

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>ESTATE OF HIMOUD SAED ABTAN, <i>et al.</i></b>	)	
	)	
Plaintiffs,	)	Civil Case No. <b>1:07-cv-01831 (RBW)</b>
	)	(Lead Case)
v.	)	
	)	
<b>BLACKWATER LODGE AND TRAINING CENTER, <i>et al.</i></b>	)	
	)	
Defendants.	)	
_____	)	

<b>ESTATE OF ALI HUSSAMALDEEN ALBAZZAZ, <i>et al.</i></b>	)	
	)	
Plaintiffs,	)	Civil Case No. <b>07-cv-02273 (RBW)</b>
	)	(Consolidated Case)
v.	)	
	)	
<b>BLACKWATER LODGE AND TRAINING CENTER, <i>et al.</i></b>	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS’ MOTION TO DISMISS FOR LACK OF VENUE THE  
SECOND AMENDED COMPLAINT IN CASE NO. 1:07-CV-01831 AND  
THE AMENDED COMPLAINT IN CASE NO. 07-CV-02273**

Defendants Blackwater Lodge and Training Center, Inc.; Blackwater Security Consulting, LLC; Blackwater Armor and Targets, LLC; Blackwater Airships, LLC; Blackwater Logistics, LLC; Raven Development Group, LLC; Greystone Limited; Prince Group LLC; EP Investments, LLC; and Erik Prince (collectively, “Defendants”), pursuant to 28 U.S.C. § 1406(a) and Fed. R. Civ. P. 12(b)(3) move for dismissal of Plaintiffs’ Second Amended Complaint in *Estate of Himoud Saed Abtan v. Blackwater Lodge and Training Center*, No. 1:07-cv-01831, and the

Amended Complaint in *Estate of Ali Hussamaldeen Albazzaz v. Blackwater Lodge and Training Center*, No. 07-cv-02273, for lack of venue. In the alternative, Defendants move for the transfer of these consolidated cases to the Eastern District of Virginia.

As required by Local Rule 7(a), the reasons supporting this Motion are set forth in the attached Defendants' Memorandum in Support of Their Motion to Dismiss for Lack of Venue the Second Amended Complaint in Case No. 1:07-cv-01831 and the Amended Complaint in Case No. 07-cv-02273.<sup>1</sup> A Proposed Order is attached as required by Local Rule 7(c). Defendants have served counsel for Plaintiffs with copies of this Motion, the Memorandum and its supporting documents, and the Proposed Order.

Respectfully submitted,

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Dated: April 8, 2008

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<sup>1</sup> We note that Plaintiffs have not yet filed an Amended Complaint in Albazzaz as this Court has granted leave to do. We therefore request that the Court consider this motion and supporting papers, with respect to Albazzaz, as anticipating Plaintiff's Amended Complaint. All citations to the Albazzaz Amended Complaint are to the Proposed Amended Complaint appended to Plaintiffs' Motion for Leave to File an Amended Complaint, Albazzaz Dkt. No. 16.

**IN THE UNITED STATES DISTRICT COURT  
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<b>ESTATE OF HIMOUD SAED ABTAN, <i>et al.</i></b>	)	
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Plaintiffs,	)	Civil Case No. <b>1:07-cv-01831 (RBW)</b>
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Defendants.	)	
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<b>ESTATE OF ALI HUSSAMALDEEN ALBAZZAZ, <i>et al.</i></b>	)	
	)	
Plaintiffs,	)	Civil Case No. <b>07-CV-02273 (RBW)</b>
	)	(Consolidated Case)
v.	)	
	)	
<b>BLACKWATER LODGE AND TRAINING CENTER, <i>et al.</i></b>	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS' MEMORANDUM IN SUPPORT OF  
THEIR MOTION TO DISMISS FOR LACK OF VENUE THE SECOND  
AMENDED COMPLAINT IN CASE NO. 1:07-CV-01831 AND THE  
AMENDED COMPLAINT IN CASE NO. 07-CV-02273**

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## INTRODUCTION

Blackwater Lodge and Training Center, Inc. (“Blackwater Lodge”); Blackwater Security Consulting LLC (“Blackwater Security”); Blackwater Armor and Targets LLC (“Blackwater Armor”); Blackwater Airships LLC (“Blackwater Airships”); Blackwater Logistics LLC (“Blackwater Logistics”); Raven Development Group LLC (“Raven Development”); Greystone Limited (“Greystone”); Prince Group LLC (“Prince Group”); EP Investments LLC (“EP Investments”); and Erik Prince (collectively, “Defendants”), respectfully submit this Memorandum in Support of Their Motion to Dismiss for Lack of Venue.

This Memorandum establishes grounds for dismissal of the Second Amended Complaint in *Estate of Himoud Saed Abtan v. Blackwater Lodge and Training Center*, No. 1:07-cv-01831, Dkt. No. 18 (“Abtan 2d Am. Cmplt.”), and the Amended Complaint in *Estate of Ali Hussamaldean Albazzaz v. Blackwater Lodge and Training Center*, No. 07-cv-02273 (“Albazzaz Am. Cmplt.”).<sup>2</sup> Pursuant to Fed. R. Civ. P. 12(b)(3) and 28 U.S.C. § 1406(a), all claims should be dismissed because Plaintiffs have again committed an obvious error—for the third time in *Abtan*—by continuing to rely on clearly inapplicable venue provisions and failing to allege any basis whatsoever to satisfy their burden of establishing that venue is proper in this Court.

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<sup>2</sup> We note that Plaintiffs have not yet filed an Amended Complaint in Albazzaz as this Court has granted leave to do. We therefore request that the Court consider this motion and supporting papers, with respect to Albazzaz, as anticipating Plaintiff's Amended Complaint. All citations to the Albazzaz Amended Complaint are to the Proposed Amended Complaint appended to Plaintiffs' Motion for Leave to File an Amended Complaint, Albazzaz Dkt. No. 16.



## ARGUMENT

Plaintiffs rely upon two venue provisions, neither of which provides any grounds for venue in this Court. When venue is defective, 28 U.S.C. § 1406(a) authorizes this Court either to dismiss or to transfer the action. All Defendants reside for venue purposes in Virginia,<sup>3</sup> and venue would therefore be proper in the Eastern District of that State. Here, however, because Plaintiffs have repeatedly committed an obvious error in suing without alleging any plausible basis for venue in the District of Columbia, Defendants request that this Court dismiss both complaints.<sup>4</sup>

### **I. Plaintiffs provide no basis for venue in the District of Columbia.**

The new complaints fail to establish any basis for venue in this Court. Plaintiffs have the “obligation to institute the action in a permissible forum,” and thus bear “the burden of establishing that venue is proper.” *Freeman v. Fallin*, 254 F. Supp. 2d 52, 56 (D.D.C. 2003). Here, Plaintiffs rely on two provisions in support of venue in the District of Columbia—28 U.S.C. § 1391(a)(3) and 28 U.S.C. § 1391(b)(2). *Abtan* 2d Am. Cmplt. ¶ 30; *Albazzaz* Am. Cmplt. ¶ 15. As explained below, neither provision is relevant.

#### **A. Section 1391(a)(3) is inapplicable because these suits are not based solely on diversity jurisdiction.**

The first provision relied on by Plaintiffs applies to actions “founded *only* on diversity of citizenship.” 28 U.S.C. § 1391(a) (emphasis added). It is inapplicable here because Plaintiffs do not rely only on diversity jurisdiction, yet Plaintiffs continue to assert this provision in their new

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<sup>3</sup> One Defendant, Greystone, is disregarded for venue purposes because it is an alien. *See* Part II.C.

<sup>4</sup> In addition, Defendants note that the new complaints continue to make allegations regarding Total Intelligence Solutions, LLC, which is no longer a Defendant in this case. Therefore, Defendants respectfully request that this Court strike the references to Total Intelligence in paragraphs 24 and 26 of the Second Amended Complaint in *Abtan* and paragraphs 9 and 11 of the Amended Complaint in *Albazzaz*.

complaints as grounds for venue in this Court. Abtan 2d Am. Cmplt. ¶ 29 (basing jurisdiction on both diversity and the presence of a federal question); Albazzaz Am. Cmplt. ¶ 14 (same); *see Friedman v. Revenue Mgmt. of N.Y., Inc.*, 839 F. Supp. 203, 206 (S.D.N.Y. 1993) (when “[j]urisdiction \* \* \* is based on diversity and a federal question,” Section 1391(a) is “irrelevant for the determination of proper venue”), *aff’d* 38 F.3d 668 (2d Cir. 1994). Indeed, this provision cannot apply because this Court has no diversity jurisdiction over these cases. *See Eze v. Yellow Cab Co. of Alexandria, Va., Inc.*, 782 F.2d 1064, 1065 (D.C. Cir. 1986) (per curiam) (“A diversity suit, in line with the *Strawbridge* rule, may not be maintained in federal court by an alien against a citizen of a state and a citizen of some other foreign country.”);<sup>5</sup> *see also Allendale Mut. Ins. Co. v. Bull Data Sys., Inc.*, 10 F.3d 425, 428 (7th Cir. 1993) (Posner, J.) (explaining in dicta how such a case does “not fit any of the possibly applicable jurisdictional pigeonholes”).

**B. Section 1391(b)(2) is inapplicable because no substantial part of the events or omissions giving rising to Plaintiffs’ claims occurred in the District of Columbia.**

The second venue provision cited in the new complaints also provides no basis for venue in this Court. Section 1391(b)(2) authorizes venue in “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.” No property is at issue in either of these cases, and the “events or omissions giving rise” to Plaintiffs’ claims are allegedly tortious actions in Iraq, not the District of Columbia—and not even the United States, for that matter:

- In *Albazzaz*, Plaintiffs allege that “[o]n or about September 9, 2007, Blackwater shooters shot, without justification, and killed five innocent persons \* \* \* in and

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<sup>5</sup> As discussed in Part II.C, *infra*, Greystone is an alien corporate Defendant.

around Al Watahba Square” and “[n]umerous other innocent persons were killed and injured in the incident,” Albazzaz Am. Cmplt. ¶ 17;

- In *Abtan*, Plaintiffs allege that “[o]n or about September 16, 2007, Blackwater shooters shot without justification and killed multiple innocent civilians \* \* \* in and around a traffic circle known as Nisoor Square” and “injured multiple innocent civilians \* \* \* in and around the same location,” *Abtan* 2d Am. Cmplt. ¶¶ 32, 33.

Plaintiffs’ claims in these actions arise out of their allegations about events and omissions related to the September 9 and September 16 incidents in Baghdad, *none* of which, much less “a substantial part” of which, occurred here in the District of Columbia. *See Abtan* 2d Am. Cmplt. ¶¶ 85-111 (asserting causes of action for war crimes (count 1), assault and battery (count 2), wrongful death (count 3), intentional infliction of emotional distress (count 4), negligent infliction of emotional distress (count 5), and negligent hiring and training (count 6)); Albazzaz Am. Cmplt. ¶¶ 62-88 (same).<sup>6</sup>

It is black letter law that in tort actions such as these, the “substantial part” venue inquiry focuses on “where the allegedly tortious actions occurred and the place where the harms were felt.” 14D WRIGHT, MILLER & COOPER, FEDERAL PRACTICE & PROCEDURE § 3806.1 (Westlaw 2008); *see also State Farm Mut. Auto. Ins. Co. v. Bussell*, 939 F. Supp. 646, 650 (S.D. Ind. 1996) (Barker, C.J.) (distinguishing contract and tort suits on this basis under the identical language of Section 1391(a)(2)); *Adrian v. United States*, No. Civ. A. 04-1721, 2006 WL 763076, \*2 (D.D.C. Mar. 13, 2006) (Walton, J.) (finding no venue under Section 1391(b)(2) for a *Bivens* claim when “all of the allegedly injurious acts occurred in” another state).

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<sup>6</sup> The only count for which some of the allegedly tortious acts could conceivably have occurred outside of Iraq is count 6 (negligent hiring, training, and supervision). Plaintiffs, however, do not assert that *any* hiring or training—much less “a substantial part”—took place in the District of Columbia.

Because Plaintiffs' claims sound exclusively in tort, and both the alleged tortious actions and the alleged injuries occurred in Iraq, there is simply no basis for venue in this Court under Section 1391(b)(2). *See, e.g., Rogers v. Metro. & City Police New Scotland Yard of London*, Civ. A. No. 91-2124 (CRR), 1992 WL 23669, at \*1 (D.D.C. Jan. 23, 1992) (finding venue improper in this Court under Section 1391(b)(2) because the "complaint describe[d] no important events giving rise to [plaintiff's] claim which took place in the District of Columbia or property alleged to be located in the District" but rather "describe[d] events occurring mostly in Colorado, California, or overseas").

\* \* \* \* \*

Plaintiffs have again filed complaints without alleging any plausible basis for venue in this Court. Moreover, because these suits do not rest solely on diversity jurisdiction, and because "a substantial part of the events or omissions giving rise to" Plaintiffs' claims could not possibly have occurred in the District of Columbia, no discovery is needed before this Court dismisses Plaintiffs' complaints. *See Mwani v. Bin Laden*, 417 F.3d 1, 17 (D.C. Cir. 2005) (upholding a denial of jurisdiction-related discovery because the court could "not see what facts additional discovery could produce that would affect [the] jurisdictional analysis") (internal quotation marks and citation omitted); *see also United States v. Toushin*, 714 F. Supp. 1452, 1460 (M.D. Tenn. 1989) (denying motion for venue-related discovery because the court was disposing of the venue motions and had "no reason to prolong this matter with unnecessary discovery"). This Court should therefore dismiss the complaints in both *Abtan* and *Albazzaz* for lack of venue.

## **II. Venue would be proper in the Eastern District of Virginia.**

Given the allegations in Plaintiffs' complaints, venue would be proper in the Eastern District of Virginia ("E.D. Va."). Indeed, Plaintiffs have already conceded that venue is proper in

E.D. Va. Abtan Pls. Opp. 5, Albazzaz Pls. Opp. 5-6. Under Section 1391(b)(1)—which Plaintiffs do not cite in their complaints—venue is proper in “a judicial district where any defendant resides, if all defendants reside in the same State.” As demonstrated below, all Defendants reside in Virginia and thus venue is proper in E.D. Va. under Section 1391(b)(1). Nevertheless, Defendants submit that these consolidated cases should be dismissed, not transferred to E.D. Va., for the reasons given below. *See* Part III, *infra*.

### **A. The non-alien corporate Defendants reside in Virginia.**

The Defendants who are non-alien corporations reside in Virginia. For venue purposes, a corporation resides in any judicial district in which “it is subject to personal jurisdiction.” 28 U.S.C. § 1391(c). To be subject to personal jurisdiction in Virginia, each Defendant must have “continuous and systematic” contacts with the State. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984) (providing the standard for general personal jurisdiction). This constitutional minimum is the relevant standard, for Virginia law<sup>7</sup> extends general personal jurisdiction as far as the federal Constitution permits. *English & Smith v. Metzger*, 901 F.2d 36, 38 (4th Cir. 1990); *Witt v. Reynolds Metals Co.*, 240 Va. 452, 454-56 (1990).

Each non-alien corporate Defendant has the requisite “continuous and systematic” contacts with the State of Virginia:

1. Prince Group and EP Investments have their respective principal places of business in Virginia. The location of a corporation’s principal place of business is conclusive evidence that it is subject to general personal jurisdiction. *See Perkins v. Benguet Consol. Mining Co.*,

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<sup>7</sup> Virginia law determines whether Defendants have sufficient contacts with Virginia to support general jurisdiction, and thus to make federal venue proper under Section 1391(b)(1) and Section 1391(c). *Beech Aircraft Corp. v. EDO Corp.*, Civ. A. No. 90-1518, 1991 WL 133551, at \*2 (D.D.C. Feb. 15, 1991) (“Whether personal jurisdiction could be established over [the defendant] in the federal courts of Kansas is determined with reference to Kansas law.”).

342 U.S. 437, 447-48 (1952) (finding general personal jurisdiction where the principal place of business had temporarily relocated because of the Second World War); *Devaughn v. Inphonic, Inc.*, 403 F. Supp. 2d 68, 72 (D.D.C. 2005) (finding a corporation subject to personal jurisdiction where its principal place of business was located); *Intranexus, Inc. v. Siemens Med. Solutions Health Servs. Corp.*, 227 F. Supp. 2d 581, 582 n.3 (E.D. Va. 2002) (“[I]t is indisputable that venue would be proper in the Eastern District of Pennsylvania because Defendant has its principal place of business in Pennsylvania and is therefore subject to personal jurisdiction therein pursuant to 28 U.S.C. § 1391(c).”); *LG Elecs. Inc. v. Advance Creative Computer Corp.*, 131 F. Supp. 2d 804, 813 (E.D. Va. 2001) (“General jurisdiction exists over resident defendants with their principal place of business in the jurisdiction.”); *Witt*, 240 Va. at 455 (“A foreign corporation \* \* \* which has its principal place of business in the forum \* \* \* may be subjected to personal jurisdiction there.”).

Both Defendants have the requisite contacts, because each has its principal place of business in Virginia. The principal place of business of Prince Group and EP Investments is an approximately 10,000 square feet office located at 1650 Tysons Blvd., McLean, Virginia 22102 (“the McLean Site”). Schmitz Decl., Ex. A, ¶ 4; Prince Decl., Ex. B, ¶ 5. All Prince Group employees work at the McLean Site. Schmitz Decl., Ex. A, ¶ 5. Plaintiffs themselves recognize that these Defendants are based in E.D. Va. *See* Abtan 2d Am. Cmplt. ¶¶ 22, 23, 26; Albazzaz Am. Cmplt. ¶¶ 7, 8, 11.

2. The remaining non-alien corporate Defendants—Blackwater Lodge, Blackwater Security, Blackwater Armor, Blackwater Airships, Blackwater Logistics, and Raven Development—also reside in Virginia.

First, several of these Defendants have offices in Virginia. Roitz Decl., Ex. D, ¶¶ 9, 22 (Blackwater Lodge, Blackwater Security); Matthews Decl., Ex. E, ¶ 5 (Blackwater Armor). This fact alone is sufficient to establish that these Defendants are subject to general personal jurisdiction. *Schmidt v. Am. Inst. of Physics*, 322 F. Supp. 2d 28, 32 n.1 (D.D.C. 2004); see 4 WRIGHT & MILLER § 1067.5 (“[T]he defendant must be engaged in longstanding business in the forum state, such as marketing or shipping products, or performing services or *maintaining one or more offices* there \* \* \*.”) (emphasis added); see also *Helicopteros Nacionales de Colombia*, 466 U.S. at 416 (finding no general jurisdiction and emphasizing that defendant did “not have a place of business” in the state).

Second, Blackwater Lodge, Blackwater Security, and Raven Development are authorized to do business in Virginia. Roitz Decl., Ex. D, ¶¶ 7, 20; Matthews Decl., Ex. E, ¶ 17. This is strong evidence that they are subject to general personal jurisdiction within the State. *Helicopteros Nacionales de Colombia*, 466 U.S. at 416 (finding no general jurisdiction and emphasizing that defendant “never ha[d] been licensed to do business in the State”); *Inversiones Inmobiliarias El Bosque, S.A. v. Transtainer Corp.*, No. Civ. A. 03-0962, 2004 WL 325615, at \*3 (E.D. La. Feb. 18, 2004) (finding general personal jurisdiction under both Louisiana law and the federal Constitution where defendant was “authorized to do business in Louisiana, ha[d] appointed an agent for service of process, ha[d] solicited business in Louisiana, and ha[d] maintained an office in Kenner, Louisiana”).

Finally, all of these Defendants have other “continuing and systematic” contacts with the State. Blackwater Lodge is the corporation that leases the McLean Site. Roitz Decl., Ex. D, ¶ 9. Blackwater Lodge and Blackwater Security have a host of contacts that meet the “continuous and systematic” test, including contracts with and frequent visits to the State Department’s Office of

Acquisition Management, which is located in Arlington, Virginia. *E.g., id.* ¶¶ 7–14, 20–26. Virginia is one of the major places of business for Blackwater Logistics, and a significant amount of its cargo shipments involve Virginia ports. Matthews Decl., Ex. E, ¶ 14. Virginia is also a major place of business for Raven Development, and its business contacts with the State include development of a \$10 million auto-auction facility. *Id.* ¶¶ 19–21. Moreover, the non-alien corporate Defendants routinely conduct business in Virginia with clients and strategic partners or owners (such as other Defendants and Mr. Prince),<sup>8</sup> including frequent business trips, meetings, and acquisition of government contracts. Roitz Decl., Ex. D, ¶¶ 10, 20–21; Matthews Decl., Ex. E, ¶¶ 6, 10, 15, 20. Taken together, these contacts are more than sufficient to subject each of these Defendants to general personal jurisdiction in Virginia, because it is unquestionable that each Defendant “has adopted the state as one of its major places of business.” *Witt*, 240 Va. at 456 (quoting *Ratliff v. Cooper Labs., Inc.*, 444 F.2d 745, 748 (4th Cir. 1971)).

### **B. The individual Defendant (Erik Prince) resides in Virginia.**

An individual defendant resides in the place of his domicile. *King v. Wall & Beaver St. Corp.*, 145 F.2d 377, 378-79 (D.C. Cir. 1944); 14D WRIGHT, MILLER & COOPER § 3805 & n.12. In determining a person’s domicile, courts consider “two factors: physical presence in a state, and intent to remain there for an unspecified or indefinite period of time.” *Prakash v. Am. Univ.*, 727 F.2d 1174, 1180 (D.C. Cir. 1984).

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<sup>8</sup> For example, Blackwater Security is a wholly owned subsidiary of Blackwater Lodge, which is a wholly owned subsidiary of EP Investments, which has its principal place of business in McLean, Virginia. Roitz Decl., Ex. D, ¶ 26; *see also* Part II.A.1, *supra*. Although establishing general jurisdiction over a parent corporation does not “automatically establish jurisdiction over a wholly owned subsidiary,” *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 n.13 (1984), courts are more likely to find general jurisdiction in a state where “shareholders reside,” *U.S. Gen., Inc. v. Draper City*, No. 2:05-CV-917 TS, 2006 WL 1594184, at \*4 (D. Utah June 7, 2006) (relying on an eleven-factor test that includes this point).



Erik Prince resides in Virginia. Mr. Prince's domicile is in McLean, Virginia, where he lives and intends to continue residing indefinitely. Prince Decl., Ex. B, ¶ 1. Plaintiffs concede this point in both complaints. Abtan 2d Am. Cmplt. ¶ 21 (describing Mr. Prince as "a resident of McLean, Virginia"); Albazzaz Am. Cmplt. ¶ 6 (same).

### **C. The alien corporate Defendant does not affect the venue analysis.**

Greystone is organized in Barbados. Burgess Decl., Ex. F, ¶ 3. As an alien, Greystone "may be sued in any district," 28 U.S.C. § 1391(d), including E.D. Va. In determining proper venue in a suit with alien and non-alien defendants, the alien is ignored—"venue is proper in any district in which the suit could have been brought against the non-alien defendants alone." 14D WRIGHT, MILLER & COOPER § 3810. Here, because all of the other Defendants reside in Virginia, venue would be proper in E.D. Va.<sup>9</sup>

### **III. Dismissal of all claims is appropriate.**

In these cases, dismissal—not transfer to E.D. Va.—is appropriate. Because Plaintiffs filed these cases in the wrong court, the resolution of venue is governed by 28 U.S.C. § 1406(a), which provides:

The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

*Id.* Accordingly, this Court has the discretion either to dismiss these consolidated cases or to transfer them to a district court where venue is proper, namely E.D. Va.

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<sup>9</sup> Given that Greystone has significant business relationships with Virginia, Burgess Decl., Ex. F, ¶¶ 6–7, it is likely that it has "continuous and systematic" contacts with the State. An inquiry into Greystone's contacts with Virginia is unnecessary, however, given the company's status as an alien.

It is appropriate for this Court to dismiss rather than transfer an action when a plaintiff has “committed an obvious error in filing [its] action in the wrong court, and thereby imposed substantial unnecessary costs on both the defendant and the judicial system.” *Nichols v. G.D. Searle & Co.*, 991 F.2d 1195, 1201 (4th Cir. 1993) (affirming a dismissal for lack of personal jurisdiction). In such a circumstance, it would not serve the interests of justice and judicial economy “simply to transfer [the] action to the proper court, with no cost to” Plaintiffs or Plaintiffs’ counsel. *Id.*; *Coté v. Wadel*, 796 F.2d 981, 984-85 (7th Cir. 1986) (Posner, J.) (dismissing rather than transferring an action, even though the statute of limitations had run, because “litigants and the public will benefit substantially in the long run from better compliance with the rules limiting personal jurisdiction”). This general rule also is applicable to cases where a plaintiff sues in an obviously improper forum. Although general practice is to transfer a case to a forum where venue is proper, “district courts often dismiss a case, rather than transfer it under Section 1406(a), if the plaintiff’s attorney reasonably could have foreseen that the forum in which the suit was filed was improper and \* \* \* similar conduct should be discouraged.” 14D WRIGHT, MILLER & COOPER § 3827 & n.37.

Here, the case for dismissal is strong. First, Plaintiffs have filed the *Abtan* complaint three times now (despite having been informed after the filing of the second complaint that venue is improper in the District Court for the District of Columbia), but they have still failed to offer any explanation that is even remotely plausible for venue in this Court. This is their second attempt with *Albazzaz*. Each amended complaint cites two venue provisions, and both provisions, as discussed above, are facially irrelevant. Plaintiffs have not dropped their reliance on Section 1391(a)(3), which applies to suits based only on diversity jurisdiction, in their new complaints.

Second, Plaintiffs' own allegations regarding the Defendants invariably refer to McLean, Virginia or Moyock, North Carolina, not Washington, D.C. *E.g.*, *Abtan* 2d Am. Cmplt. ¶¶ 21–27; *Albazzaz* Am. Cmplt. ¶¶ 6–12. Plaintiffs mention the District of Columbia only in a paragraph seeking discovery in order to show that Defendants “routinely conduct business and enter into contracts in this District.” *Abtan* 2d Am. Cmplt. ¶ 28; *Albazzaz* Am. Cmplt. ¶ 13. But this generic assertion (1) alleges nothing concrete, (2) bears no relationship to the venue provisions on which Plaintiffs rely, and (3) is undercut by the fact that even when Plaintiffs allege places where Defendants are registered to do business, they include Virginia and ten other States but *not* the District of Columbia. *Abtan* 2d Am. Cmplt. ¶ 19; *Albazzaz* Am. Cmplt. ¶ 12.

Third, Plaintiffs' prior admissions and allegations demonstrate that the proper venue is E.D. Va. Plaintiffs previously conceded that venue is proper in E.D. Va. *Abtan* Pls. Opp. 5, *Albazzaz* Pls. Opp. 5–6. Moreover, in the complaints, Plaintiffs allege (albeit incorrectly) that all Defendants are “owned and personally controlled” by one individual, Mr. Prince, and by two corporations, Prince Group and EP Investments. *Abtan* 2d Am. Cmplt. ¶ 24; *Albazzaz* Am. Cmplt. ¶ 9. All three—by Plaintiffs' own admission—reside in Virginia. *Abtan* 2d Am. Cmplt. ¶¶ 21 (“Erik Prince, a resident of McLean, Virginia”), 22 (“The Prince Group LLC is \* \* \* located at 1650 Tysons Boulevard, McLean, Virginia, 22102”), 23 (“EP Investments, LLC is located at 1650 Tysons Boulevard, McLean, Virginia, 22102”); *Albazzaz* Am. Cmplt. ¶¶ 6, 7, 8 (same).

Therefore, given the fact that Plaintiffs have now three times in *Abtan* made no effort whatsoever to connect their allegations to the venue requirements of federal law or the location of even one of the numerous parties they have named as Defendants, dismissal is appropriate in

both cases. In the alternative, Defendants request that this Court transfer these cases to a court where venue is proper, namely E.D. Va.

\* \* \* \* \*

WHEREFORE, Defendants respectfully request that the Court grant their Motion and enter an order dismissing in their entirety the Second Amended Complaint in *Abtan* and the Amended Complaint in *Albazzaz*; or, in the alternative, transferring both cases to the U.S. District Court for the Eastern District of Virginia. In any event, Defendants respectfully request that this Court strike the references to Total Intelligence in the new complaints.

Respectfully submitted,

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Dated: April 8, 2008

**CERTIFICATE OF SERVICE**

I, Peter White, an attorney, certify that on April 8, 2008, I caused true and correct copies of the foregoing Motion to Dismiss, the Memorandum and its supporting documents, and the attached Proposed Order to be filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following counsel who has registered for receipt of documents filed in this manner:

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In addition, on this same date, I caused the above-mentioned Motion, Memorandum, supporting documents, and Proposed Order to be served upon the following counsel of record via first-class mail:

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