

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

BUZZFEED, INC. and BEN SMITH,
Plaintiffs,

v.

DEPARTMENT OF JUSTICE, FEDERAL
BUREAU OF INVESTIGATION, OFFICE
OF THE DIRECTOR OF NATIONAL
INTELLIGENCE, JAMES COMEY, and
JAMES CLAPPER,
Defendants.

Case No. 1:17-mc-02429-APM

STATUS REPORT

Pursuant to the Court's Minute Order dated February 16, 2018, BuzzFeed, Inc. and Ben Smith (together, "BuzzFeed") respectfully submit this Status Report to update the Court on certain matters related to the instant Motion to Compel as discussed at the hearing held on February 15, 2018.

Status of Florida Litigation. The court in the underlying Florida Litigation held a status conference on February 28, 2018. At that conference, the Florida court extended the discovery deadline to June 15, 2018. Accordingly, BuzzFeed does not object to the Government's request for an extension of time to file their supplemental declaration on or before March 19, 2018. (ECF No. 21 at 3 & n.1).

Topics of Testimony Requested. As discussed at the February 15 hearing, BuzzFeed believes that recently declassified documents that answer many of the requested topics should be admissible at summary judgment. Accordingly, BuzzFeed is willing to withdraw its request for testimony on topics 1, 2, 4-6, and 9, without prejudice to renew these requests in the event that

any evidentiary rulings in the Florida Litigation preclude its ability to rely on alternative sources of the same information.

With respect to topics 3, 7, and 8, BuzzFeed has engaged in discussion with the plaintiffs in the Florida Litigation concerning the possibility of submitting stipulated facts to obviate the need for testimony, but the parties have not been able to agree to a stipulation.

As stated at the hearing, BuzzFeed is willing to accept an affidavit from the Government in lieu of testimony, provided that the language of that affidavit is clear and responsive to the topics of testimony requested. BuzzFeed is willing to work with the Government on such an affidavit. To that end, BuzzFeed proposes the following narrowed topics in lieu of the current topics 3, 7, and 8:

Narrowed Topic No. 3: Whether, prior to 5:20 p.m. Eastern time on January 10, 2017, the FBI and/or any of the other Defendant agencies had the last two pages of the Dossier as it was published by BuzzFeed. Alternatively, if the Defendants were able to simply confirm that as of that time and date the FBI and/or any of the other Defendant agencies had the 35 pages of the Dossier that were published by BuzzFeed, that would be acceptable.¹

Narrowed Topic No. 7: Whether on or about December 9, 2016, the FBI received from Senator John McCain a copy of the Dossier containing the first 33 pages published by BuzzFeed.

Plaintiffs note that this topic has been narrowed in that it no longer seeks any information about subsequent communications, if any, with Senator McCain.

Narrowed Topic No. 8: Whether, prior to January 10, 2017, Mr. Clapper, Mr. Rogers, Mr. Brennan, and/or Mr. Comey briefed President Obama about the Dossier and provided a

¹ For the avoidance of doubt, if the Government had these two pages but displaying fewer or different redactions than appear in the version published by BuzzFeed, the answer should still be “yes.” By accepting an affidavit in lieu of a deposition, BuzzFeed does not want to risk any semantic gamesmanship that could not happen in a deposition where there is an opportunity to ask questions clarifying any ambiguous responses.

synopsis of it.² Plaintiffs note this question has been slightly narrowed in that the exact date of the briefing is not sought.

Dated: March 1, 2018

Respectfully submitted,

/s/ Nathan Siegel

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² In the event that one of those persons did not participate in a briefing but someone else from the same agency did, that should be reflected in the response. The specific name of any other such person is not important to BuzzFeed.