EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PATRICIA SMITH and CHARLES WOODS Plaintiffs, v. HILLARY CLINTON, Defendant	Civil Action No. 3:16-cv-02010

PLAINTIFFS' OPPOSITION TO DEFENDANT HILLARY CLINTON'S MOTION TO VACATE DEFAULT

I. INTRODUCTION

Defendant Clinton and the undersigned counsel have engaged in a disturbing pattern and practice of behavior which can only be described as thumbing their noses at the law and thus not respecting the rules and procedures which govern the rest of us. Defendant Clinton's numerous scandals, including the most recent one giving rise to Plaintiffs' Complaint seeks redress for the deaths of Plaintiffs' sons, have been well-documented. Indeed, while waging ad hominem attacks against Plaintiff's counsel in its motion, ironically Defendant Clinton's counsel's own firm, Williams Connolly, has also been implicated in Defendant Clinton's private e-mail scandal, for having obstructed justice by "delet[ing] possibly relevant emails that weren't turned over to the State Department and "cleaned their devices in a way that prevented emails from being

recovered fully."[1] These deleted emails are likely relevant evidence or may lead to relevant evidence in this case. Defendant Clinton's instant motion to vacate default is just another instance of her and her counsel's belief that they are "above the law." They indeed have reason to believe this, as neither of them have thus far been held truly and ultimately accountable for any of their actions, for decades.

Indeed, Plaintiffs have strictly adhered to the Federal Rules of Civil Procedure and served Defendant Clinton properly under New York law. Plaintiffs are entitled to serve Defendant Clinton in any manner which is allowed under the Federal Rules, and have clearly done so. In fact, Plaintiffs have consciously chosen to serve Defendant Clinton in the manner which they did, and not through the undersigned counsel, because counsel for Defendant Clinton has proven to be untrustworthy, as described above. Defendant Clinton's attempt to prejudice this Court by alleging that counsel for Plaintiffs has brought "at least eighteen" suits against the Clintons [over the course of the last twenty-two years] is clearly irrelevant. However, if it were relevant, it would stand as a testament to the brazen and unlawful behavior of Defendant Clinton. In fact, the undersigned counsel and Freedom Watch will tread where others will not, such as attempting to bring justice to those who feel they are immune to the laws and rules of the United States and its courts. Ironically, in the words of an iconic former Senator and presidential candidate, Barry Goldwater, "extremism in the defense of liberty is no vice. And…moderation in the pursuit of justice is no virtue!"

[1] Susan Beck, *Tough Words for Clinton's Lawyers as FBI Drops Email Probe*, Law.com, July 5, 2016, available at: http://www.law.com/sites/almstaff/2016/07/05/tough-words-for-clintons-lawyers-as-fbi-drops-email-probe/?slreturn=20160821180059

II. THE FACTS AND THE LAW

A. Defendant Was Properly Served Under New York Law

Pursuant to Fed. R. Civ. P. 4(e), service on an individual may be effected by "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made…." Plaintiffs filed this instant action in the District of Columbia and properly served Defendant Clinton in New York. Thus, service can be effected under the laws of either the District of Columbia or New York.

Pursuant to New York law, service may be made "by delivering the summons within the state to a person of suitable age and discretion at the actual place of business…of the person to be served and…by mailing the summons by first class mail to the person to be served at his or her actual place of business…." N.Y.C.P.L.R § 308(2). In his affidavit, process server Jack Johnson stated that, on August 11, 2016, he delivered a copy of the required documentation to Defendant Clinton's campaign headquarters at 1 Pierrepont Plaza, Brooklyn, NY, 11201—Defendant Clinton's "actual place of business." (Docket No. 7 at 9). This was done only after Plaintiffs had attempted to serve Defendant Clinton personally at her Washington D.C. residence. *Id*. at 8. There, Defendant Clinton's U.S. Secret Service contingent, at Defendant Clinton's obvious direction, advised the process server to serve Defendant Clinton at her campaign headquarters. *Id*. at 8. Only when Defendant Clinton's campaign staff, obviously at her direction, attempted to evade service of process were the documents were left with "in the possession of a security officer" who "did not provide his name." *Id*. Indeed, the security officer served is a "person of suitable age and discretion" as an adult employee at Defendant Clinton's place of business. Any disingenuous contention that Defendant Clinton tries to make otherwise is contradicted and severely undermined by the fact that Defendant Clinton and her staff knew that

a process server was present, but still willfully and improperly attempted to prevent service by being "unwilling to present themselves to accept service of process." *Id*. Additionally, "a copy of the legal documents were sent – via the United States Postal Service – to [Defendant Clinton's] attention at the service address." *Id*. As such, proper service was made pursuant to N.Y.C.P.L.R. § 308(2).

As Defendant Clinton admits, the U.S. Court of Appeals for the Second Circuit, where New York sits, has expressly held that federal law, not state law, governs the time that a defendant has to file an answer. *Beller & Keller v. Tyler*, 120 F.3d 21 (2d Cir. N.Y. 1997). In *Tyler*, the Second Circuit had occasion to make a ruling based on facts nearly identical to the instant matter—plaintiffs sued defendants in federal court, and opted to serve the defendants pursuant to New York law. *Id*. at 22. The Second Circuit expressly stated that "[t] he additional proof of service requirement of CPLR § 308(4) (along with its twenty-day time limit and its ten-day post-filing period) serves only one purpose: triggering the thirty-day time limit in which to file an answer in state court." *Id*. at 26. Moreover, the *Tyler* court held that "under the plain terms of Federal Rule of Civil Procedure 12(a), a defendant has twenty days from receipt of the [26] summons to file an answer unless a federal statute provides otherwise. This is so even if, as permitted by Federal Rule of Civil Procedure 4(e), the defendant is served pursuant to a state law method of service and the state law provides a longer time in which to answer." *Id*. at 25-26.

Defendant Clinton's contention appears to be that the *Tyler* court simply got it wrong, despite the fact that the 1997 decision has never been overruled. In making this allegation, Defendant Clinton focuses on the language used by the *Tyler* court that the time for filing an answer begins upon "receipt of the summons." Instead, Defendant Clinton argues, the time for

filing an answer should begin upon "service." What Defendant Clinton conveniently ignores is, under the Federal Rules of Civil Procedure, "receipt of summons" is the same as "service." Thus, the *Tyler* court could have used the two terms interchangeably. To the extent that Defendant Clinton is arguing that service under New York law is not made until ten days after receipt of the summons, the *Tyler* court has expressly stated that this is entirely irrelevant to federal actions. Lastly, Defendant Clinton attempts to make an argument based on New York public policy, while completely ignoring the fact that, at the end of the day, this action is a federal action, and as the *Tyler* court stated, one of the the express purposes of the Federal Rules of Civil Procedure is "nationwide uniformity for service of process in federal courts." *Id.* at 26. Applying each state's different rules regarding timing to file an answer clearly undermines this express purpose. Thus, Defendant Clinton's circular argument is unpersuasive and disingenuous, and Defendant Clinton has been properly served under New York law, as permitted by the Federal Rules of Civil Procedure.

B. The United States Was Properly Served

Pursuant to Rule 4(i) of the Federal Rules of Civil Procedure, the United States is properly served when a party (1) sends a copy of the summons and complaint by registered or certified mail to the United States attorney for the district where the action is brought, and (2) sends a copy of the summons and complaint by registered or certified mail to the Attorney General of the United States. Plaintiffs have done both, as evidenced by the return receipts attached hereto as **Exhibit A**, which attached affidavit of mailing. Copies of the required documentation were mailed out on August 16, 2016 and delivered at the Office of the Attorney General on August 23, 2016 and the U.S. Attorney for the District of Columbia on August 19, 2016, based on the tracking numbers linked to the attached return receipts. Any representation

that Defendant Clinton and her counsel make to this Court that the United States did not receive the proper documentation is blatantly false and another dishonest attempt to deceive the Court, as she has with many other persons and entities in the past.

C. Defendant Clinton Had Twenty-One Days After Service to Respond to Plaintiff's Complaint

Defendant Clinton contends that Fed. R. Civ. P. 12(a)(3), referring to "United States Officers or Employees Sued in an Individual Capacity" applies, which would give Defendant Clinton sixty (60) days to respond to the Complaint instead of the standard twenty-one (21) days generally allowed. This position ignores a critical point—Defendant Clinton is not a United States employee. She is a private citizen—with the same rights and responsibilities as every other private citizen in the United States—despite any contention that Defendant Clinton may make otherwise. Defendant Clinton is no more entitled to additional response time than Plaintiffs are here.

Indeed, much of Plaintiffs' cause of action for Defamation is based entirely on statements made by Defendant Clinton after she had left the State Department. (Docket No. 1 ¶ 23). These statements at issue were made in either 2015 or 2016 during Defendant Clinton's campaign for President. Defendant Clinton does not argue, nor could she, that she was acting as Secretary of State when she made the defamatory statements at issue. Moreover, Defendant Clinton's use of her private email server, according to FBI Director James Comey, was an extremely careless transmission of classified information, and thus she violated criminal statutes. This causes her to lose any governmental immunity. *See Loumiet v. United States*, 968 F. Supp. 2d 142, 158 (D.D.C. 2013); *see also Harlow v. Fitzgerald*, 457 U.S. 800 (1982). She was therefore sued and later served in her private capacity, and thus had twenty-one days to respond to the complaint once served.

D. Defendant Clinton's Default Should Not Be Excused

In order for an entry of default to be vacated, the party in default must show good cause to set aside entry of default. *Keegel v. Key West & Caribbean Trading* Co., 627 F.2d 372, 373 (D.C. Cir. 1980). In making such a determination, the court considers "whether (1) the default was willful, (2) a set-aside would prejudice plaintiff, and (3) the alleged defense was meritorious." *Id*.

Defendant Clinton claims that her default was not willful, "as Secretary Clinton and her counsel were unaware that a security guard had accepted copies of the complaint and summons on August 11, 2016." (Docket No. 14 at 14). This assertion simply doesn't make sense given the process server's affidavit, which expressly stated that Defendant Clinton and her staff were "unwilling to present themselves to accept service of process" of the summons and complaint. (Docket No. 7 at 9). Moreover, counsel for Defendant Clinton freely admits that he "became aware of this lawsuit shortly after its filing" and "began monitoring the case docket." (Docket No. 14 at 4). These facts make Defendant Clinton's assertion that she was unaware that she had been served, quite simply, not believable. Similarly, Defendant Clinton's contention that she, in good faith, believed that she had 60 days to respond is not persuasive, because there is no way for her to argue that she is currently an employee of the United States. Furthermore, Defendant Clinton's argument that Plaintiffs will not be prejudiced merely because counsel for Plaintiff has stated that "[t]his case is not going to be decided before the election…" is patently false. Whether or not this matter is disposed of before the November Presidential election has nothing to do with the rights of Plaintiffs to recover expeditiously for their damages caused by Defendant Clinton. In fact, that counsel for Defendant Clinton is referencing the election is indicative of Defendant Clinton's attempt to buy time to push this matter past the November election, so that

Defendant Clinton's presidential aspirations are protected and realized. This case, to the contrary, was not filed to affect the presidential election on November 8, 2016, but instead to seek justice for the deaths of Plaintiffs' sons.

Lastly, and perhaps most incredibly, Defendant Clinton and her counsel have flouted and trifled with the Court's process and on their own decided that Defendant Clinton is not in default, and is above being subject to Local Rule 7(g) which mandates that any motion to vacate entry of default be accompanied by "a verified answer presenting a defense sufficient to bar the claim in whole or in part." Defendant Clinton's rationale for not complying with L.R. 7(g) is simply that she does not believe that she is in default, despite the fact that the clerk of this Court has made the opposite determination. Defendant Clinton cites *Baade v. Price*, 175 F.R.D. 403 (D.D.C. 1997), which is inapplicable to the facts here. In *Baade*, the court excused the formal requirement of attaching a verified answer to a motion to set aside default when the defendant contended that service had not been perfected and actually filed a motion to quash service of process. Defendant Clinton has not done so here, likely because she knows that she was properly served. Defendant Clinton is not entitled to make her own determination of whether she is in default—that is this Court's duty.

Finally, Defendant Clinton's attempts to evade service of process and then lie about it should not be countenanced.

III. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Defendant's Motion to Vacate Default be denied.

Dated: September 22, 2016

Respectfully submitted,
/s/ Larry Klayman
Larry Klayman, Esq.

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CERTIFICATE OF SERVICE

I, Larry Klayman, counsel for Plaintiffs hereby certify that on this day, September 22, 2016, a copy of the foregoing was filed via this Court's ECF system and served upon all parties and/or counsel of record.

/s/ Larry Klayman
Larry Klayman

AFFIDAVIT OF OLIVER PEER

I, Oliver Peer, declare as follows:

1. I am over the age of eighteen and not a party to this action.

2. On or about August 16, 2016, I mailed a copy of the summons and complaint in this instant action to the Office of the Attorney General via United States Postal Service certified mail. A true and correct copy of the return receipt is attached as **Exhibit A**.

3. On or about August 16, 2016, I mailed a copy of the summons and complaint in this instant action to the U.S. Attorney for the District of Columbia via United States Postal Service certified mail. A true and correct copy of the return receipt is attached as **Exhibit A**.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this September 22, 2016 at Beverly Hills, California

/s/ Oliver Peer
Oliver Peer

EXHIBIT A

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

US Atty for District of Columbia
555 4th St NW
Washington DC 20530

9590 9403 0389 5163 6178 13

2. Article Number (Transfer from service label)

7013 2250 0002 3232 4134

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

AUG - 3 2016

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Mail
- Mail Restricted Delivery 00)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, April 2015 PSN 7530-02-000-9053 Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DC Dept of Justice
950 Pennsylvania Ave NW
Washington DC 20530

9590 9403 0389 5163 6177 90

2. Article Number (Transfer from service label)

7013 2250 0002 3232 4219

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, April 2015 PSN 7530-02-000-9053 Domestic Return Receipt