterboarding. During the water dousing sessions, guards would force him, naked, onto a large plastic sheet, which they pulled up to form a shallow basin. They doused him with buckets of cold water until he was partially submerged. The water was so cold that it was physically painful, and he shivered violently. The sessions lasted about half an hour to forty minutes, sometimes longer, and were interspersed with interrogations where Mr. Ben Soud, naked and shivering, was questioned. After about two weeks, the method's intensity was increased by placing a hood over Mr. Ben Soud's head prior to pouring the water. The addition of the hood caused him to feel like he was drowning. Mr. Ben Soud was subjected to this water treatment multiple times a day for four or five weeks. Ben Soud Decl. ¶13.

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Defendants' Response: Disputed. There is no evidentiary support for Plaintiffs' assertion that "water dousing" was similar to the "waterboard". Defendants' July 2002 Memo describes the water board as follows: "individuals are bound securely to an inclined bench. Initially a cloth is placed over the subject's forehead and eyes. As water is applied in a controlled manner, the cloth is slowly lowered until it also covers the mouth and nose. Once the cloth is saturated and completely covering the mouth and nose, subject would be exposed to 20 to 40 seconds of restricted airflow. Water is applied to keep the cloth saturated. After the 20 to 40 seconds of restricted airflow, the cloth is removed and the subject is allowed to breach unimpeded. After 3 or 4 full breaths, the procedure may be repeated. Water is usually applied from a canteen cup or small watering can with a spout." US Bates 001110-11. "Water dousing" on the other hand, as described by Mr. Ben Soud, was when a detainee is laid down on a plastic sheet or towel and water is poured on the detainee from a container while the interrogator questions the detainee. Water is applied so as not to enter the nose or mouth and interrogators were not supposed to cover the detainee's face with a cloth. Water dousing was proposed by someone other than Drs. Mitchell and Jessen in March 2003. Defs.' SOF ¶ 265(b); Mitchell Dep. 374:19-375:2. Furthermore, Mr. Ben Soud's declaration does not indicate there was an "aggressive phase" of his interrogation and Plaintiffs do not provide any other admissible evidence to support this additional statement. Defendants do not dispute that Mr.

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Ben Soud was subject to "water dousing" as described in Mr. Ben Soud's declaration. Ben Soud Decl. ¶ 13.

Plaintiffs' Response: Plaintiffs do not contend that the procedures for water dousing and the waterboard were similar, but that the purpose and the physical and psychological effects of water dousing on Mr. Ben Soud approximated those of Defendants' waterboard method. ECF No. 180 ¶ 13 (Ben Soud Decl.) ("I felt like I was drowning."). Although Mr. Ben Soud does not use the technical term "aggressive phase," he describes being subjected to Defendants' methods, a process the CIA (and the interrogation team of which Defendants were members) labelled as the "aggressive phase." *See* ECF No. 182-13 at U.S. Bates 002019–23.

118. Plaintiffs' Fact: Mr. Ben Soud was also strapped to a waterboard with a hood placed over his head. He was then spun around, and buckets of cold water were poured over him while his feet were elevated. The water ran into his mouth and up his nose, causing him to feel like he was drowning as he choked and struggled for breath. "Although interrogators did not pour water directly over [his] mouth and nose, they threatened to do so if [he] didn't cooperate." The threat terrified him. Ben Soud Decl. ¶ 14.

Defendants' Response: Disputed to the extent Plaintiffs' claim this constituted waterboarding, which had a specific meaning as set forth in

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the July 2002 Memo. US Bates 001109-11. Furthermore, Plaintiffs admit that what Mr. Ben Soud was subject to was not an authorized technique. Mr. Soud's Response to Jessen's RFA at No. 7.

Plaintiffs' Response: Plaintiffs do not claim that the procedure described by Mr. Ben Soud "constituted waterboarding," or was "authorized."

119. Plaintiffs' Fact: Interrogators subjected Mr. Ben Soud to various sessions in which he was subjected to "enhanced interrogation techniques" in combination, interspersed with interrogation sessions when he would be assaulted while interrogators demanded information. During these sessions, the combined physical assaults (consisting of repeated uses of the attention grasp, facial hold, facial slap, and abdominal slap methods) caused him "acute pain" which lasted for hours after the interrogations. Ben Soud Decl. ¶18.

Defendants' Response: Disputed. Mr. Ben Soud's declaration does not use the term "enhanced interrogation techniques," "walling," "facial hold," "facial slap," or "abdominal slap." In fact, it does not even use the term "assault." Rather, it states that Mr. Ben Soud was subject to repeated beatings, which caused him "acute pain." Salim Decl. ¶ 18. Defendants further respond that the July 2002 Memo did not propose beatings, nor is it apparent from Mr. Ben Soud's description whether any of the treatment

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described is consistent with Defendants' suggestions. US Bates 001109-11.

Plaintiffs' Response: Response—No record dispute. Mr. Ben Soud did not use the technical terms in his declaration but describes his personal experience of Defendants' methods as applied to him, and their consequences. CIA records confirm that interrogators subjected Mr. Ben Soud to "enhanced interrogation techniques" that included "insult slap," "abdominal slap," "attention grasp," "walling," and "facial hold." Fact #113.

120. Plaintiffs' Fact: Interrogators stopped the aggressive phase of Mr. Ben Soud's torture about five or six weeks after they had started it. Ben Soud Decl. ¶ 5, 19.

Defendants' Response: Disputed. Mr. Ben Soud's declaration does not indicate there was an "aggressive phase" of his interrogation, nor does it claim Mr. Ben Soud was "tortured." Plaintiffs do not provide any other admissible evidence to support these statements. Defendants do not dispute that Mr. Ben Soud's interrogation lessened around the end of May 2003. Ben Soud Decl. ¶¶ 5, 19.

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Plaintiffs' Response: Response—No record dispute. Mr. Ben Soud does not use the technical term "aggressive phase" or the word "torture" in his declaration. Instead Mr. Ben Soud describes his experience of both. "Aggressive phase" is a term used in CIA documents to describe the period when interrogators used Defendants' methods on a detainee. *See e.g.*, ECF No. 182-13 at U.S. Bates 002019–23. Mr. Ben Soud provides evidence of the abuse he suffered during this period, which lasted for about five or six weeks, ECF No. 180 ¶¶ 5–19 (Ben Soud Decl.). Mr. Ben Soud also provides evidence of the severe physical and mental pain he suffered as a consequence, i.e., his torture. *Id.*

121. Plaintiffs' Fact: Mr. Ben Soud suffered severe mental and physical pain as a result of the combination of abuses he was subjected to, in combination with the humiliating and degrading conditions of his confinement. He felt "completely hopeless and helpless," and experienced "a constant state of terror, apprehension and dread," which began to let up only "once interrogators stopped using some of the worst of their interrogation methods, around the end of May, 2003." Ben Soud Decl. ¶ 19.

Defendants' Response: Not contested for purposes of Plaintiffs' Motion.

122. Plaintiffs' Fact: Mr. Ben Soud was detained by the CIA until August 2004, when the CIA transferred Mr. Ben Soud to the custody of the Qaddafi

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dictatorship in Libya. Mr. Ben Soud was imprisoned by the Qaddafi regime for his membership in a group opposed to the dictatorship, and remained in prison until Qaddafi's overthrow in January 2011. Deposition of Mohamed Ahmed Ben Soud 225:17–226:7, 228:4–16, 238:16–23 (Ladin Decl., Exh. TT). Mr. Ben Soud never fought against the United States. Ben Soud Decl. 20.

Defendants' Response: Defendants' object to this "fact" as compound. (a) Not contested for purposes of Plaintiffs' Motion that Mr. Ben Soud was detained by the CIA until August 2004. Defendants object to the remainder of this asserted fact as irrelevant to the resolution of the issues presented in Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402).

(b) Through his dealings with the Libyan Islamic Fighting Group ("*LIFG*"), Mr. Ben Soud had meetings with Abu Faraj al-Libi, who Mr. Ben Soud knew was a member of Al-Qa'ida. After September 11, 2001, members of LIFG started cooperating with Al-Qa'ida. Defs.' SOF ¶¶ 275-76.

Plaintiffs' Response: Response—No record dispute. Response to (b)—irrelevant.

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123. Plaintiffs' Fact: After Qaddafi was killed in 2011, President Obama announced that "the dark shadow of tyranny has been lifted" from Libya. Remarks by the President on the Death of Muammar Qaddafi, Oct. 20, 2011. https://obamawhitehouse.archives.gov/the-press-office/2011/10/20/remarks-president-death-muammar-qaddafi (Ladin Decl., Exh. UU).

Defendants' Response: Defendants object to this "fact" as irrelevant to the resolution of the issues presented in Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402).

124. Plaintiffs' Fact: As the years progressed, Defendants remained "involved in the selection and development of interrogation and exploitation techniques" and were "instrumental in training and mentoring other CIA interrogators and debriefers." Ladin Decl., Exh. VV at U.S. Bates 001585–86.

Defendants' Response: Disputed as related to Plaintiffs. The CIA conducted training in "High-Value Target" interrogation techniques in late 2002. The training was designed, developed, and conducted by individuals from CTC other than Drs. Mitchell and Jessen, and Drs. Mitchell and Jessen played no role in the interrogation training. Individuals from JPRA were instructors at this training. Defs.' SOF ¶ 226. Dr. Mitchell testified that he was not involved in training or mentoring

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until after 2005. Mitchell Dep. 343:6-344:11. Defendants further object to this "fact" as irrelevant to the resolution of the issues presented in Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402) because as of August 2004, Plaintiffs were not in CIA custody. Defs.' SOF ¶¶ 273, 277-78, 324.

Plaintiffs' Response: Response—No record dispute. Defendants themselves argued that the post-2004 contract cited here is relevant, *see* 2:16-mc-00036-JLQ, ECF No. 32 at 9–10, and the Court ordered its production, *see* 2:16-mc-00036-JLQ, ECF No. 47 at 6–8. Defendant Mitchell's cited testimony does not establish that Defendant Jessen was not involved in training or mentoring interrogators prior to 2005.

125. Plaintiffs' Fact: Defendants formed Mitchell, Jessen & Associates to meet the "growing demand for expert consultation, operational interrogation and exploitation capabilities" in the CIA program. *Id.* at U.S. Bates 001586. Defendants' company acquired a "sole source contract to support CTC's rendition, detention, and interrogation program." Ladin Decl., Exh. WW at U.S. Bates 001629. Mitchell, Jessen & Associates contracted with the CIA to continue providing "professional services by Drs. Mitchell and Jessen." Ladin Decl., Exh. XX at U.S. Bates 001906. Defendants submitted a technical proposal for their company, claiming they would respond to a need "to continue developing and refining the program," as "an outside source of

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professional expertise in the area of human exploitation, interrogation, debriefing, and the management of detainees in ways that facilitate intelligence collection." Ladin Decl., Exh. VV at U.S. Bates 001585.

Defendants' Response: Not disputed for purposes of Plaintiffs' Motion, but Defendants object to these facts as irrelevant to the resolution of the issues presented in Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402) because when Mitchell, Jessen & Associates ("MJA") was formed in 2005, Plaintiffs were no longer in CIA custody. Defs.' SOF ¶¶ 273, 277-78, 324, 336.

Plaintiffs' Response: Defendants consistently argue that their involvement in the CIA program was limited to providing a list of methods in 2002. Evidence of their subsequent pervasive involvement in and profit from the program is relevant to the knowledge and intent elements of Plaintiffs' claims and Defendants' liability for those claims.

126. Plaintiffs' Fact: In 2006, Defendants spent several days considering refinements to their list of methods, and decided that "nudity, slaps, facial holds, dietary manipulation, and cramped confinement," were, in fact, "completely unnecessary." Defendants believed walling and sleep deprivation were essential. They briefed their "recommendations to the mid-

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level CIA officers who were working the issue for CIA leadership." Ladin Decl., Exh. E at MJ00022862

Defendants' Response: Not disputed for purposes of Plaintiffs' Motion, but Defendants object as irrelevant to the resolution of the issues presented in Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402) because as of August 2004, Plaintiffs were no longer in CIA custody. Defs.' SOF ¶¶ 273, 277-78, 324.

Plaintiffs' Response: Defendants' refinement of their methods, and their conclusion that certain of the methods were "completely unnecessary," is relevant to Defendants' lack of qualification to devise an interrogation program in the first place, the experimental nature of Defendants' methods, and the pure brutality of what Plaintiffs endured as a result.

127. Plaintiffs' Fact: In 2007, Secretary of State Condoleezza Rice wanted a personal briefing on the program from its original architects. Defendants, accompanied by John Rizzo, met with the Secretary. Ladin Decl., Exh. EE, Rizzo Dep. 68:14¬69:8. During the discussion of sleep deprivation, the Secretary of State expressed concern that Defendants' method—which involved shackling a prisoner's hands to an overhead tether—evoked an image similar to the prisoner abuse scandal that had taken place at Abu Ghraib. Ladin Decl., Exh. YY at U.S. Bates 001175–76. Defendants

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"indicated the possibility of devising alternative methods to deprive sleep," and resolved to "work on alternative methods for implementing sleep deprivation EIT and propose courses of action." *Id.* at U.S. Bates 001176–77.

Defendants' Response: Defendants object to this "fact" as compound. Defendants further object to this fact as irrelevant to the resolution of the issues presented in Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402) because as of August 2004, Plaintiffs were no longer in CIA custody. Defs.' SOF ¶¶ 273, 277-78, 324.

Defendants do not dispute that Defendants met with Secretary of State Condoleezza Rice and John Rizzo as set out in US Bates 001175-76 and that Mr. Rizzo referenced Defendants as "the original architects of the program."

Disputed that there was one overarching CIA interrogation program, and specifically that the interrogation methods posed by the Defendants were the basis of interrogation for any Plaintiff. The interrogation methods proposed by Defendants became the basis only for the CIA's interrogation of Zubaydah and later the CIA's HVD Program. Rodriguez Dep. 183:22-184:25; 186:17-20; Defs.' SOF ¶¶ 209-11.

Plaintiffs' Response: Response—Speculation about multiple programs. Further, the fact that both John Rizzo and Secretary Rice considered Defendants the "original architects" of the program is relevant to

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Plaintiffs' claim of causation. In addition, the fact that Defendants were tasked with devising new methods further supports that Defendants played a central role in designing the CIA program.

128. Plaintiffs' Fact: Defendants played additional leading roles in the program, including "provid[ing] high-level briefings to the 7th floor," i.e., to CIA's top management, as well as the production of papers evaluating and justifying the use of "coercive physical pressures" as part of interrogation. Ladin Decl., Exh. ZZ at U.S. Bates 001909; Ladin Decl., Exh. AAA at U.S. Bates 002285–2291.

Defendants' Response: Defendants object to this "fact" as irrelevant to the resolution of the issues presented in Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402) because US Bates 001909 discusses the actions of MJA, which was formed in 2005 and US Bates 002285-91 was drafted in February 2005. Ladin Decl., Exh. ZZ at U.S. Bates 001909; Ladin Decl., Exh. AAA at U.S. Bates 002285-91. As of August 2004, Plaintiffs were no longer in CIA custody. Defs.' SOF ¶¶ 273, 277-78, 324.

Disputed. Plaintiffs mischaracterize US Bates 002285-91, which is a paper titled "Interrogation and Coercive Physical Pressures: A Quick Overview." This document explains some pros and cons to applying "legal and approved coercive interrogation techniques" on "high value

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detainees[.]" In this paper, Defendants again reiterated that if interrogation techniques were applied improperly, it could induce a "severe sense of hopelessness" that would undermine efforts to obtain intelligence. Ladin Decl., Exh. AAA at U.S. Bates 002285–2291

Disputed that there was one overarching CIA interrogation program, and specifically that the interrogation methods posed by the Defendants were the basis of interrogation for any Plaintiff. The interrogation methods proposed by Defendants became the basis only for the CIA's interrogation of Zubaydah and later the CIA's HVD Program. Rodriguez Dep. 183:22-184:25; 186:17-20; Defs.' SOF ¶¶ 209-11.

Plaintiffs also mischaracterize US Bates 001909. The document does not state that "Defendants played additional leading roles in the program", but outlines the areas in which the CIA contracted with MJA. As discussed earlier, Defendants were involved only in the CIA's HVD Program, and specifically were not involved with the interrogation for Plaintiffs Salim and Ben Soud. Ladin Decl., Exh. ZZ at U.S. Bates 001909; *see* Defs.' Resp. Pls.' SOF ¶ 54.

Plaintiffs' Response: Response—No record dispute. Response—Speculation about multiple programs. This fact is relevant because it shows that Defendants had a central role in devising, refining, and

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justifying the CIA program. It also confirms Plaintiffs' theory of causation, and refutes Defendants' claims that their involvement in the CIA program was limited to proposing methods in 2002. As to the remainder of Defendants' objections, Plaintiffs do not mischaracterize the documents, which speak for themselves.

129. Plaintiffs' Fact: Defendants were personally paid millions of dollars by the CIA as independent contractors for "research and development as well as operational services." Ladin Decl., Exh. XX at U.S. Bates 001906.

Defendants' Response: Defendants object to these "facts" as irrelevant to the resolution of the issues presented in Plaintiffs' Motion (Fed. R. Civ. P. 56(e)(1); Fed. R. Evid. 401, 402). Disputed that Defendants were individually paid millions of dollars. From 2001-05, Dr. Mitchell was paid $1,459,601.43 as an independent contractor to the CIA. From 2002-05, Dr. Jessen was paid $1,204,550.42 as an independent contractor to the CIA. Ladin Decl., Exh. XX at U.S. Bates 001906.

Plaintiffs' Response: Response—No record dispute. Defendants were paid, as Plaintiffs stated, nearly three million dollars before they began profiting through Mitchell Jessen and Associates. This constitutes "millions of dollars." This fact is also relevant to the intent element of

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Plaintiffs' claims and confirms Defendants' intent to aid and abet the CIA program.

130. Plaintiffs' Fact: After the program was investigated by the Senate Select Committee on Intelligence, the CIA agreed with the Committee's conclusion that the CIA "allowed a conflict of interest to exist wherein the contractors who helped design and employ the enhanced interrogation techniques were also involved in assessing the fitness of detainees to be subjected to such techniques and the effectiveness of those same techniques." Ladin Decl., Exh. BBB, CIA Response at 10; Ladin Decl., Exh. B, Rodriguez Dep. 133:2–20.

Defendants' Response: Disputed. As discussed above, there was not one overarching CIA interrogation program and Defendants were involved only with the CIA's HVD Program and not with interrogation of Plaintiffs Salim and Ben Soud. *See* Defs.' Resp. Pls.' SOF ¶ 54. Additionally, the CIA did not "agree" with the Committee's conclusion. Rather the CIA responded to the Committee's conclusion by stating, that the Committee's Report "correctly points out that the propriety of the multiple roles performed by contracted psychologists—particularly their involvement in performing interrogations as well as assessing the detainees' fitness and the effectiveness of the very techniques they had devised—raised concerns and prompted deliberation within CIA, but it fails to note that at

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least some of these concerns were addressed" in early 2003. Ladin Decl., Exh. BBB, CIA Response at 10. Further, objected to as irrelevant to the resolution of the issues presented in Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402).

Plaintiffs' Response: Response—Speculation about multiple programs. Response—No record dispute. The CIA's statement speaks for itself and is accurately quoted. In addition, this fact is relevant to Defendants' intent in promoting and advocating for the use of their methods on CIA prisoners, which resulted in the expansion of those methods from use on the CIA's first prisoner, Abu Zubaydah, to Plaintiffs.

131. Plaintiffs' Fact: Until the CIA program was shuttered and Defendants' contract was terminated in 2009, Mitchell, Jessen, and Associates received $81 million in taxpayer money. ECF No. 77 ¶ 68; Ladin Decl., Exh. BBB, CIA Response at 11, 49.

Defendants' Response: Defendants object to this "fact" as irrelevant to the resolution of the issues presented in Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402) because MJA was not formed until 2005, after Plaintiffs were released from C. Defs.' SOF ¶¶ 273, 277-78, 324. Disputed. As discussed above, there was not one overarching CIA interrogation program and Defendants were involved only with the CIA's

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HVD Program and not with the interrogations of Plaintiffs Salim and Ben Soud. *See* Defs.' Resp. Pls.' SOF ¶ 54. From 2005 through 2009, MJA was paid approximately $72 million. Dr. Mitchell's profit percentage from MJA was in the "small single digits." Defs.' SOF ¶ 336-37.

Plaintiffs' Response: Response—Speculation about multiple programs. Response—No record dispute. Defendants themselves admitted that their company was paid $81 million. Am. Answer, ECF No. 77 ¶ 68. The document Defendants cite is earlier in time and apparently does not reflect the amount Defendants' company was paid before the contract ended. In any event, whether Defendants' company was paid $72 or $81 million, the fact that it earned such a large amount is relevant to show both Defendants' central role in the CIA program as well as their intent and motivation to promote, advance, and justify their methods and the resulting CIA program.

DATED: June 26, 2017 By: *s/ Dror Ladin*

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of June, 2017, I caused to be electronically filed and served the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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