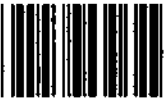


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P/A.

1 ROBERT D. ROSE, Cal. Bar No. 62559
2 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
3 A Limited Liability Partnership
4 Including Professional Corporations
5 501 West Broadway, 19th Floor
6 San Diego, California 92101-3598
7 Telephone: 619-338-6500
8 Facsimile: 619-234-3815

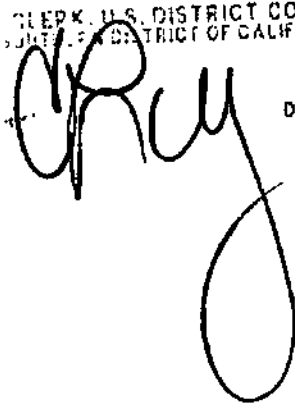
9 Adam L. Rosman, Esq.
10 ZUCKERMAN SPAEDER LLP
11 1201 Connecticut Ave., NW
12 Washington, DC 20036
13 Telephone: 202-778-1800
14 Facsimile: 202-822-8106

15 Attorneys for Adel Louis Nakhla

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA



DEPUTY

16 UNITED STATES DISTRICT COURT
17 SOUTHERN DISTRICT OF CALIFORNIA

18 SALEH, an individual, SAMI ABBAS
19 ALRAWI, an individual, et al.,

20 Plaintiffs,

21 v.

22 TITAN CORPORATION, a Delaware
23 Corporation; ADEL NAHKLA, a Titan
24 employee located in Abu Ghraib, Iraq; et al.,

25 Defendants.

Case No. 04-CV-1143 R (NLS)

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT ADEL LOUIS NAKHLA'S
MOTION TO DISMISS THE
COMPLAINT

DATE: March 14, 2005
TIME: 2:00 p.m.
CTRM: 5

COMPLAINT FILED: June 9, 2004

CR

19

1 Defendant Adel L. Nakhla ("Nakhla")¹ submits the following Memorandum of
2 Points and Authorities in Support of his Motion to Dismiss the Complaint.

3
4 I.

5 INTRODUCTION

6
7 On June 30, 2004, Plaintiffs filed a Second Amended Complaint ("Complaint" or
8 "Compl.") on behalf of a purported class of detainees in Abu Ghraib prison in Baghdad, Iraq
9 against Defendants Titan Corporation; CACI International Inc., CACI Incorporated-Federal, and
10 CACI N.V. (referred to collectively as "CACI"); Adel L. Nakhla; Stephan Stefanowicz; and
11 John Israel. The 26-count Complaint alleges that Defendants, together with "certain United States
12 government officials," conspired to violate the United States Constitution, federal statutes and
13 California common law. All of the alleged conduct took place in Iraq.

14
15 The Complaint should be dismissed against Nakhla under Fed. R. Civ. P. 12(b)(2)
16 because this Court may not exercise personal jurisdiction over him. Nakhla, a civilian, resides in
17 Montgomery Village, Maryland and has had no contact whatsoever with the Southern District of
18 California or, for that matter, the State of California. He has never lived in, nor even visited
19 California. He does not own property in California and does not own or operate a business in
20 California. Plaintiffs have not met the requirements for the exercise of personal jurisdiction over
21 Nakhla, and the case against him must be dismissed.

22
23 The Complaint must also be dismissed under Fed. R. Civ. P. 12(b)(6) against
24 Nakhla because, for the reasons stated by Defendants Titan Corporation and CACI in their

25
26
27 ¹ Misspelled as "Nahkla" in the Complaint.

1 motions, which Nakhla joins under Local Rule 7.1(j)(2), the Complaint fails to state any claim
2 against him upon which relief may be granted.

3
4 **II.**

5 **ARGUMENT**

6
7 **A. This Court may not exercise personal jurisdiction over Nakhla because he has had**
8 **no contact with the forum and Plaintiffs may not invoke RICO's nationwide service**
9 **provision.**

10
11 Nakhla, a civilian, resides in Montgomery Village, Maryland. He has never lived
12 in, nor even visited California. He does not own property in California and does not own or
13 operate a business in California. Attached is the Declaration of Nakhla in Support of Motion to
14 Dismiss ("Decl.") ¶¶ 5-8.

15
16 Plaintiffs bear the burden of establishing that this Court has personal jurisdiction
17 over Nakhla. *Fields v. Sedgwick Associated Risks, Ltd.*, 796 F.2d 299, 301 (9th Cir. 1986). Vague
18 allegations in a complaint regarding personal jurisdiction do not suffice to demonstrate personal
19 jurisdiction. *Butcher's Union Local No. 498 v. SDC Investment, Inc.*, 788 F.2d 535, 540
20 (9th Cir. 1986).

21
22 **1. This Court may not exercise personal jurisdiction over Nakhla**
23 **consistent with Due Process.**

24
25 Under Federal Rule of Civil Procedure 4(k), federal courts exercise the same
26 powers of personal jurisdiction as the courts of the state in which they sit. To establish personal
27 jurisdiction in California, this Court must determine that the state's long-arm statute confers

1 personal jurisdiction over the non-resident defendant and that the exercise of that jurisdiction
2 comports with federal due process. *Data Disc Inc. v. Systems Tech. Assoc.*, 557 F.2d 1280, 1286
3 (9th Cir. 1977). California's long-arm statute, Code of Civil Procedure § 410.10, extends the reach
4 of personal jurisdiction to the limits of due process. *Bancroft & Masters, Inc. v. Augusta Nat'l,*
5 *Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000).²

6
7 Due process requires that each defendant have sufficient "minimal contacts" with
8 the forum so that the Court's exercise of jurisdiction does not "offend traditional notions of fair
9 play and substantial justice." *Data Disc Inc.*, 557 F.2d at 1287 (citing *International*
10 *Shoe Company v. Washington*, 326 U.S. 310, 316 (1945)). Personal jurisdiction may be either
11 general or specific. *Reebok Int'l Ltd. v. McLaughlin*, 49 F.3d 1387, 1391 (9th Cir. 1995). Where a
12 defendant's contacts with the forum are "substantial, continuous and systematic," this Court may
13 exercise general jurisdiction over the defendant, and any cause of action may be brought.
14 *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415 (1984). The standard for
15 establishing general jurisdiction is high and requires that the defendant's contacts "be of the sort
16 that approximate physical presence." *Bancroft*, 223 F.3d at 1086.

17
18 If the defendant does not have such extensive contacts with the forum, this Court
19 may exercise specific jurisdiction only if (1) the defendant has purposefully availed himself of
20 forum benefits such that he should reasonably anticipate being haled into court there; (2) the
21 controversy is related to or arises out of the defendant's contacts with the forum; and (3) the
22 exercise of personal jurisdiction is reasonable. *Bancroft*, 223 F.3d at 1086. The mere fact that a
23 court may exercise personal jurisdiction over a defendant corporation does not mean that its non-
24 resident employees are subject to personal jurisdiction as well. *Calder v. Jones*, 465 U.S. 783, 790

25
26 ² § 410.10 provides that a "court of this state may exercise jurisdiction on any basis not inconsistent
27 with the Constitution of this state or the United States."

1 (1984). The court must assess each defendant's contacts with California individually to determine
2 whether that defendant is subject to personal jurisdiction. *Id.*

3
4 Plaintiffs have alleged no facts to support this Court's exercise of general or
5 specific jurisdiction over Nakhla, because there are no such facts to allege. Indeed, in their entire
6 326-paragraph Complaint, Plaintiffs make only two specific allegations regarding Nakhla, Compl.
7 ¶¶ 16, 18, neither of which support personal jurisdiction over him in California. As his
8 Declaration shows, Nakhla has had no contacts with the State whatsoever, let alone let alone
9 "substantial, continuous and systematic" contacts sufficient to allow this Court to establish general
10 jurisdiction over him. *See* Decl. ¶¶ 5-8; *Doe v. American Nat'l Red Cross*, 112 F.3d 1048,
11 1051-52 (dismissing case for lack of personal jurisdiction where defendant's contacts with State
12 were, "at best, attenuated").

13
14 Similarly, Plaintiffs cannot allege any facts to support this Court's exercise of
15 specific jurisdiction. Plaintiffs did not and cannot allege that Nakhla "purposefully availed
16 himself" of the forum's benefits, or that this case is related to, or arises out of, Nakhla's contacts
17 with California. Nakhla has never set foot in the State, Decl. ¶ 6, and the Complaint itself
18 demonstrates that the controversy in this case is related to Mr. Nakhla's alleged activities in *Iraq*,
19 not to his (non-existent) contacts with this forum. Compl. ¶¶ 101-166. Consequently, this Court
20 may not exercise specific jurisdiction over Nakhla. *See Glencore Grain Rotterdam B.V. v.*
21 *Shivnath Rai*, 284 F.3d 1114, 1124 (9th Cir. 2002) (dismissing for lack of personal jurisdiction
22 because defendant's conduct – negotiating and performing contracts outside of the United States –
23 was not "directed at or related to California").

1 **2. None of the alleged claims allow this Court to exercise personal**
2 **jurisdiction under a nationwide service provision.**
3

4 Of the several statutes Plaintiffs allege was violated by Nakhla and other
5 Defendants, only one – the Racketeer Influenced and Corrupt Organization Act (“RICO”) –
6 contains a nationwide service provision. *See* 18 U.S.C. § 1965(b). As discussed by
7 co-Defendants Titan and CACI, the RICO claims should be dismissed under Fed. R. Civ. P.
8 12(b)(6). *See* Memoranda of Points and Authorities in Support of Defendant Titan’s and CACI’s
9 Motions to Dismiss. Therefore, this Court need not even consider whether it may exercise
10 personal jurisdiction over Mr. Nakhla through RICO.
11

12 But even assuming for the purposes of this Motion that this Court does not dismiss
13 the RICO claims, a court may exercise personal jurisdiction over a defendant in another judicial
14 district under 18 U.S.C. § 1965(b) only if “the ends of justice require” it. *Id.* The right to
15 nationwide service “is not unlimited,” and merely “naming persons in a RICO complaint does not,
16 in itself, make them subject to section 1965(b)’s nationwide service provisions.” *Butcher’s Union*,
17 788 F.2d at 539. Instead, in order for a court to exercise personal jurisdiction over a non-resident
18 defendant under section 1965(b), Plaintiffs must show that that the court has jurisdiction over at
19 least one of the alleged co-conspirators and that no other district court can exercise jurisdiction
20 over all of the alleged co-conspirators. *Id.* In *Butcher’s Union*, the Ninth Circuit’s seminal case
21 on RICO’s nationwide service provision, the court refused to exercise personal jurisdiction over
22 two non-resident defendants where the plaintiffs’ did not allege any specific facts regarding
23 personal jurisdiction over the defendants. *Id.* at 537.
24

25 Like *Butcher’s Union*, Plaintiffs here allege no facts that would allow this Court to
26 find that the ends of justice would be satisfied by forcing Nakhla to face a federal lawsuit 3,000
27 miles from home, in a State where he has no contacts whatsoever. Plaintiffs fail to allege any
28

1 contact whatsoever between Nakhla and the forum state and allege only a conspiracy centered in
2 California. Consequently, this Court may not exercise personal jurisdiction over Nakhla through
3 RICO's nationwide service provision. *See Gutierrez v. Givens*, 989 F. Supp. 1033, 1038
4 (S.D. Cal. 1997) (refusing to extend RICO's nationwide service provision because plaintiffs did
5 not demonstrate that "no other district exists in which all Defendants would be subject to
6 jurisdiction"); *Wordtech Systems, Inc. v. Programmer's Paradise, Inc.*, No. C 97-327 (TEH),
7 1997 WL 638444, at *3 (N.D. Cal. Oct. 8, 1997) (dismissing for lack of personal jurisdiction
8 under RICO because other district had jurisdiction over both defendants);
9 *LeDuc v. Kentucky Central Life Insur. Co.*, 814 F. Supp. 820, 826 (N.D. Cal. 1992) (refusing to
10 find personal jurisdiction under RICO because other district had jurisdiction over all defendants).

11
12 Without any factual basis in the Complaint to establish jurisdiction under the Due
13 Process Clause or RICO's nationwide service provision, this Court's exercise of personal
14 jurisdiction over Nakhla would "offend traditional notions of fair play and substantial justice."
15 *See International Shoe*, 326 U.S. at 316. The Complaint, therefore, should be dismissed against
16 Nakhla for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2).

17
18 **B. The Complaint should be dismissed for failure to state a claim upon which**
19 **relief may be granted.**

20
21 As discussed in the Motions and accompanying Memoranda of Points and
22 Authorities submitted by Defendants Titan Corporation and CACI, which Nakhla joins under
23 Local Rule 7.1(j)(2), each of the numerous Constitutional, federal statutory, and California
24 common law counts alleged in the Complaint are legally deficient and must be dismissed against
25 Nakhla and the other Defendants for failure to state a claim upon which relief may be granted.

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III.
CONCLUSION

Based on the arguments above, the Complaint should be dismissed because this Court may not exercise personal jurisdiction over Nakhla and Plaintiffs have failed to state a claim upon which relief may be granted.

DATED: September 10, 2004

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By 
ROBERT D. ROSE

Attorneys for Adel Louis Nakhla

DATED: September 10, 2004

ZUCKERMAN SPAEDER LLP

By 
ADAM L. ROSMAN

Admitted Pro Hac Vice