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April 20, 2009

BY HAND

The Honorable Reggie B. Walton
United States District Court for the
District of Columbia
333 Constitution Avenue, N.W.
Washington, DC 20001

Re: *Estate of Himoud Saed Abtan, et al. v. Blackwater
Lodge and Training Center, et al.*
No. 1:07-cv-01831 (RBW)
*Estate of Ali Hussamaldeen Albazzaz, et al. v.
Blackwater Lodge and Training Center, et al.*
No. 07-CV-02273 (RBW)

Dear Judge Walton:

We write to inform the Court of developments in these cases. On December 19, 2007, this Court entered an Order noting that it “has come to the Court’s attention that counsel in this case have discussed various aspects of the case with members of the national news media.” The Order further stated that “the Court’s overriding interest is and must be the ‘right to a fair trial,’ and cautioned that this “right cannot be maintained if the minds of potential jurors are swayed by indiscriminate appeals by counsel to the public at large.” That Order warned that the Court “will not hesitate to enforce its local rules should it conclude that any attorney in this case has attempted to unduly prejudice the proceedings before it through untoward engagements with the national or local news media.”

Recently, counsel for plaintiffs filed four new cases against defendants in the Southern District of California arising out of defendants’ activities in Iraq. Two of these cases are based on the same two incidents and make the same allegations—often verbatim—as those in the cases before this Court. (With respect to all of the cases, Defendants intend to contest whether venue lies in the Southern District of California.) The new filings are:

- *Estate of Mushtaq Karim Abd Al-Razzaq et al. v. Xe et al.*, No. 09-cv-00626, filed March 26, 2009 (claims on behalf of fifteen plaintiffs arising out of the same September 16, 2007 incident as the *Abtan* case pending before this Court).
- *Estate of Sa’ad Raheem Jarallah v. Xe et al.*, No. 09-cv-00631, filed March 27, 2009 (claims on behalf of one plaintiff arising out of the same September 9, 2007 incident as the *Albazzaz* case pending before this Court).

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- *Estate of Raheem Khalaf Sa'adoon et al. v. Xe et al.*, No. 09-cv-00561, filed March 19, 2009 (claims on behalf of four plaintiffs arising out of an incident that occurred on December 24, 2006 in Iraq).
- *Estate of Sabah Salman Hassoon et al. v. Xe et al.*, No. 09-cv-00647, filed April 1, 2009 (claims on behalf of eleven plaintiffs arising out of an incident that occurred in Iraq on February 7, 2007).

In connection with the filing of these cases in California, plaintiffs' counsel have made a number of statements to the media prejudicial to defendants. For an article published on March 20, 2009 on *PR Newswire*, Susan Burke, plaintiffs' lead counsel, stated:

By all accounts, the death [at issue in one of the new complaints] was senseless. His death is part of a pattern of illegal Xe-Blackwater shootings around the globe known to company management. From Mr. Sa'adoon's death to the litany of other civilian shootings by Xe-Blackwater personnel, the company has created, fostered and refused to curb a culture of lawlessness and unaccountability.

(Exhibit 1). In another article, by Louis Hansen of the Associated Press, published on March 21, 2009 in *The Virginian-Pilot*, contains the following quote by Ms. Burke: "There's a real pattern here A real disregard for human life." (Exhibit 2). On April 1, 2009, *PR Newswire* published a story quoting an associate of Ms. Burke as stating:

The staggering number of civilian deaths in Iraq caused by the Prince-controlled companies reflects the pattern and practice of recklessness in their use of deadly force. We believe the evidence will show that these companies' mercenaries have flouted the laws of the United States and their host nation Iraq.

(Exhibit 3). And in an article published in *The New York Times* on April 4, 2009, Ms. Burke stated that individuals formerly associated with defendants are "really all still there [in Iraq], and it's back to business as usual." (Exhibit 4).

These statements are just the most recent examples of statements made by plaintiffs' lead counsel since the Court entered its December 19, 2007 Order. On March 19, 2008, we sent Ms. Burke a letter expressing concern that comments she and her associates made to the media in February and March 2008 violated the spirit, if not the letter, of the Court's December 19, 2007 Order and asked Ms. Burke to remain mindful of the Court's admonition not to try this case in the media. (Exhibit 5). In reply to our letter, counsel for plaintiffs sent an email expressing her belief that the Court did not intend "the lawyers to remain fully silent, and have no communication with the mass media" and did not mean "to prohibit the lawyers from generally

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commenting on the matter, which is of great public importance and is not yet set for trial.”
(Exhibit 6).

As this Court already recognized, statements such as those that counsel for plaintiffs continue to make can inappropriately sway the minds of potential jurors, and thereby deprive defendants of the ability to seat an impartial jury, should a trial eventually prove necessary. Counsel for plaintiffs have stated that they do not believe that this Court’s Order prohibits such statements. For this reason, Defendants bring this matter to the Court’s attention.

Sincerely,


Michael E. Lackey

cc (via email):

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