

torturing victims, and eliminates the allegations about CACI interrogators. Note, this Second Amended Complaint does not add any new causes of action.

STATEMENT OF PROCEDURAL FACTS

Mr. Al-Quraishi sued L-3, Adel Nakla and CACI International on June 30, 2008, for torturing him. At the same time, several other torture victims sued the same two corporations and different individual torturers in the District Courts where the individual torturers lived. All of these lawsuits alleged that L-3, CACI, and their employees conspired together and with others to torture and abuse plaintiffs when they were detained at Abu Ghraib and other prisons in Iraq. By filing in these jurisdictions, the torture victims planned to have a series of trials in the communities where the former torturers now resided.

This plan did not come to fruition because L-3 and CACI (joined by the individuals) began a series of procedural filings seeking to consolidate all the torture litigation in the Eastern District of Virginia over the victims' objections. The torture victims, after learning that they were losing this battle over transfer, developed a different trial strategy, which they voluntarily shared with Defendants. That is, the victims decided to consolidate the various lawsuits into two lawsuits, one aimed at the L-3 translators (i.e., this lawsuit) and one aimed at the CACI interrogators (in the Eastern District of Virginia). The victims voluntarily dismissed CACI from the Maryland action, and dismissed L-3 from the actions being transferred to the Eastern District of Virginia. The victims amended the Eastern District of Virginia complaint to focus exclusively on CACI's acts. The proposed Second Amended Complaint seeks to focus this lawsuit on L-3's acts.

By so doing, the torture victims are hoping to be able to litigate against L-3 in one forum and against CACI International in another, rather than being subjected to the combined corporate

forces in a forum not of their choosing, namely the Eastern District of Virginia. This strategy, and all the reasons that the victims believe that this Court should permit this action to remain here, are set out in detail in Plaintiffs' Opposition to L-3's Motion To Transfer, which is being filed on October 2, 2008.

As part of this effort to implement this two-pronged (rather than multi-pronged) litigation strategy, the torture victims began to negotiate with L-3 to refrain from moving to transfer this action to the Eastern District of Virginia. An agreement was reached under which the torture victims would agree to stay this action, and refrain from third-party discovery against L-3 in the Eastern District of Virginia, in exchange for L-3 agreeing not to seek to transfer this action. This agreement is attached as Exhibit B.

As part of that agreement, the parties contemplated that the victims would file the First Amended Complaint, and then immediately thereafter seek to stay the action. The victims filed the Amended Complaint. As a result, although the Amended Complaint named the additional victims, undersigned counsel, believing themselves to be in agreement with L-3, voluntarily refrained from expanding the public record on the scope and extent of L-3's wrongdoing. L-3, however, became "incensed" that so many victims had sought legal redress, and abruptly jettisoned the carefully-negotiated agreement. See Exhibit C, which is the email by which L-3's counsel alerts victims' counsel that L-3 is reneging on the agreement. During a telephone discussion subsequent to the sending and receipt of the email, L-3 counsel advised undersigned counsel that L-3 viewed the Amended Complaint's lack of detail about the victims as indicative of wrongdoing by undersigned counsel – that is, L-3 seemed to think undersigned counsel were simply making up victims. Undersigned counsel advised L-3 counsel that the victims had

assumed that given that parties' agreement, the victims assumed L-3 would prefer not to have all the bad acts placed on the public record.

The torture victims, having been accused of acting inappropriately by L-3 (albeit perhaps not by L-3's counsel), deemed it prudent to eliminate L-3's wholly unfounded suspicions by further amending the Complaint to include allegations about the very real harms suffered by the very real victims, all of whom have been personally interviewed by the legal team. In addition, as noted above, the torture victims needed to recast the Amended Complaint to eliminate the allegations about CACI (which are true but no longer at issue in this forum) and add further relevant allegations about bad acts by L-3 translators.

The torture victims contacted L-3 counsel, advised them of the planned amendment and asked L-3 to reveal any additional grounds on which L-3 planned to move to dismiss the Complaint. The torture victims prefer simply to cure any alleged defects in their pleadings rather than litigating whether L-3 is accurate as a matter of law. Such an exchange not only seems required by L-3's duty to meet and confer on the Motion To Dismiss, but would have spared the parties and the Court from having to review wholly unnecessary briefing. L-3 refused to share with the torture victims even a rudimentary summary of the grounds upon which L-3 intends to move to dismiss the action in the immediate future, yet simultaneously insisted that the torture victims provide L-3 with an actual draft of the Second Amended Complaint. The torture victims declined to participate in this lop-sided arrangement.

ARGUMENT

Clearly, the torture victims are entitled to amend the complaint at this early juncture regardless of whether L-3 unreasonably refuses to consent to the amendment. Leave to amend a complaint under Fed.R.Civ.P. 15(a) "shall be freely given when justice so requires." Leave to

amend should be denied only when the amendment would be prejudicial, there has been bad faith on the part of the moving party, or the amendment would be futile. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Nolte v. Capital One Financial Corp.*, 390 F.3d 311 (4th Cir. 2004); *HCMF Corp. v. Allen*, 238 F.3d 273, 276 (4th Cir. 2001); *Edwards v. City of Goldsboro*, 178 F.3d 231, 242 (4th Cir. 1999).

This Court has the discretion to decide whether the torture victims' proposed Second Amended Complaint furthers the efficiency of the litigation. *See HCMF Corp.*, 238 F.3d at 276-77 (reviewing decision under abuse of discretion standard). The torture victims are not adding any new causes of action. Rather, they are adding two additional plaintiffs (who clearly could commence a new action if not joined here), eliminating allegations about CACI, adding allegations about the misconduct of L-3 employees, and adding the details about the victims sought by L-3.

L-3 will not suffer any prejudice if the Court grants the victims' leave to amend. L-3 has not yet filed a responsive pleading. The Court has not entered a scheduling order, commenced discovery, or set a trial. Clearly, L-3 is not prejudiced in any way by any significant delay. *See Franks v. Rogers*, 313 F.3d 184 (4th Cir. 2002) (rejecting claims of prejudice because three months between approval of permit and motion to amend could "hardly have prejudiced the defendants").

The torture victims are not acting in bad faith in offering this amendment. They are not seeking to harass or abuse Defendants in any way. *GSS Properties, Inc. v. Kendale Shopping Center, Inc.*, 119 F.R.D. 379, 381 (M.D.N.C. 1988). Rather, the victims are acting at this early juncture for two reasons: First, they are responding to L-3's unfounded suspicions about whether the victims are real. Second, they are revising the Complaint to align with their

defensive strategy of trying to prevent the two corporate defendants from working together to move and consolidate this action with the pending action against CACI in the Eastern District of Virginia.

Finally, the amendment is not futile. For a motion to amend to be futile, it must be clearly insufficient or frivolous on its face. *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 510 (4th Cir. 1986). The Second Amendment Complaint states claims similar to those that have already survived a motion to dismiss in the District Court in the District of Columbia. Further, given that this Court has yet to rule on the viability of the claims, the proposed Second Amended Complaint does not contradict or ignore any earlier rulings. *See Nolte v. Capital One Financial Corp.*, 390 F.3d 311 (4th Cir. 2004) (amendment denied as futile when it does not cure deficiencies previously identified by the Court).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully move the Court for leave to file the proposed Second Amended Complaint.

Date: October 1, 2008

Respectfully submitted,



Susan L. Burke
William T. O'Neil
BURKE O'NEIL LLC
4112 Station Street
Philadelphia, PA 19127
Telephone: (215) 971-5058
Facsimile: (215) 482-0874

Katherine Gallagher
CENTER FOR CONSTITUTIONAL RIGHTS

666 Broadway, 7th Floor
New York, NY 10012
Telephone: (212) 614-6439
Facsimile: (212) 614-6499

Shereef Hadi Akeel
AKEEL & VALENTINE, P.C.
888 West Big Beaver
Suite 910
Troy, MI 48084
Telephone: (248) 594-9595
Facsimile: (248) 594-4477

Counsel for Plaintiffs