UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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) C.A. No.
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COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, for injunctive and other appropriate relief which seeks the disclosure and release of agency records improperly withheld from plaintiff by defendant U.S. Department of Justice (DOJ). This is a proceeding in equity.

Jurisdiction and Venue

- 2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the defendant pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).
 - 3. Plaintiff Martin Garvey is an adult citizen of the State of New Jersey.
- 4. Defendant DOJ is a Department within the Executive Branch of the United States Government.

Relevant Background

- 5. On January 29, 2008, Federal Grand Jury No. 07-703, S.D. Fla., indicted Michael Lauer, Martin Garvey, Milton Barbarosh, Laurence Isaacson, and Eric Hauser for stock fraud. *United States v. Lauer et al.*, No.08-20071-Cr.-AJ, S.D.Fla.
- 6. The district court ordered the proceedings and trial of Garvey and Lauer severed from those of their codefendants.
- 7. In subsequent and separate trials Lauer and Garvey were acquitted in 2011 and Isaacson was convicted. Isaacson's conviction is presently on appeal in the United States Court of Appeals for the Eleventh Circuit.
- 8. The Government concealed the existence of certain relevant and important documents that are the subject of this FOIA action.
- 9. The disclosure of the alleged conflict of interest and the alleged investigation of the conflict did not take place until after the acquittal of Lauer and Garvey.

FOIA Request

- 10. Garvey seeks copies of four documents in this action:
- a. The signed and unredacted indictment in *United States v. Lauer et al.*, No.08-20071-Cr.-AJ, S.D.Fla., filed by Grand Jury No. 07-703, S.D. Fla.
 - b. The document reflecting or revealing the vote of the grand jurors in \P 9(a).
- c. The request for a formal ethics opinion by the Assistant United States

 Attorney assigned to *United States v. Lauer, supra*, Harold Schimkat, to the General Counsel at the Executive Office for United States Attorneys (or other person) referenced in DE 1223 in *United States v. Lauer, supra*. The request for the ethics opinion related to conflicts of interest arising out of the employment of Mr. Schimkat's spouse at the law firm of Carlton Fields.

d. The actual ethics opinion issued by the General Counsel at the Executive Office for United States Attorneys (or other person) identified in ¶9(c).

Plaintiff's FOIA Request and Defendant's Failure to Comply Timely

- 10. On September 20 & 24, 2013, plaintiff filed two FOIA requests with Executive Form DOJ-361, to Ms. Susan Gerson, Assistant Director, Executive Office for United States Attorneys, Freedom of Information & Privacy Staff, 600 E Street, N.W., Suite 7300, Washington, DC 20530-0002, for the four documents described above. Plaintiff offered to pay the reasonable expenses of providing the documents requested.
- 11. On October 22, 2013, defendant confirmed receipt of the two requests as No. 13-3567 and No. 13-3568.
- 12. When more than twenty working days passed without a responsive answer, plaintiff mailed a follow-up letter dated December 3, 2013 to the above-described person and address pointing out the department's delinquency.
- 13. When more than twenty additional working days passed without a responsive answer, plaintiff sent a third letter on January 6, 2014, once again pointing out the department's delinquency. More than twenty working days have transpired since plaintiff's third letter.
- 14. The DOJ has not refused the request for the documents plaintiff requests, has not requested further information from plaintiff, has not provided the documents plaintiff requests, and has not provided a date certain when it will decide whether or not to provide the documents plaintiff requests, notwithstanding the FOIA's requirement of an agency or department response within twenty working days, and plaintiff's efforts.

- 15. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request.
 - 16. The DOJ has wrongfully withheld the requested records from plaintiff.

Requested Relief

WHEREFORE, plaintiff prays that this Court:

- A. Order defendant to produce the requested records in their entireties and make legible and unredacted copies available to plaintiff or, if the documents do not exist, so state;
 - B. Provide for expedited proceedings in this action;
- C. Award plaintiff his costs and reasonable attorneys' fees incurred in this action; and
 - D. Grant such other relief as this Court may deem just and proper.

Respectfully submitted

DAVID M. DORSEN D.C. Bar No. 199653

2900 K Street, N.W.

Suite 500

Washington, DC 20007

202 204-3706

Dorsen35@aol.com

February 10, 2014

CIVIL COVER SHEET

JS-44 (Rev. //I3 DC)								· W		
I. (a) PLAINTIFFS				DEFENDANTS						
MARTIN H. GARV	/EY			U.S. DEP	ARTME	ENT O	F JUST	ΓICE		
11 School St., Apt	. 11			600 E Stre	et, N.V	٧.				
Clinton, NJ 08809				Washingto	on, DC	20530	l			
(b) COUNTY OF RESIDEN	ICE OF FIRST	LISTED PLAINTIFF 88888		COUNTY O	F RESIDE			TED DEFENDANT		
(EX	CEPT IN U.S.	. PLAINTIFF CASES)		(IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLV.			/ED			
(c) ATTORNEYS (FIRM N.	AME, ADDRE	SS, AND TELEPHONE NUMBER)		ATTORNEYS	(IF KNOW	/N)		-		
David M. Dorsen,	Esa.									
Suite 500	_ 0q.									
2900 K St., N.W.										
Washington, DC 2	0007									
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2 U.S. Government Defendant		Diversity Indicate Citizenship of	Citizen of	Another State	O 2	\mathbf{O}_2		orated and Principal	O 5	O 5
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345 Marine Product Liability		863 DIWC/DIWW (405(g))			*(If Antitrust, then A governs)*					
350 Motor Vehicle		864 SSID Title XVI			•					
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290 All Other Real	Property	540 Mandamus & Othe	r	Other Stat				899 Administrat	ve Procee	dure
550 Civil Rights		375 False Claims Act			Act/Review	or Appeal	of			
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G. Habeas Corpus/ 2255 530 Habeas Corpus – General 510 Motion/Vacate Sentence 463 Habeas Corpus – Alien Detainee	H. Employment Discrimination 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)	I. FOIA/Privacy Act S95 Freedom of Information Act 890 Other Statutory Actions (if Privacy Act)	○ J. Student Loan 152 Recovery of Defaulted Student Loan (excluding veterans)			
	(If pro se, select this deck)	*(If pro se, select this deck)*				
 ○ K. Labor/ERISA (non-employment) □ 710 Fair Labor Standards Act □ 720 Labor/Mgmt. Relations □ 740 Labor Railway Act □ 751 Family and Medical Leave Act □ 790 Other Labor Litigation □ 791 Empl. Ret. Inc. Security Act 	C L. Other Civil Rights (non-employment) 441 Voting (if not Voting Rights Act) 443 Housing/Accommodations 440 Other Civil Rights 445 Americans w/Disabilities – Employment 446 Americans w/Disabilities – Other 448 Education	M. Contract 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment Enforcement of Judgment 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholder's Suits 190 Other Contracts 195 Contract Product Liability 196 Franchise	○ N. Three-Judge Court 441 Civil Rights – Voting (if Voting Rights Act)			
V. ORIGIN						
O 1 Original O 2 Removed O 3 Remanded from O 4 Reinstated or O 5 Transferred from O 6 Multi-district O 7 Appeal to Proceeding from State Appellate Court Reopened another district Litigation District Judge from Mag. Judge						
VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.) 5 U.S.C. § 552; SEEKING DOJ RECORDS UNDER FOIA						
VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ Check YES only if demanded in complaint YES NO NO						
VIII. RELATED CASE(S) (See instruction) YES NO H yes, please complete related case form IF ANY						
DATE:02/11/2014	SIGNATURE OF ATTORNEY OF REC	cord Why Pr	Aln			

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident
 of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed <u>only</u> if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the <u>primary</u> cause of action found in your complaint. You may select only <u>one</u> category. You <u>must</u> also select <u>one</u> corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

UNITED STATES DISTRICT COURT

for the

MARTIN H. GARVEY Plaintiff v. U.S. DEPARTHENT OF JUSTICE Defendant	Civil Action No.
SUMMONS IN A C	CIVIL ACTION
A lawsuit has been filed against you.	to the attached complaint or a motion under Rule 12 of ust be served on the plaintiff or plaintiff's attorney,
If you fail to respond, judgment by default will be ente You also must file your answer or motion with the court.	ered against you for the relief demanded in the complaint.
2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	CLERK OF COURT
Date:	Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT

for the

MARTIN H. GARVEY Plaintiff V. U.S. DEPARTMENT OF JUSTICE Defendant	Civil Action No.
SUMMONS IN A CIVI	IL ACTION
To: (Defendant's name and address) U.S. DEPARTMENT OF J CIVIL PROCESS CLERK UNITED STATES ATTOR 555 HTH ST., N.W. WASHINGTON, DC 205 A lawsuit has been filed against you.	USTICE NEY 30
Within 21 days after service of this summons on you (not are the United States or a United States agency, or an officer or em P. 12 (a)(2) or (3)—you must serve on the plaintiff an answer to the Federal Rules of Civil Procedure. The answer or motion must whose name and address are: DAVID M. DORSEN, EST SUITE SOO ST., N.W. WASHINGTON, DC 20	aployee of the United States described in Fed. R. Civ. the attached complaint or a motion under Rule 12 of be served on the plaintiff or plaintiff's attorney,
If you fail to respond, judgment by default will be entered You also must file your answer or motion with the court.	against you for the relief demanded in the complaint.
	CLERK OF COURT
Date:	Signature of Clerk or Deputy Clerk