

# Faridi Declaration Ex. 14

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

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SUHAIL NAJIM ABDULLAH AL      :   Civil Action No.:
SHIMARI, et al.,              :   1:08-cv-827
      Plaintiffs,              :
      versus                    :   Monday, April 29, 2024
                                  :   Alexandria, Virginia
CACI PREMIER TECHNOLOGY,      :   Volume X
INC.,                          :   Pages 1-16
      Defendant.              :
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The above-entitled jury trial was heard before the Honorable Leonie M. Brinkema, United States District Judge. This proceeding commenced at 9:40 a.m.

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

P R O C E E D I N G S

1  
2 THE DEPUTY CLERK: Civil Action  
3 Number 1:08-cv-827, Suhail Najim Abdullah Al Shimari, et al.  
4 versus CACI Premier Technology, Inc.

5 Will counsel please note their appearance for the  
6 record, beginning with the plaintiff.

7 MR. FARIDI: Good morning, Your Honor.  
8 Muhammad Faridi on behalf of the plaintiffs. I'm joined by  
9 my colleagues, Baher Azmy and Alex Mahler-Haug.

10 THE COURT: Good morning.

11 MR. O'CONNOR: Good morning, Your Honor.  
12 John O'Connor for CACI. I'm joined by my co-counsel,  
13 Linda Bailey, Nina Ginsberg and Joseph McClure.

14 THE COURT: Good morning.

15 All right. As you know, at the end of court on  
16 Friday just as they were leaving -- so we were actually out  
17 of session at that point -- the jury handed us a note: Is  
18 there any way we could get more evidence binders? And I  
19 thought that was unclear whether they meant the binder  
20 clips, because they had asked for that previously, whether  
21 they're looking for what I would call notebooks, you know,  
22 in which they could put -- or whether they want the exhibits  
23 themselves. So we emailed you over the weekend, requested  
24 that each side bring back to court one set of just the  
25 exhibits that have been entered; however, it occurs to me

1 that I'm now concerned about the record for the Court of  
2 Appeals. It has to be -- you know, the integrity of that  
3 record has to be maintained.

4 And so I think the better approach is -- first of  
5 all, I'm going to have the jury come in. I'm going to ask  
6 them what this meant. If, in fact, they want the  
7 evidence -- rather than just giving them two separate sets,  
8 because then I can see it getting mixed up, I don't know  
9 what they're doing with it -- I'm going to ask them to  
10 indicate which exhibits they want to see, we will then get  
11 the copies from you, put a big copy stamp on it so that when  
12 we go to sort things out so the Court of Appeals gets the  
13 record as it was properly entered into evidence.

14 Is there anybody who has an objection to  
15 proceeding that way?

16 MR. FARIDI: None from our side, Your Honor.

17 MR. O'CONNOR: No, Your Honor.

18 And just for the Court's information, we exchanged  
19 this morning and looked at each other's binders, and they're  
20 accurate. The PII is all gone, and so there's no issues  
21 with it.

22 THE COURT: Great. Okay. So that will take care  
23 of that.

24 Now, the second issue that came up over the  
25 weekend -- and, again, I don't know whether you received

1 copies of this or not, but Rhonda Montgomery, who was the  
2 court reporter who was covering the case on Friday, got an  
3 email from a Jada Clarke, who's a production associate at  
4 Nightline ABC News, and she would like to order the court  
5 exhibit -- the court exhibit for case -- for this case. I  
6 think she meant exhibits.

7 I don't know what she wants, but we don't have --  
8 the exhibits are with the jury right now; I can't make  
9 copies available for this reporter at this point.

10 I'm going to direct Ms. Montgomery to write back  
11 to her and tell her the exhibits are with the jury so we  
12 don't have -- we can't provide -- the Court can't provide  
13 them, but you all could. And when I tried the *Moussaoui*  
14 case, because there had been pressure from the media to see  
15 the exhibits as they went in, the protocol that I recall we  
16 had was that each side was responsible for uploading in a --  
17 I can't recall whether they put them on our website or -- in  
18 other words, filed them in the case itself or whether they  
19 did it on their individual websites, but they made available  
20 to the press that way all exhibits that had been entered  
21 into evidence the previous day.

22 So I'm going to see whether or not she can wait  
23 until the jury finishes its verdict. If she's pushing hard,  
24 then she'll have to get them from you all, so I'm just  
25 putting you on notice to that. All right.

1 Now, is there someone here from the United States?

2 MS. TULIS: Yes, Your Honor.

3 THE COURT: Is there an issue we have to address?

4 MS. TULIS: No, Your Honor. I'm just here to

5 monitor the proceedings.

6 THE COURT: Oh, all right. I thought for some

7 reason there was some issue.

8 All right. Is there anything else from counsel?

9 The jury is here, so I think we'll just bring them in, and

10 I'm going to ask them what the question meant in terms of

11 the folders.

12 MR. AZMY: Your Honor, we filed papers last night

13 related to the borrowed servant instruction.

14 THE COURT: First of all, there's no pending

15 question about the borrowed servant, so I'm not going to sua

16 sponte assume that that's what's holding them up. There are

17 other issues which could very well be holding them up.

18 Number two, even if that were the question, I

19 don't agree with your proposal. I think it goes beyond what

20 the Fourth Circuit deems to be the proper formulation. So

21 I've read it, but I already told the jury you can wear two

22 hats. I put that -- I added that verbally. The first

23 sentence of that instruction clearly says you can be working

24 for two people at the same time.

25 The issue is clearly from the Fourth Circuit's

1 viewpoint, and I think appropriately under my view from my  
2 viewpoint as well, is whether or not the conditions of work  
3 that the person is performing are who's controlling it.  
4 That's the question. And I think that's fairly articulated  
5 in the instruction plus the supplement that they have. But  
6 you've made your record on that issue.

7 MR. AZMY: I understand, Your Honor. I just  
8 think -- we understand the first sentence, I just think it  
9 doesn't really tell the jury what follows from the fact that  
10 you wear two hats. I don't think they're left guessing.  
11 Does that mean there's a borrowed servant doctrine in play  
12 or not, and I think that, for us, might be the source of the  
13 confusion.

14 THE COURT: I think the confusion is, frankly, the  
15 facts in this case are very difficult, and they cut in both  
16 ways. And so we'll have to see, if the jury does, in fact,  
17 hang whether this case goes for another trial or not, we'll  
18 take up after that. Let's wait and see what the jury does  
19 today.

20 Let's bring them in, please.

21 THE CSO: Yes, Judge.

22 Rise for the jury.

23 (Jury present at 9:46 a.m.)

24 THE COURT: Good morning, ladies and gentlemen.

25 It's a nice bright day. I hope that the air



1 conditioning is working. Sometimes it over -- it overworks,  
2 so let us know if it gets too cold in there, and if it's not  
3 cold enough, also, obviously, let us know.

4           When you left on Friday, there was a question that  
5 I actually don't understand, so I'm going to ask the  
6 foreperson to let me know what you meant by this.

7           What do you mean by "evidence binders"? Are you  
8 looking for more of those black clips? Are you looking for  
9 more what I would call three-ring binders, or are you  
10 looking for more exhibits? Can you tell me what you're  
11 looking for?

12           THE FOREPERSON: We were wondering if we could  
13 have more exhibits, so a second PTX and a second DTX binder,  
14 if possible.

15           THE COURT: Okay. All right. The answer is --  
16 it's a qualified answer. I don't want to give you a  
17 complete second set of exhibits, in part because I'm worried  
18 about you mixing them up with the originals, because what  
19 you have now are the original exhibits, which I hope you've  
20 been keeping in order.

21           If there are specific exhibits that you do want  
22 another copy of, you need to write them down on a list.  
23 Because you've got the index. All right. And what we will  
24 do is, we will put a big stamp on them that says copy. And  
25 in terms of the copy, if you want to write on the copy, you

1 can write on it, but you'll have a second exhibit you can  
2 look at, rather than just giving you all of the exhibits  
3 again, because that's going to get difficult to then  
4 control. All right.

5 So feel free to then go through the index, and  
6 that's a good chance for the eight of you to start talking  
7 again collectively about what it is you would like to  
8 refresh your memories about. All right. Will that help?

9 THE FOREPERSON: Yeah.

10 THE COURT: Because I doubt you want all the  
11 exhibits back.

12 Okay. So go ahead and give us the list. When the  
13 list comes in, Counsel, unless there is an objection to the  
14 list, I don't need to come back on the bench. I've got a  
15 settlement conference I'm doing across the hall, but I'll  
16 come in if there is an issue.

17 The procedure is, we'll put a big copy stamp on  
18 each exhibit that goes into the jury room so that the jurors  
19 can be looking at that.

20 All right. Thank you, ladies and gentlemen. You  
21 can go back to your deliberations. We'll get that to you as  
22 soon as you give us the list.

23 (A brief recess was taken.)

24 THE COURT: All right. As you know, we've got a  
25 question from the jury, and they've asked: Can we have a

1 definition of "scope of employment" or a bit more  
2 clarification of what that term means in this case/context?

3 And I've given you a proposed supplementary  
4 instruction. So let me hear the plaintiffs' sense of that.

5 MS. MAHLER-HAUG: Your Honor, Alex Mahler-Haug for  
6 plaintiffs.

7 Plaintiffs submit that while the supplementary  
8 Instruction Number 2 does provide the jury with some  
9 additional useful information, it's missing some key  
10 instruction that will allow the jury to sort through the  
11 facts at issue in this case.

12 Plaintiffs submit that the jury should be  
13 instructed that an act is within an employee's scope of  
14 employment, even if that conduct is unauthorized, as long as  
15 it was foreseeable in light of the employee's duties. And  
16 that's consistent with this initial instruction about the  
17 conduct being the same general nature.

18 That's also a point from this Court's 2009 opinion  
19 in this case, so it does reflect law of the case in that  
20 instance. And that additional instruction would also be  
21 consistent with the Fourth Circuit's definition of scope of  
22 employment, that an act is within the scope if it concerns a  
23 matter generally entrusted to the employee by the company,  
24 even if the company did not actually authorize or direct a  
25 particular act.

1           So plaintiffs would submit that this Court provide  
2 some additional information to the jury as part of its  
3 supplementary instruction to ensure that it is complete and  
4 consistent with precedent.

5           THE COURT: Then I think what I should simply do  
6 is reread Instruction 26, because that language is there.  
7 That is the last sentence: Conduct is within the scope of  
8 employment if it is of the same general nature as that  
9 authorized or incidental to the conduct authorized by the  
10 corporation. That's right from the Fourth Circuit.

11           MS. MAHLER-HAUG: And plaintiffs would submit that  
12 an additional explanation, which the jury has requested, is  
13 that conduct that is foreseeable in light of the duties  
14 entrusted to the employee by the company falls within the  
15 scope of employment. So that would provide additional  
16 elaboration to give the jury a sense of how to apply the law  
17 in these situations.

18           THE COURT: All right. Let me see from  
19 Mr. O'Connor.

20           MR. O'CONNOR: Thank you, Your Honor.

21           We think the instruction as written is appropriate  
22 as far as it goes. It pulls straight from the *Estate of*  
23 *Alvarez*, which is a decision this year which the Fourth  
24 Circuit established guidance regarding scope of employment.

25           The one comment that we have is consistent with

1 the Court's supplemental instruction on borrowed servant, we  
2 think it would be appropriate to remind the jury that the  
3 plaintiffs in this case have the burden of proof, as the  
4 Court reminded the jury that we have the burden of proof  
5 with the supplemental borrowed servant instruction.

6 THE COURT: Okay. Let's bring the jury in.

7 THE CSO: Yes, Judge.

8 (Jury present at 3:55 p.m.)

9 THE COURT: You all may have a seat.

10 Ladies and gentlemen, you've sent us the following  
11 question, and, again, this shows how carefully you're  
12 thinking about the case. And the question is: Can we have  
13 a definition of "scope of employment" or a bit more  
14 clarification of what that term means in this case/context?

15 I, first of all, want to remind you about Jury  
16 Instruction 26, which is the general corporate  
17 responsibility for employee conduct. That's the instruction  
18 that I think you have some questions about. So just to  
19 repeat what that says: A corporation is liable under the  
20 law for the acts of its employees, agents, directors and  
21 officers performed within the scope of their employment.  
22 Conduct is within the scope of employment if it is of the  
23 same general nature as that authorized or incidental to the  
24 conduct authorized by the corporation.

25 Now, I'm giving you Supplementary Instruction

1 Number 2, which you will have with you. We'll make some  
2 copies for you for the jury room. Whether conduct is within  
3 the scope of employment depends upon whether the conduct is  
4 of the same general nature as that authorized or incidental  
5 to the conduct authorized by the corporation. This is a  
6 fact-bound issue that requires a jury to look at all the  
7 facts and circumstances in evidence to determine whether the  
8 conduct of an employee, which results in injury to another,  
9 is sufficiently related in time, place and causation to the  
10 defendant's duties to be attributable to the employer's  
11 business.

12 For example, a real estate company hires a real  
13 estate agent to show a house that is on the market. While  
14 showing a potential buyer around the house, the agent  
15 injures a buyer's foot when closing a bedroom door. The  
16 agent is acting within the scope of his employment as the  
17 agent of the real estate company.

18 On the other hand, if the agent showed a potential  
19 buyer pornographic pictures during the walk-through causing  
20 the buyer emotional distress, the agent would be acting  
21 outside the scope of his employment as an agent of the real  
22 estate company. I hope that example helps you.

23 Just as a reminder, the burden is on the plaintiff  
24 to establish by a preponderance of the evidence that the  
25 CACI employees were acting within the scope of their

1 employment for the corporate defendant in order for the  
2 defendant to be liable. All right.

3 Anything further counsel want the Court to address  
4 on this?

5 MR. O'CONNOR: No, Your Honor. Thank you.

6 MR. FARIDI: Not at the moment, Your Honor.

7 THE COURT: All right. Then, ladies and  
8 gentlemen, we'll have some copies of this additional  
9 instruction made for you, and we'll let you go back to your  
10 deliberations.

11 Thank you. We'll recess court.

12 (Jury not present at 3:58 p.m.)

13 (A recess was taken.)

14 THE COURT: All right. We'll bring the jury back  
15 in. I know they've ordered lunch for tomorrow, so they're  
16 planning on being here tomorrow.

17 MR. FARIDI: Your Honor, before the jury comes  
18 in --

19 THE COURT: Yes.

20 MR. FARIDI: -- can I just make one note?

21 THE COURT: Yes.

22 MR. FARIDI: During the last session, Your Honor,  
23 I think you instructed the jury that plaintiffs bear the  
24 burden on establishing that the conduct of the CACI  
25 interrogators was within the scope of the employment.

1 I want to lodge a quick objection to that. I  
2 think our view of the law, Your Honor, is that the only  
3 thing that we need to demonstrate is that the interrogators  
4 were employed by CACI. The burden then shifts over to CACI  
5 to establish that the acts that they perpetuated were not  
6 within the scope of the employment. So I just wanted to  
7 make a record of that.

8 THE COURT: All right. That's fine.

9 Let's bring the jury in.

10 THE CSO: Yes, Judge.

11 (Jury present at 6:00 p.m.)

12 THE COURT: All right. Ladies and gentlemen, I  
13 know it's been another long day for your all, and you've  
14 ordered lunch for tomorrow, so you're coming back tomorrow.  
15 And I think we're able to accommodate your lunch request.

16 Again, I want to commend you for working so  
17 diligently on this case, and, again, you've asked very good  
18 questions. I have a full docket in court tomorrow morning,  
19 so there may be a slightly longer delay in answering any of  
20 your questions, but we will get them answered as quickly as  
21 possible.

22 Please remember my standard cautions to avoid any  
23 coverage of this case. There is definitely some media  
24 coverage, so please avoid it. Don't discuss the case with  
25 anyone, don't have any private conversations with each



1 other. You've been behaving beautifully as jurors, so just  
2 keep up the good work. It's warm out there, but at least  
3 bright and sunny, so get yourselves a break, and we'll see  
4 you back here tomorrow morning. I assume the same schedule  
5 now, the 9:30 start time for tomorrow?

6 THE FOREPERSON: Yes. 9:30 start time tomorrow.

7 THE COURT: Okay. And lunch at 1:00 and then sort  
8 of the mid-morning and mid-afternoon breaks that you've been  
9 doing? Great.

10 All right. Folks, we'll let you go home for the  
11 evening, and we'll recess for the day. We will be in court  
12 tomorrow morning at 9:00 on unrelated matters just for  
13 counsels' purposes.

14 (Proceedings adjourned at 6:03 p.m.)

15 -----

16 I certify that the foregoing is a true and accurate  
17 transcription of my stenographic notes.

18

19

Stephanie Austin

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Stephanie M. Austin, RPR, CRR

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