IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION

WISSAM ABDULLATEFF SA'EED AL-QURAISHI, et al., **Plaintiffs,** **v.** **ADEL NAKHLA, et al.,** **Defendants.**	**Civil Action No. 8:08-cv-01696-PJM**

REPLY IN SUPPORT OF
DEFENDANT L-3 SERVICES, INC.'S MOTION TO TRANSFER VENUE

Plaintiffs' Opposition rests on three erroneous assertions: (1) that defendant Adel Nakhla has not filed a written concession of personal jurisdiction in the Eastern District of Virginia ("Eastern District") from which the Court is urged to conclude that there is no personal jurisdiction over Nakhla and therefore no basis for transfer under 28 U.S.C. § 1404(a); (2) that this Court must give deference to plaintiffs' choice of a Maryland forum; and (3) that the Amended Complaint and pending Second Amended Complaint have so transformed this case that there would no longer be any efficiencies in transferring this case to the Eastern District for consolidation with *Al Shimari v. CACI*, No. 08-cv-0827 (E.D. Va.). Plaintiffs are wrong on all counts and transfer should be ordered.

I. THE CASE COULD HAVE BEEN BROUGHT IN THE EASTERN DISTRICT.

The first step in the transfer analysis is to decide whether this case might have been brought in the transferor district, since that is a threshold requirement under 28 U.S.C. § 1404(a). *See Dow v. Jones*, 232 F. Supp. 2d 491, 499 (D. Md. 2002). Plaintiffs suggest that it could not have been brought in the Eastern

District because defendant Nakhla's *fact* affidavit filed in support of L-3's transfer motion did not express the *legal* conclusion that the facts establish personal jurisdiction in Virginia.[1] But this misses the mark. Nakhla's affidavit concedes facts laying out Nakhla's extensive contacts with, and in, Virginia relating to this case, amply demonstrating that there is personal jurisdiction over him under the Virginia long-arm statute. Indeed, Nakhla's contacts with Virginia are far more extensive than those of the individual CACI employees already brought into the Eastern District from their resident jurisdictions through the transfer of their respective cases—transfers that, with respect to two of the CACI defendants, plaintiffs' counsel did not contest. The only thing lacking is *any* evidence from plaintiffs—or even *any* substantial argument—that indicates a *lack* of jurisdiction over Nakhla in Virginia.

In a complete *non sequitur,* plaintiffs argue that Nakhla's dismissal from the *Saleh* action in DC for lack of personal jurisdiction demonstrates a similar lack of jurisdiction in Virginia. But plaintiffs leave out the reason for the dismissal in DC—namely the lack of any contact between Nakhla and DC with respect to his work in Iraq. As Judge Robertson found, "[n]one [of defendants Israel, Nakhla and Stefanowicz] lives in the District of Columbia or has meaningful contacts here." *Saleh v. Titan Corp.,* 436 F. Supp. 2d 55, 59 (D.D.C. 2006). Moreover, plaintiffs in *Saleh* did not even attempt to invoke the DC long-arm statute as a basis for personal jurisdiction, relying instead solely on a defective allegation of nationwide RICO jurisdiction. *See id.* In contrast with DC, and as set out in L-3's opening Memorandum and supporting affidavits, Nakhla had repeated contacts with Virginia that are more than sufficient to satisfy personal jurisdiction under that state's long-arm statute. And in any event, Nahkla, through counsel, has further confirmed that he does not contest personal jurisdiction in the Eastern District for this case.

[1] Plaintiffs concede that L-3 could be sued in Virginia, as two California courts have already held. *See Saleh v. Titan Corp.,* 361 F. Supp. 2d 1152 (S.D. Cal. 2005) and *Al-Janabi v. Stefanowicz,* No. 08-cv-02913 (C.D.

II. RELEVANT FACTORS WEIGH STRONGLY IN FAVOR OF TRANSFER.

Plaintiffs cannot cite a single factor weighing in favor of Maryland as the venue for this case. They point only to their choice of Maryland and argue it must be honored. But the law is clear that this is not so when the chosen forum has no connection to the case, and the plaintiffs have no tie to the forum. This is especially so when, on the other side of the scale, transfer would greatly conserve judicial and party resources. Transfer is appropriate and should be granted.

A. Plaintiffs' Choice of Forum Should Be Given No Weight.

Plaintiffs repeatedly misstate the standard to be applied in a motion to transfer when the chosen forum has no connection to the underlying case and is not the home district of any of the plaintiffs. As an initial matter, it is worth noting that plaintiffs' claimed support comes from language pulled from a 60-year old case involving a *motion to dismiss* for *forum non conveniens—Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)—not a *motion to transfer* under 28 U.S.C. § 1404(a). It is well established that a plaintiff's choice of forum is given less weight in the context of a motion to transfer under 28 U.S.C. § 1404 than in the context of a motion to dismiss for *forum non conveniens*. *See So-Comm., Inc. v. Reynolds*, 607 F. Supp. 663 (N.D. Ill. 1985); *see also Y4 Design, Ltd. v. Regensteiner Publ'g Enters., Inc.*, 428 F. Supp. 1067 (S.D.N.Y. 1977) (noting that plaintiff's choice of forum is no longer given overriding consideration it once enjoyed under doctrine of *forum non conveniens*).

While a plaintiff's choice of forum is *generally* given substantial weight, an oft-cited and well-recognized exception to the rule gives it little or no weight when the chosen forum has no connection to the

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Cal.), Order of August 18, 2008, attached as Exhibit F to L-3's Memorandum of Points and Authorities.

case and is not where the plaintiff resides.[2] This is true even when a defendant resides in the chosen forum. *See, e.g., Mamani v. Bustamante*, 547 F. Supp. 2d 465, 473 (D. Md. 2008); *Fox v. Callender*, 729 F. Supp. 32, 34 (D. Md. 1990). This very Court has given little weight when the chosen forum, as here, "has no connection with the matter in controversy." *Dicken v. United States*, 862 F. Supp. 91, 93 (D. Md. 1994) (Messitte, J.) (internal quotations omitted). The diminished weight placed on plaintiff's choice of forum in such cases is based in part on the straightforward reality that when a foreign plaintiff is involved, each district is essentially of equal convenience to the plaintiff. Thus there is no particular reason to give plaintiff's choice greater weight in balancing the interests. This is especially so when, as here, the chosen district has no tie to the case. *See* cases cited in note 2, *supra*. To avoid the clear holding of this Court, plaintiffs contend that this Court, and the many others to so hold, are "simply wrong as a matter of law." (Opp. at 10.) In support of this bold contention, plaintiffs rely on a single case from the Eastern District of Texas, ignoring the host of cases going the other way.

Another reason to give less weight to a foreign plaintiff's choice of forum—which is very relevant here—is to protect against the dangers of forum shopping. Plaintiffs spend a great deal of time arguing that the issue of forum shopping is wholly irrelevant to a motion to transfer. However, far from irrelevant, forum shopping is one of the problems § 1404 was specifically designed to protect against. *See Torres v. S.S.*

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[2] *See, e.g., U.S. Ship Mgmt. v. Maersk Line, Ltd.*, 357 F. Supp. 2d 924, 936 (E.D. Va. 2005) (plaintiff's choice of venue outside its home district entitled to little weight); *Lycos, Inc. v. TiVo, Inc.*, 499 F. Supp. 2d 685, 692 (E.D. Va. 2007) (choice of forum not entitled to deference when there is only tenuous connection between the case and the forum); *In re Hanger Orthopedic Group, Inc. Sec. Litig.*, 418 F. Supp. 2d 164, 170 (E.D.N.Y. 2006) (weight "significantly diminished" where none of plaintiffs resided in forum); *Tuna Processors, Inc. v. Haw. Int'l Seafood, Inc.*, 408 F. Supp. 2d 358, 360 (E.D. Mich. 2005) (plaintiff's choice given less weight when plaintiff has little or no connection to the forum); *So-Comm, Inc.*, 607 F. Supp. at 666-67 (choice of forum given less weight when plaintiff is not a resident); *CES Publg Corp. v. Dealerscope, Inc.*, 544 F. Supp. 656, 662-63 (E.D. Pa. 1982) (choice of forum entitled to less weight when plaintiff is non-resident and cause of action did not arise there).

Rosario, 125 F. Supp. 496, 497 (S.D.N.Y. 1954) (28 U.S.C. § 1404(a) is "designed to remedy the evils of forum shopping"). And courts, including the Fourth Circuit, have held—contrary to plaintiffs' assertions—that forum shopping by a plaintiff *is* a factor to be considered in ruling on motions for transfer. *See, e.g.*, *Clayton v. Warlick*, 232 F.2d 699, 706 (4th Cir. 1956); *Polaroid Corp. v. Casselman*, 213 F. Supp. 379, 383 (S.D.N.Y. 1962) (plaintiff's choice of forum entitled to "no weight whatever where it appears that the plaintiff was forum shopping and that the selected forum has little or no connection with the parties or the subject matter").

In this regard it is telling that plaintiffs do not genuinely refute L-3's description of the events that led to the current posture of virtually identical cases initially filed all across the United States. While plaintiffs shade some of the issues, they acknowledge that this case and *Al Shimari* in the Eastern District (even as reconfigured) allege essentially the same conspiracy and they acknowledge that counsel for plaintiffs dropped both plaintiffs and defendants from various suits only to reinsert them elsewhere, including in this case. In particular, plaintiffs do not dispute that they selectively dropped CACI from the instant case (and likewise dropped L-3 from those in the Eastern District) while maintaining allegations of a conspiracy between the two of them in both cases.

Plaintiffs contend that their motivation was to get one case against CACI and one against L-3, i.e., they want their claims of conspiracy and allegations concerning what transpired at Abu Ghraib to proceed in two fora, which is precisely the sort of manipulation that 1404(a) was meant to address. Further, why have the L-3 case in Maryland when L-3, like CACI, is headquartered in Virginia? The CACI case was moved away from the home districts of the individual defendants and there is every reason to do the same with this one.

The inference of forum shopping from these facts does not require advanced skills of observation. Far from a personal attack against counsel,[3] plaintiffs' forum shopping is relevant and provides all the more reason to transfer the case to the Eastern District.

B. The Interests of Justice Weigh in Favor of Transfer To Avoid Wasting Resources.

While there is no factor weighing in favor of maintaining this case in the District of Maryland, the interests of justice, in the form of conserving judicial and party resources through consolidation of overlapping cases, tilt heavily towards transfer. As a result, the Court should transfer this matter to the Eastern District.

The Complaint and Amended Complaint in this action correctly state that defendant Adel Nakhla was employed by defendant L-3 as an interpreter in Iraq from June 2003 to May 2004. (Compl. ¶ 6; Am. Compl. ¶ 77.) In the Amended Complaint and the pending Second Amended Complaint, counsel for plaintiffs seeks to convert a claim by Wissam Abdullateff Sa'eed Al-Quraishi individually for torts allegedly committed against him by Nakhla in 2003 or 2004 (and by unnamed interrogators including CACI interrogators (Compl. ¶ 33)) at Abu Ghraib in late 2003 into an action on behalf of 73 other plaintiffs for conduct by unknown persons allegedly suffered in multiple locations in Iraq over a five-year period, including locations where Nakhla was never stationed and during four years in which Nakhla was not even in Iraq. Through this attempted transmogrification of what had been a simple one-plaintiff/two-defendant case into a 74-plaintiff case—in which 73 plaintiffs have no claim against Nakhla absent proof of a fantastical torture conspiracy between Nakhla, CACI, and the whole of the U.S. military establishment—

[3] Plaintiffs misconstrue the focus on their counsel's role. Plaintiffs' counsel's role in the procedural history is important to demonstrate that all these cases are being brought in a coordinated and strategic fashion to attack the military's conduct of the war in Iraq and its use of contractors, and not as individual actions.

plaintiffs' counsel seeks to avoid transfer to the Eastern District where this case overlaps with essentially identical conspiracy allegations made in *Al Shimari*.[4]

Since only two of plaintiffs here can identify the person(s) or even the unit or contractor who was involved in the alleged torture, the heart of both cases is the existence of a sweeping conspiracy between unidentified military person(s) who had contact with a plaintiff and CACI and L-3. In *Al Shimari,* similarly, there is no direct claim against any identified person. Moreover, assuming that plaintiffs are properly joined—which is not beyond doubt—the common core of facts that makes joinder permissible is the common conspiracy.[5]

Plaintiffs attempt to gloss over the degree of overlap between the two cases. It is not true, as plaintiffs allege, that this transmogrified case is no longer related to Abu Ghraib during the time that CACI was conducting interrogations at that location and L-3 personnel were working as linguists for both military and CACI personnel, as directed by the military. Thus, although the 73 new parties' allegations are too vague to provide the most basic details to state claims, the overlap between the cases is apparent—

- 58 appear to have been incarcerated during the time that CACI and L-3 were both operating in Iraq and of these all but 6 spent time at Abu Ghraib.
- None alleges a direct claim against Nakhla;
- Only one, Al-Ogaidi—who was incarcerated at Abu Ghraib; who first filed his case in district court in Washington State against CACI and L-3; and who consented to transfer to

[4] *Al Shimari* now involves four plaintiffs who allege under a conspiracy theory that CACI is liable for actions of unknown personnel stationed at Abu Ghraib. (Am. Compl. ¶ 71.) The original Complaint alleged a conspiracy that also included Nakhla and L-3. (Compl. ¶ 35; "Dugan and his fellow CACI interrogators were not the only corporate employees involved in the hard site torture. L-3 translators, including Adel Nakhla, participated at every step along the way, translating threats and in some instances assisting with the physical torture of hard site victims.")

[5] To the extent the new plaintiffs and issues are in fact different, then they have been misjoined and thus cannot serve as a means of blocking a legitimate transfer. L-3 reserves the right to raise any objections as to misjoinder of parties at a later date.

the Eastern District, but now apparently objects to going back to the Eastern District—makes an allegation against an L-3 employee, in this instance unnamed; and

- Only one, Al-Janabi—who was incarcerated at Abu Ghraib; who first filed his case in the Central District of California against both CACI and L-3; and who then fought and lost transfer to the Eastern District, and now apparently fights that transfer again—makes an allegation that an L-3 translator, unnamed, translated threats made by a military or CACI interrogator;

Thus, even after the tactical pruning and grafting that has gone on in these cases, both cases are still primarily about a conspiracy between L-3, CACI, and the military to torture and otherwise abuse prisoners in Iraq and in particular about Abu Ghraib. Plaintiffs illogically suggest that the overlap between the cases needs to be complete to warrant transfer, but provide no authority for that proposition. Transfer to achieve consolidation is warranted by the existence of common witnesses and issues, which is substantial here. There is no reason to have witnesses testifying twice and to have two different courts deciding issues concerning the same alleged torture conspiracy between CACI, L-3, and the military, that was supposedly hatched at Abu Ghraib in late 2003.

Plaintiffs' counsel on behalf of a purported class that would have included the plaintiffs here, said as much in the DC litigation. The plaintiffs in the District of Columbia cases—where CACI and L-3 were again sued as co-conspirators liable for the actions of each other and of military personnel stationed throughout Iraq over a multi-year period— sought to divide trial proceedings into several stages, the first of which would be a trial "for the limited purpose of establishing conspiracy liability." (Exhibit A, Mem. of Points and Authorities, Docket No. 144, *Saleh v. CACI, et al.,* D.D.C. No. 05-cv-1165(JR), at 3 (hereafter, "*Saleh* Memorandum").) In support of that position, plaintiffs in the District of Columbia cases (where there are some 250 individual plaintiffs) argued that common issues of discovery, law and fact governed the conspiracy issue and that it needed to be decided before any other.

> Here, the torture victims allege a common core of salient facts—namely, that CACI formed a conspiracy with military and other corporate employees to torture and abuse detainees. Although the torture victims endured different variations of the torture, none of these differences controls or impacts in any way the jury determination of the existence of a conspiracy to torture.

Id. at 7; *see also id*. at 5. In further support, plaintiffs' counsel stated: "The Torture Victims' Proposal, if adopted, would conserve judicial resources without sacrificing any fairness towards any party." *Id.* at 5. While the request for class certification was denied without reasons, the articulated rationale supports transfer here.

The common core of the conspiracy allegations here and in *Al Shimari* inevitably means that many of the same issues will need to be resolved, and the same witnesses will be needed to defend the now separate cases, needlessly doubling the inconvenience to the witnesses, to counsel, and, most importantly, to the courts. Accordingly, the interests of justice in avoiding duplicative litigation on the shared factual and legal issues outweighs any considerations for keeping this case in Maryland.[6] *See Sundance Leasing Co. v. Bingham*, 503 F. Supp. 139 (N.D. Tex. 1980) (transfer is proper where action based on common foundation is pending in another district). If the cases remain separated, there will be tremendous overlap between these cases that will lead to duplicative discovery, trial time, and wasted resources, not to mention increasing the chance of disparate outcomes in the different courts. It is for precisely these types of situations that § 1404 was designed. *See Cont'l Grain Co. v. Barge FBL-585*, 364 U.S. 19, 26 (1960) (§ 1404 designed to prevent wastefulness of time and money); *Harley-Davidson Motor Co. v. Strada*, 78 F.R.D. 521 (E.D. Wis. 1978) (desire to avoid multiplicity of litigation is encompassed within the interest of

[6] Other than with regard to their choice of forum, Plaintiffs do not assert that the other factors weigh in favor of keeping the action in Maryland.

justice inquiry); *Inline Connection Corp. v. Verizon Internet Servs.*, 402 F. Supp. 2d 695 (E.D. Va. 2005) (judicial economy and balance of hardships clearly favored transfer).

CONCLUSION

This action could, and should, have been brought in the Eastern District of Virginia. Transfer and consolidation will conserve judicial and party resources and will cause no inconvenience for non-party witnesses by eliminating the need for unnecessary duplicative proceedings. Accordingly, Defendant L-3 Services respectfully requests that this Court grant its motion to transfer venue.

Respectfully submitted,

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/s/ Brett R. Tobin

Ari S. Zymelman, *pro hac vice*
azymelman@wc.com
F. Greg Bowman (Bar No. 16641)
fbowman@wc.com
Brett R. Tobin (Bar No. 27818)
btobin@wc.com
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000 (telephone)
(202) 434-5029 (facsimile)
Attorneys for Defendant L-3 Services, Inc.