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RECEIVED

COMMONWEALTH OF MASSACHUSETTS

02/22/2024

SUPERIOR COURT

MIDDLESEX, ss.

Middlesex Superior Court  
Civil Action Number: 21-1904

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BABAK BABAKINEJAD

Plaintiff

v.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

Defendant

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**PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION  
TO MOTION FOR DEFAULT JUDGMENT (Mass R. Civ P. 55(b)(2)) & MOTION  
TO COMPEL DISCOVERY WITH REQUEST TO EXTEND TRACKING ORDER**

1. Babak Babakinejad "Plaintiff", proceeding *pro se*, submits the following in response to Defendant's Opposition:
2. Contrary to Defense Attorney Nicholas Perkin's statements; on January 30, 2024, Plaintiff has actively sought (*See*: Exhibit A), and has obtained a Conference on February 1, 2024, before serving his motion (*See*: Exhibit B).
3. Therefore, Defendant's assertion that Plaintiff's motion "must" fail on procedural grounds - because Plaintiff "Makes no attempt to comply with rule 9A" - patently overlooks this fact.
4. Plaintiff made supplementary attempts to contact Defendant on February 7, 2024 & February 8, 2024 (*See*: Exhibit C), which Defendant rebuffed (*See*: Exhibit D).
5. Moreover, Plaintiff followed up with Defendant's counsel, by an email detailing the lacunae in MIT production before Defendant served it's Opposition (*See*: Exhibit E)<sup>1</sup>.

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<sup>1</sup> Portions of Exhibit E have been redacted pursuant to the confidentiality order to prevent the disclosure of confidential information.

6. Defendant's citation of *Brossard v. West Roxbury Division of the District Court Department* is misapplied, as it pertains to a context distinct from the procedural efforts undertaken here.
7. Plaintiff, respectfully submit that the motion deserves consideration on the substance of it rather than on fine details of procedure, which are difficult for a *pro se* litigant to even obtain clarification on, much less to perfectly fulfil, notwithstanding Plaintiff's continual and exhaustive efforts to do so.
8. In reality, Despite Defense counsel's efforts to present a different narrative to the Court, the severe deficiencies in Defendant's "4" productions are starkly evident to Plaintiff.
9. Attorney Perkin's Opposition reveals a critical inconsistency, in his February 6, 2024, production letter, which contains a self-contradictory admission that undermines the completeness of Defendant's Court ordered custodian email productions: by stating that the production of the Harper and Zuber emails "completes the email productions... for the 19 custodians," while simultaneously acknowledging ongoing document reviews and the possibility of future supplemental productions, MIT essentially admits to the Court and to the opposing party that their discovery compliance may be incomplete<sup>2</sup>.
10. As Attorney Perkins incorrectly claims completion of the 19 custodian searches, one need not look deep to see that MIT possesses relevant non-privileged information but audaciously holds back, disobeying this Court's directives:
  - a. MIT EHS Associate Director Phyllis Carter's July 11, 2018 email to MassDEP regulator Mr. Joseph Cerutti falsely denies any discharges of chemicals into the Underground Injection Control Well, contradicting the actual events, violating MIT's license [MAS31A184201-5A24] (See: Exhibit F).
  - b. Additionally, articles such as "MIT Media Lab Scientist Used Syrian Refugees to Tout Food Computers That Didn't Work" by Harry Goldstein, published on October

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<sup>2</sup> Defendant's adoption of blanket confidentiality obstructs transparent discourse in open court regarding critical matters.

24, 2019 (See Excerpts, as Exhibit G, page 1-2), and "MIT Media Lab's Food Computer Project Permanently Shut Down" by Harry Goldstein, published on May 17, 2020 (See Excerpts as Exhibit G, page 3), provide further evidence.

11. These examples reveal the existence of relevant non-privileged email communications of custodians such as Zuber, Berkowitz, Harper, DiBerardinis, Carter, and England that MIT improperly withholds.
12. All of Plaintiff's motions and filings have been submitted in pursuit of a genuine need for comprehensive information to effectively prepare the case. Therefore, Plaintiff's assertions that Defendant is failing to meet these requirements are neither frivolous nor "meritless accusations," contrary to what Perkins incorrectly claims.
13. The extensive redaction of non-privileged documents within the research misconduct investigation materials, particularly the absence of interview transcripts of Plaintiff's former colleagues and witnesses - appear as attachment names, and referred to but the actual transcripts conspicuously missing - contradicts Perkins' attempts to convey an impression of compliance, characterized by claiming to review and partially redact responsive privileged documents, as well as promises of privilege logs.
14. Perkins's statement about the large number of pages MIT produced to signify compliance, is fundamentally flawed and constitutes a fallacy.
15. What's even more concerning is Defendant's misrepresentation of "ongoing compliance" and their mischaracterization before the court.
16. Furthermore, Defense attorney's repeated assertions of the existence of "sensitive" documents does not exempt their client from compliance, especially concerning investigation material, or other relevant documents, mandated by the court from previous years.

17. The surfeit of resources available to Manatt, Phelps & Phillips, LLP, a law firm with more than 500 lawyers, renders Defendant's protestations of an inability to fulfill obligations incredible.
18. Defendant's agreement to a 60-day extension is insufficient. A mere extension, without concrete measures and absent compulsion, especially considering their history, fails to meaningfully address their ongoing non-compliance.
19. Defendant's actions—characterized by a belated and reluctant disclosure of information, coupled with disingenuous claims of cooperation—manifest a profound disregard for the principles of good faith and fair play.
20. This court has the authority to render a default judgement that fails to comply with discovery order. Pursuant, Rule 37(b)(2)(C), Plaintiff contends that MIT's actions—or lack thereof—constitute a failure to comply, given the selective production of documents and the failure to produce others as ordered by the Court.
21. While it is true that default judgment is an extraordinary remedy, where a party fails to obey an order to provide or permit discovery, it does not preclude its application where Defendant's actions demonstrate wilfulness, bad faith, or fault to a degree that fundamentally disrupts the equitable administration of justice, as is the case here.
22. The necessity for such a sanction in the present case is underscored by MIT's strategic non-compliance and deceptive conduct, which collectively signal a disregard not only for Plaintiff's rights, as he continues to suffer prejudice because of the egregiousness of MIT's conduct in improperly obscuring essential details but for the authority of this Court and the integrity of the judicial process.

23. Plaintiff respectfully requests that the Court to:

- a. Deliberate on Plaintiff's motion, to exercise its authority to address MIT's noncompliances with its Orders.
- b. Promptly release Defendant's *in camera* filings retained by the Court for Plaintiff's review, aiming to rectify, at the very least partially, Defendant's persistent failure to comply fully with its Orders.

Respectfully submitted,

Plaintiff Babak Babakinejad, *pro se*

*/s/ Babak Babakinejad*

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Babak Babakinejad  
280 Western Avenue, Apt #3  
Cambridge MA 02139  
857-206-1359

Babak.babakinejad@gmail.com

Date: February 22, 2024

#### CERTIFICATE OF SERVICE

I, Babak Babakinejad, hereby certify that on this 22nd day of February, 2024, I served a copy of the foregoing document upon counsel for all other parties to this action by electronic mail.

*/s/ Babak Babakinejad*

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Babak Babakinejad

# EXHIBIT A

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**Request for Conference: Follow-up on Court's Order and Refiling Motions**

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**Babak Babakinejad** <babak.babakinejad@gmail.com>

30 January 2024 at 15:23

To: "Murphy, Martin" <mfmurphy@manatt.com>, "Perkins, Nicholas" <NPerkins@manatt.com>

Dear Attorneys Perkins and Murphy,

I am considering refiling my motion following the court's order. Despite several attempts, I have been unable to reach your offices. Under Rule 9C, I am requesting a conference to discuss this matter and directly address the issues, to work towards an efficient resolution. I am available for the rest of the day and can be reached at 857-206-1359

I look forward to hearing from you.

Regards,  
Babak

Babak Babakinejad  
857-206-1359

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**Request for Conference: Follow-up on Court's Order and Refiling Motions**

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**Perkins, Nicholas** <NPerkins@manatt.com>

30 January 2024 at 15:32

To: Babak Babakinejad <babak.babakinejad@gmail.com>

Cc: "Murphy, Martin" <MFMurphy@manatt.com>

Dr. Babakinejad,

I recently saw two missed calls from you in the last half hour or so. Marty Murphy and I are available for a call this Thursday, February 1, after 2:00 PM. Are you available then?

Please note that, under Superior Court Rule 9A, if you intend to file your Motion, you will need to serve it on us after a conference and give us time to respond to it.

Thanks,  
Nick

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**Request for Conference: Follow-up on Court's Order and Refiling Motions**

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**Babak Babakinejad** <babak.babakinejad@gmail.com>

30 January 2024 at 15:54

To: "Perkins, Nicholas" <NPerkins@manatt.com>

Cc: "Murphy, Martin" <MFMurphy@manatt.com>

Thanks for your response. February 1st at 2:00 PM works for me. If you provide the documents that are being improperly withheld, it may serve to mitigate the necessity for further action at this time.

Regards,  
Babak

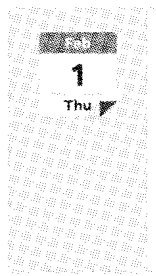
Babakinejad v. MIT - Conference - B. Babakinejad, M. Murphy, N. Perkins

Inbox



Perkins, Nicholas  
to me, Martin

Tue, 30 Jan, 17:42 (10 days ago) ☆ 🌐 ↶ ⋮



### Babakinejad v. MIT - Conference - B. ...

View on Google Calendar

**When:** Thu 1 Feb 2024 14:00 – 15:00 (GMT-5)  
**Where:** <https://manatt.zoom.us/j/97883274474?pwd=bUxQbG9BVG1PNGRNSUlzWEF6MFV2dzO9>  
**Who:** Murphy, Martin, Perkins, Nicholas\*

### Agenda

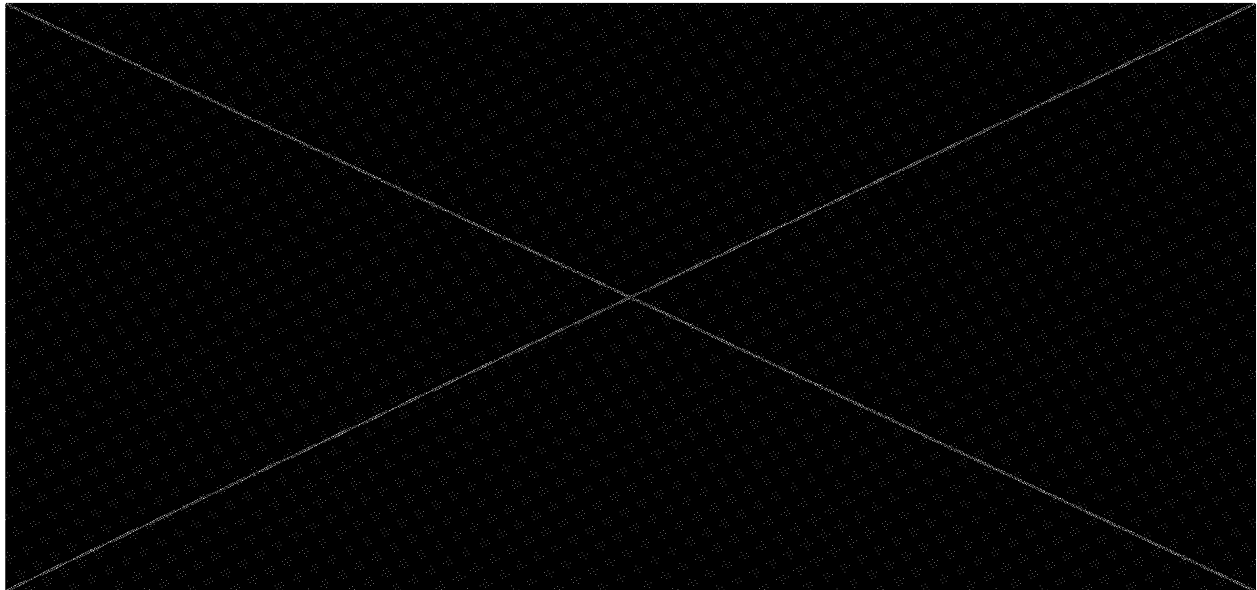
Thu 1 Feb 2024

No earlier events

14:00 Babakinejad v. MIT - Conference - B. ...

No later events

manatt





# EXHIBIT B

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## Babakinejad v. MIT: Motion for Default

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**Babak Babakinejad** <babak.babakinejad@gmail.com>

1 February 2024 at 15:06

To: "Murphy, Martin" <mfmurphy@manatt.com>, "Perkins, Nicholas" <NPerkins@manatt.com>

Dear Attorney Murphy and Attorney Perkins,

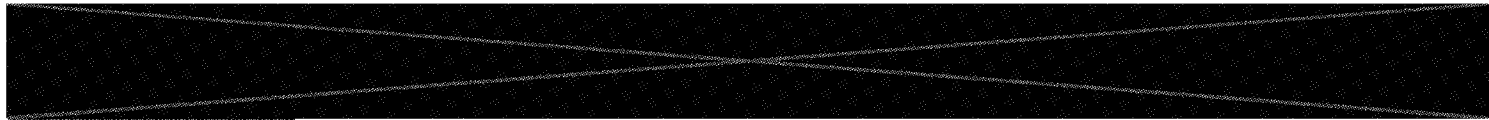
According to the Massachusetts Rules of Civil Procedure, and following our recent Rule 9A conference held on Thursday, February 1st, 2024, please find attached, Plaintiff's Motion for Default Judgment against MIT, by way of service.

Thank you,  
Babak

Babak Babakinejad  
857-206-1359

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 **Motion\_for\_Default\_20240201.pdf**  
1861K



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## Babakinejad v. MIT: Motion for Default

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**Babak Babakinejad** <babak.babakinejad@gmail.com>

2 February 2024 at 08:00

To: "Murphy, Martin" <mfmurphy@manatt.com>, "Perkins, Nicholas" <NPerkins@manatt.com>

Attorney Murphy and Perkins,

Please note that I have refined the certificate of service (attached for your reference) to remove the mention of eFiling on page 6, to render a more precise representation of the method of service.


Regards,  
Babak

Babak Babakinejad  
857-206-1359

*'All the great things are simple, and many can be expressed in a single word: freedom, justice, honor, duty, mercy, hope' -*  
Winston Churchill

[Quoted text hidden]

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 **certificate of service.pdf**  
62K

# EXHIBIT C

## Babakinejad v. MIT: Motion for Default

**Babak Babakinejad** <babak.babakinejad@gmail.com>

7 February 2024 at 15:08

To: "Murphy, Martin" <mfmurphy@manatt.com>, "Perkins, Nicholas" <NPerkins@manatt.com>

Dear Attorney Murphy,

I'm requesting a meeting to confer about concerns regarding the MIT email productions and research misconduct investigation materials. This follows my motion on February 1, 2024, post-conference, and relates to issues raised in my recent email to you and the subsequent productions by Attorney Perkins last night.

Please share your availability.

Regards,  
Babak

Babak Babakinejad  
857-206-1359

On Fri, 2 Feb 2024 at 08:00, Babak Babakinejad <babak.babakinejad@gmail.com> wrote:  
Attorney Murphy and Perkins,

Please note that I have refined the certificate of service (attached for your reference) to remove the mention of eFiling on page 6, to render a more precise representation of the method of service.

Regards,  
Babak

Babak Babakinejad  
857-206-1359

*'All the great things are simple, and many can be expressed in a single word: freedom, justice, honor, duty, mercy, hope' -Winston Churchill*

[Quoted text hidden]

## Babakinejad v. MIT: Motion for Default

**Babak Babakinejad** <babak.babakinejad@gmail.com>

8 February 2024 at 09:02

To: "Murphy, Martin" <mfmurphy@manatt.com>, "Perkins, Nicholas" <NPerkins@manatt.com>

Gentlemen, Following up on my previous email, I am still waiting for your response. I urge you to reply with your availability to confer, as soon as possible, as time is of the essence in this matter.

Regards,  
Babak

On Wed, 7 Feb 2024 at 15:08, Babak Babakinejad <babak.babakinejad@gmail.com> wrote:

Dear Attorney Murphy,

I'm requesting a meeting to confer about concerns regarding the MIT email productions and research misconduct investigation materials. This follows my motion on February 1, 2024, post-conference, and relates to issues raised in my recent email to you and the subsequent productions by Attorney Perkins last night.

Please share your availability.

Regards,  
Babak

Babak Babakinejad  
857-206-1359

On Fri, 2 Feb 2024 at 08:00, Babak Babakinejad <babak.babakinejad@gmail.com> wrote:

Attorney Murphy and Perkins,

Please note that I have refined the certificate of service (attached for your reference) to remove the mention of eFiling on page 6, to render a more precise representation of the method of service.

Regards,  
Babak

Babak Babakinejad  
857-206-1359

*'All the great things are simple, and many can be expressed in a single word: freedom, justice, honor, duty, mercy, hope'* -Winston Churchill

On Thu, 1 Feb 2024 at 15:06, Babak Babakinejad <babak.babakinejad@gmail.com> wrote:

Dear Attorney Murphy and Attorney Perkins,

According to the Massachusetts Rules of Civil Procedure, and following our recent Rule 9A conference held on Thursday, February 1st, 2024, please find attached, Plaintiff's Motion for Default Judgment against MIT, by way of service.

Thank you,  
Babak

Babak Babakinejad  
857-206-1359

# EXHIBIT D

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## Your February 6 Letter and email

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**Murphy, Martin** <MFMurphy@manatt.com>

8 February 2024 at 14:04

To: "Babak Babakinejad (via Google Drive)" <babak.babakinejad@gmail.com>

Cc: "Perkins, Nicholas" <NPerkins@manatt.com>

Dear Dr. Babakinejad:

I am writing to confirm receipt of your February 6, 2024 letter. Perhaps needless to say, we have a very difficult recollection of our February 1 conference than the one you set out in that letter. I see no reason to respond to each of the false allegations you make in the letter, or to point out the incorrect statements you made in our conference (for example, falsely contending that we had produced no documents from Hildreth England when, in fact, we had).

Suffice it to say that we reject your contentions.

Let me make two additional points:

First, I have been practicing law in Massachusetts for more than 40 years. Respectfully, I don't need you to remind me of my obligations as a lawyer, and neither does Mr. Perkins.

Second, there is plenty of legitimate work for all of us to do on this case. I do not think it is helpful for us to be sidetracked by vitriolic letter writing campaigns. We obviously can't stop you from taking that course if you choose, but we have no obligation to engage with you (apart from complying with our obligations under the Rules) if you do. To the extent you choose to send letters like this in the future, you should not assume that we will respond, or that our failure to do so means we in any way agree with what you say.

**Martin F. Murphy**

*(He/Him/His)*

Partner



## Babakinejad v. MIT: Attorney Murphy's emails at 2:04

**Babak Babakinejad** <babak.babakinejad@gmail.com>

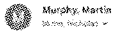
8 February 2024 at 15:05

To: "Murphy, Martin" <mfmurphy@manatt.com>, "Perkins, Nicholas" <NPerkins@manatt.com>

Mr. Murphy,

Could you please collate the contents of the two emails that you sent me at exactly 14:04 EST so that they represent a single, coherent response?

Regards,  
Babak



**Murphy, Martin**  
mfmurphy@manatt.com

11:04 AM (14:04 EST) 2024

Dear Dr. Babakinejad:

I am writing to confirm receipt of your February 6, 2024 letter. Perhaps needless to say, we have a very difficult recollection of our February 1 conference than the one you set out in that letter. I see no reason to respond to each of the false allegations you make in the letter, or to point out the incorrect statements you made in our conference (for example, falsely contending that we had produced no documents from Hildreth England when, in fact, we had).

Suffice it to say that we reject your contentions.

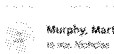
Let me make two additional points:

First, I have been practicing law in Massachusetts for more than 40 years. Respectfully, I don't need you to remind me of my obligations as a lawyer, and neither does Mr. Perkins.

Second, there is plenty of legitimate work for all of us to do in this case. I do not think it is helpful for us to be sidetracked by vitriolic letter-writing campaigns. We obviously can't stop you from taking that course if you choose, but we have no obligation to engage with you (apart from complying with our obligations under the Rules) if you do. To the extent you choose to send letters like this in the future, you should not assume that we will respond, or that our failure to do so means we in any way agree with what you say.

**Martin F. Murphy**  
mfmurphy@manatt.com  
Partner

**Wheat, Pharis B. Phillips, Esq.**



**Murphy, Martin**  
mfmurphy@manatt.com

14:04 (14:04 EST) 2024

Dear Dr. Babakinejad:

Thank you for your email. We have already had the conference Required by Rule 8C concerning two motions: the Motion to Default that you served on February 2, 2024 (we will serve our Opposition on Monday, February 12) and MIT's planned Motion to Compel Responses to MIT's First Set of Interrogatories, which we expect to serve later today or tomorrow.

If you have additional concerns apart from those you raised in your Motion for Default regarding the MIT email productions and research misconduct investigation materials, please put those concerns in writing in detail so that we may have a productive exchange about them.

While we are always willing to confer concerning Motions, as required by Rule 8C, we have already done so with respect to the two Motions described above.

Particularly given the false and misleading description of our February 1 conference set out in your February 6 letter to me, I do not believe it would be productive to have an open-ended discussion with you about our most recent production. If you have specific concerns, we will of course review them.

**Martin F. Murphy**  
mfmurphy@manatt.com  
Partner

**Babak Babakinejad**  
857-206-1359

# EXHIBIT E



Babak Babakinejad <babak.babakinejad@gmail.com>

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## Your February 6 Letter and email

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**Babak Babakinejad** <babak.babakinejad@gmail.com>

12 February 2024 at 08:18

To: "Murphy, Martin" <MFMurphy@manatt.com>

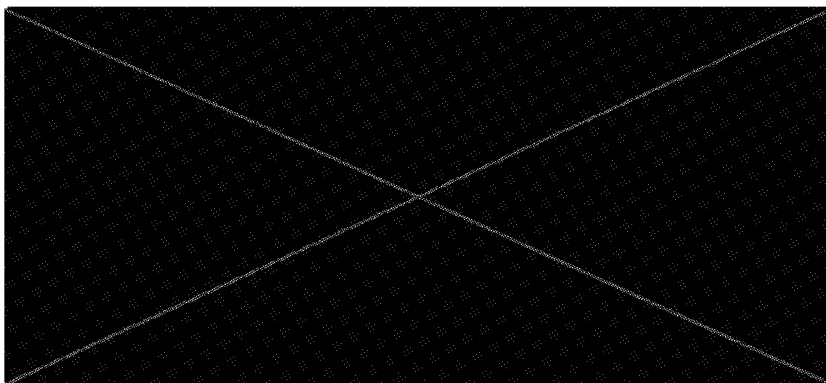
Cc: "Perkins, Nicholas" <NPerkins@manatt.com>

Dear Attorney Murphy,

Perhaps you could provide the conference transcript to reconcile your recollection with mine; and I'm sorry that you have chosen to characterize my legitimate concerns about the mixed messages emanating from your office as a vitriolic attack.

You have either not reviewed the material or are choosing to filibuster to distract me, taking advantage of my position as an unrepresented litigant. With respect to your legal experience, 40 years of experience does not guarantee compliance.

Here are a few examples illustrating the lacunae in MIT's production, reinforcing doubts about your office's representation.



I look forward to receiving your opposition to my motion.

Regards,  
Babak

857-206-1359

[Quoted text hidden]

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 **confidential\_re-MITproductions.pdf**  
63K

# EXHIBIT F

**From:** Phyllis B. Carter [mailto: pcarter@mit.edu ]  
**Sent:** Wednesday, July 11, 2018 6:00 PM  
**To:** Cerutti, Joseph (DEP)  
**Cc:** Louis DiBerardinis  
**Subject:** UIC Registration Middleton

—  
21 Manning Avenue

—  
MAS31A184201-5A24

Dear Mr. Cerutti,

With this email I am fulfilling the quarterly report for the MIT Bates UIC Registration [MAS31A184201-5A24]. During the last quarter that covers April 1 through June 30, there have been no discharges to the subject UIC. Should you have any questions please contact me.

Regards,  
Phyllis Carter  
Regards,

*Phyllis Carter  
EMP Sr Officer  
MIT EHS Office, N52-496  
77 Massachusetts Avenue  
Cambridge, MA 02139  
617.452.2508  
<https://ehs.mit.edu/site>  
Working Together to Protect People and Planet*

# EXHIBIT G

**From: Investigation by IEEE Spectrum**  
**"MIT Media Lab Scientist Used Syrian Refugees**  
**to Tout Food Computers That Didn't Work"**

**(Author: Harry Goldstein, Published on October 24, 2019)**

“Babakinejad showed Spectrum an email he sent on 16 April 2018 to officials with MIT Environment, Health and Safety to report that OpenAg was discharging nutrient solutions beyond state-permitted limits, a controversy that was examined last month in a joint report by ProPublica and WBUR. Babakinejad also took his concerns about OpenAg and Harper to Media Lab director Ito.”

“In an email to Ito on 5 May 2018, Babakinejad stated that Harper was making claims in public talks about “implementations of image processing, microbiome dosing, creating different climates and collecting credible data from bots across the world that are not true.”

“In addition, Babakinejad wrote, “He [Harper] takes credit for deployment of PFC’s to schools and internationally including a refugee camp in Amman despite the fact that they have never been validated, tested for functionality and up to now we could never make it work i.e. to grow anything consistently, for an experiment beyond prototyping stage.”

“Ito responded and asked Babakinejad if he could share these concerns with Harper.”

“Harper, who is also an MIT principal research scientist, did not respond to detailed questions about the WFP project sent to him by IEEE Spectrum for this article.”

“Harper, who is also an MIT principal research scientist, did not respond to detailed questions about the WFP project sent to him by IEEE Spectrum for this article.”

“Hildreth England, the OpenAg Initiative assistant director at the time and currently codirector of the Media Lab’s PlusMinus program, answered the next day, “...yes, the PFC v2.0 was deployed in a Syrian refugee camp with the World Food Program.” England declined Spectrum’s request to comment, citing “an open inquiry being led by MIT’s Office of the VP for Research.”

“Update: Four days after publication of this article on 24 October 2019, Spectrum asked MIT to comment on the status of OpenAg. Kimberly Allen, Director of Media Relations for MIT, responded on 6 November 2019:

“Presently some documentation and design work related to OpenAg has been permitted to take place on campus, but otherwise Prof. Maria Zuber, MIT’s Vice President for Research, has halted OpenAg activities, pending completion of ongoing assessments. As further background, Prof. Zuber wrote a letter regarding the Open Agriculture Initiative earlier this month, which was published in The Tech:

<https://thetech.com/2019/10/03/response-letter-open-agriculture-initiative>

**Reference:**

<https://spectrum.ieee.org/mit-media-lab-scientist-used-syrian-refugees-to-tout-food-computer>

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## **From: Investigation by IEEE Spectrum**

### **"MIT Media Lab's Food Computer Project Permanently Shut Down"**

**(Author: Harry Goldstein, Published on May 17, 2020)**

“Maria T. Zuber, vice president for research at MIT, led an internal investigation following allegations that Harper told MIT staff to demonstrate food computers with plants not grown in them and that fertilizer solution used by OpenAg was discharged into a well on the grounds of at the Bates Research and Engineering Center in Middleton, Mass., in amounts that exceeded limits permitted by the state of Massachusetts. While that investigation was being conducted, OpenAg’s activities were restricted.”

“The discharge was brought to light by a scientist formerly associated with OpenAg, Babak Babakinejad, who in addition to blowing the whistle on the chemical discharge at Bates also alleged, in an email to Ito on 5 May 2018, that Harper had taken credit for the deployment of food computers to schools as well as to “a refugee camp in Amman despite the fact that they have never been validated, tested for functionality and up to now we could never make it work i.e. to grow anything consistently, for an experiment beyond prototyping stage.”

“A subsequent investigation by Spectrum substantiated Babakinejad’s claims and found that Harper had lied about the supposed refugee camp deployment to potential investors and in several public appearances between 2017 and 2019.”

#### **Reference:**

<https://spectrum.ieee.org/mit-media-lab-food-computer-project-shut-down>