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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SALEH et al. Plaintiffs, v. TITAN CORPORATION et al. Defendants.	Case No. 04 CV 1143 R (NLS) **CLASS ACTION** **PLAINTIFFS' OPPOSITION TO CACI DEFENDANTS' MOTION TO TRANSFER VENUE** Date: February 7, 2005 Time: 2:00 p.m. Dept: 5 **FILED BY FACSIMILE**

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Titan Corporation and CACI International are two international corporations that recruited interrogators and translators from all parts of the United States and the world in order to engage in torture in Iraq, contrary to international law, United States law, and established military doctrine. To this end, they conspired with certain governmental officials and military personnel from around the country. Given the national and international scope of these corporations' actions, there is no single location in the United States where this case "arose" or "naturally" should have been brought. Plaintiffs chose a federal court in San Diego, California, in the home district of one of the corporate defendants, Titan. Now the other corporate defendant, CACI, wants to transfer the case to its home district, the Eastern District of Virginia. None of the other four defendants has joined CACI in its motion.

CACI has not met its burden of showing that the interests of justice favor transferring this action to the Eastern District of Virginia. CACI's motion relies entirely on speculation about where witnesses and documents may be located identifying a single specific witness or document which is present in the jurisdiction to which it seeks transfer. Although CACI's motion is accompanied bya declaration of its general counsel stating that CACI keeps a headquarters in Virginia, it does not contain the basic information necessary to a determination of whether the convenience of the witnesses and parties favors a transfer. Furthermore, CACI fails to explain why it waited five months after the complaint was filed to move for transfer and delay the case further.

Plaintiffs, by contrast, set forth a wealth of facts showing that this District is more convenient than or as convenient as the Eastern District of Virginia for the vast majority of potential third-party witnesses, as well as for access to relevant sources of proof. *See* the Declaration of Jonathan Pyle accompanying this memorandum. Plaintiffs also demonstrate that because they chose this forum for a reason and because California is connected with this controversy, their choice of forum should be given great weight.

CACI's motion to transfer can be characterized at best as an attempt to shift inconveniences from themselves to plaintiffs, third-party witnesses, and other defendants, and at worst, an impermissible attempt to forum shop. Under either analysis, CACI's motion should be denied.

STATEMENT OF FACTS

Plaintiffs brought this action against two California residents, Titan Corporation and John B. Israel, a Titan translator; one Maryland resident, Adel Nakhla, a Titan translator; one Pennsylvania resident, Steven Stefanowicz, a CACI interrogator; and one Virginia resident, CACI International. Arlington, Virginia is CACI's national headquarters. San Diego is Titan's national headquarters and CACI's west coast headquarters. *See* Declaration of Jonathan Pyle ("Pyle Decl.") ¶¶ 9-12. CACI now seeks to transfer this case to Arlington, Virginia or, in the alternative, Washington, D.C., in both cases an area that is economically dependent on government contracts. Pyle Decl. ¶ 33.

Plaintiffs filed a RICO case statement naming over one hundred RICO conspirators who work for the government, the military, CACI or Titan. Through research, Plaintiffs have also uncovered numerous third parties who are likely to have relevant knowledge. *Id.* ¶ 25. Plaintiffs researched the residences of these conspirators and witnesses and found that they reside all over the country. *Id.* Third parties related to CACI tend to cluster around Arizona; third parties related to Titan tend to cluster in areas of large Arab-American population, such as Michigan and California. *Id.*

Government reports suggest that experts and sources of evidence relevant to an investigation of abuses of detainees in Iraq are located at military installations outside the nation's capital. *Id.* at ¶ 23. California has more military installations than any other state. *Id.* ¶14.

Traveling to San Diego from around the country is inexpensive and generally less expensive than flying the same distance to Washington, D.C.

Plaintiffs' witnesses, who are located in Massachusetts, Ohio, and Texas, have submitted declarations stating that this District is convenient for them. *See* Declarations of Marney E. Mason and Peter Bauer.

CACI filed this motion five months after the complaint was filed, relying on, among other things, a copycat action, *Ibrahim v. Titan*, No. 04-cv-01248 (D.D.C.) was filed against CACI and Titan, but not Nakhla, Stefanowicz, or Israel, two months after this case in the District of Columbia. The *Ibrahim* allegations make up a subset of this action. Plaintiffs filed a motion to enjoin this

action. The *Saleh* docket has 94 entries, including eight substantive motions, in six months. The *Ibrahim* case, by contrast, has accomplished only pro hac vices and two motions to dismiss by Titan and CACI. The *Ibrahim* plaintiffs have filed more substantive papers as short-lived intervenors in this case than they have in their own.

ARGUMENT

I. THE APPLICABLE STANDARD TO TRANSFER VENUE

In motions to transfer venue, there is a strong presumption in favor of plaintiff's choice of forum. *Royal Queentex Enters. v. Sara Lee Corp.*, No. C-99-4787, 2000 WL 246599, at *3 (N.D. Cal. Mar. 1, 2000). The movant bears the burden of showing that the balance of conveniences weighs heavily in favor of the transfer in order to overcome the strong presumption in favor of the plaintiff's choice of forum. *See Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). As the court pointed out in *Aquatic Amusements Assocs., Ltd. v. Walt Disney World Co.*, 734 F. Supp. 54 (N.D.N.Y. 1990), a case CACI cites twice with approval, Def. Mot. at 12, 13, the party requesting transfer "bears the burden of establishing, by a *clear and convincing showing*, the propriety of transfer." *Id.* at 57; *see also Climax Portable Machine Tools, Inc. v. Durango Assoc., Inc*., No. 90-1296, 1991 U.S. Dist. LEXIS 2281, at *3-*4 (D. Or. Feb. 13, 1991) ("The party seeking the transfer must make a *clear and convincing* showing that the balance of interests weighs strongly in favor of an alternate forum.") (emphasis added); *Resnick v. Rowe*, 283 F. Supp. 2d 1128, 1144 (D. Haw. 2003) (requiring a "strong showing" by movant for transfer of venue). This analysis is to be conducted on "an individualized, case-by-case consideration of convenience and fairness." *Jones v. GNC Franchising, Inc.,* 211 F.3d 495, 498 (9th Cir. 2000) (quotations omitted) *citing Stewart Org. v. Ricoh Corp.,* 487 U.S. 22, 29 (1988).

This Circuit has carefully delineated what must be weighed before transferring a case away from plaintiffs' chosen forum:

> A motion to transfer venue under § 1404(a) requires the court to weigh multiple factors in its determination whether transfer is appropriate in a particular case. For example, the court may consider: (1) the location where the relevant agreements were negotiated and executed, (2) the state that is most familiar with the governing law, (3) the plaintiff's choice of forum, (4) the respective parties' contacts

> with the forum, (5) the contacts relating to the plaintiff's cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses, and (8) the ease of access to sources of proof.

Jones, 211 F.3d at 498-99 (citing *Stewart*, 487 U.S. at 29-31). Other factors not mentioned by the Ninth Circuit in *Jones* include "feasibility of consolidation of other claims," "the relative court congestion and time of trial in each forum," and "possibility of view of premises, if view would be appropriate to the action." *Royal Queentex Enters. v. Sara Lee Corp.*, No. C-99-4787, 2000 WL 246599, at *2 (N.D. Cal. Mar. 1, 2000); *Decker Coal*, 805 F.2d at 843.

The balance of these factors is explained in the sections below and summarized in the chart in Appendix A.

II. PLAINTIFFS' CHOICE OF FORUM IS ENTITLED TO DEFERENCE

California was an obvious choice where personal jurisdiction over the bulk of defendants and potential defendants could be had. The plurality of the defendants were located in California. The majority of known defendants were associated with Titan Corporation, which was headquartered in California. Moreover, it was likely that more Titan employees than CACI employees would be joined as defendants because Titan approximately 4000 employees to Iraq, while CACI sent approximately 60. Since California is home to more Arabic speakers than any other state, Pyle Decl. ¶ 1, Titan recruited heavily in that state. The Southern District of California was therefore an obvious choice for reasons of personal jurisdiction.

Furthermore, the Southern District of California was preferable for purposes of compulsory process over unwilling non-party witnesses. A large proportion of California's Arabic speakers live in San Diego and surrounding areas and have relevant information about Titan's recruiting and operating practices. Pyle Decl. ¶ 2. San Diego and the surrounding areas are also home to huge numbers of military personnel who were deployed to Iraq, Pyle Decl. ¶ 15, many of whom may have witnessed defendants or their co-conspirators engaging in torture.

Finally, the Taguba Report made it clear that CACI and Titan conspired with Military Intelligence officers to use torture in the context of interrogation. The national headquarters of

Military Intelligence, as well as the Interior Department office that issued CACI's contract for interrogators, are located in nearby Fort Huachuca, Arizona. Pyle Decl. ¶¶ 16, 24

In order to argue that plaintiffs' choice of forum is arbitrary, CACI is forced to refer strategically to Arlington, Virginia as "home . . . of three of the four contractor defendants," and to this District as the "home of one out of seven defendants." Def. Mot. at 1, 5. They do not point out, of course, that these statistics result from counting CACI three times[1] and from willful blindness to the fact that John B. Israel resides in Santa Clarita, California.[2]

Plaintiffs' choice of forum here was meaningful and is entitled to deference. Circumstances in which a plaintiff's chosen forum will be accorded little deference are limited to those that involve anticipatory suits and forum shopping. *Royal Queentex*, citing *Mission Ins. Co. v. Purina Fashions Corp*., 706 F.2d 599, 602 n. 3 (5th Cir.1983). This is not the case here, where the headquarters of one of the defendants is located in this jurisdiction, numerous witnesses and potential defendants are located here and in the vicinity, and there is a strong local interest in the controversy.

Contrary to CACI's assertions, this is not a case where foreign plaintiffs have brought suit in a forum with no connection to the case. CACI's reliance on *Koster v. (Am.) Lumberman's Mut. Casualty Co.*, 330 U.S. 518 (1947), Def. Mem. at 9, is misplaced. In *Koster*, plaintiffs' choice of forum was discounted where a policyholder brought a shareholder class action in a forum which was convenient for him but not for the members of the class he represented. That is obviously not the case here, where the vast majority of the plaintiffs and class members live abroad, predominantly in Iraq, and would all have the same reasons for finding the Southern District of California a convenient forum. *Id.* at 524-25.

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[1] Plaintiffs named CACI International as well as the two subsidiaries identified in CACI International's 2003 10-K form. One of these entities, CACI N.V., is actually a Netherlands Corporation, apparently located in Amstelveen in the Netherlands. *See* http://www.fbg.nl/cat/1586. CACI does not reveal its basis for asserting that CACI N.V. has its "home" in Virginia.

[2] *Compare* Def. Mot. at 3 ("Defendants Nahkla's [sic] and Israel's residences are not alleged in the Second Amended Complaint.") *with* Proof of Service of Class Action Complaint, Docket No. 21 (showing John B. Israel personally served in Santa Clarita, California).

CACI's reliance on *Piper Aircraft Co.*, 454 U.S. 235 (1981), is also misplaced. In *Piper Aircraft Co.*, the Court noted that "the respondent's forum choice applied with less than maximum force," *id.* at 261, in a case where the plaintiff "candidly admit[ted] that the action . . . was filed in the United States because its laws regarding liability, capacity to sue, and damages are more favorable to her position than are those of Scotland. Scottish law does not recognize strict liability in tort," *id.* at 240. This is not a case where foreign plaintiffs are bringing suit in the United States because they need the benefit of strict liability law to recover for injuries due to an accident. They are suing in the United States because they were tortured under color of United States law in Iraq, where United States government contractors have been granted immunity from liability under Iraqi law. There is no basis for discounting Plaintiffs' choice of forum in this case.

Plaintiffs' choice of forum is meaningful because California has a strong connection to the subject matter of the case. In *Los Angeles Mem'l Coliseum Comm'n*, 89 F.R.D. 497 (C.D. Cal. 1981), the court found that the "plaintiff's choice of this forum is entitled to considerable weight" because the district "has a significant connection with the subject matter of the case." *Id.* at 499-500. As discussed *infra*, this forum has a strong connection to this case.

The only other case cited by CACI in favor of giving lesser weight to the plaintiff's choice of forum as a class action is *Lou v. Belzberg*. 834 F.2d 730 (9th Cir. 1987). *Lou*, like *Koster*, was a shareholder suit. *Id.* at 732. The Court of Appeals for the Ninth Circuit in *Lou*, moreover, cited solely to shareholder actions as authority for discounting the choice of the plaintiff. *Id.* at 739 (citing *Helfant v. La. & S. Life Ins*. Co., 82 F.R.D. 53, 58 (E.D.N.Y. 1979); *Stolz v. Barker*, 466 F. Supp. 24, 27 (M.D.N.C. 1978)). The cases to which the Ninth Circuit cited were clear in their limitation to shareholder suits, rather than class actions generally. *Helfant*, 82 F.R.D. at 58 ("*In a purported stockholder class action*, moreover, the existence of hundreds of potential plaintiffs considerably weakens plaintiff's claim that his home forum is the most appropriate.") (emphasis added); *Stolz*, 466 F. Supp. at 28 ("Moreover, this factor of plaintiffs' choice of forum is of *even less significance in a shareholder's derivative suit.*") (*quoting Silverman v. Wellington Management* Co., 298 F. Supp. 877, 879 (S.D.N.Y.1969)).

Indeed, CACI's own citation to *Lou* proves the point. At 9-10 of their Memorandum, they quote the case as stating, "'*If the operative facts have not occurred within the forum and the forum has no interest in the parties or subject matter*, [the plaintiffs' choice] choice is entitled to only minimal consideration.' *Lou*, 834 F.2d at 739." (Emphasis added). Here, the "operative facts" include locations of all defendants and witnesses, and the policies and agreements made by Titan Corporation at its headquarters. Therefore, *Lou*'s statement of "minimal" consideration is not appropriate as to the lack of operative facts within the forum.

The forum clearly has an interest in holding accountable and deterring those who commit gross human rights violations. Moreover, insofar as the violations were solicited or fostered by a domiciliary of the forum and by acts performed within the forum, the forum is interested in the matter.

Therefore, Plaintiff's interest in their choice of forum is strong and should not be disturbed.

III. SAN DIEGO IS AS CONVENIENT AS VIRGINIA FOR THE PARTIES

Defendants bear a "heavy burden" of demonstrating a "clear balance of inconveniences" in moving for transfer. *E. & J. Gallo Winery v. F. & P. S.p.A*, 899 F. Supp. 465, 466 (E.D. Cal. 1994). The one fact that CACI provides in support of its motion to transfer venue is that CACI corporate headquarters are located in Arlington Virginia, Def. Mem. at 14-15; Elfante Dec. at 2. Significantly, their motion has not been joined by Defendants Titan, Adel Nahkla, Stephen A. Stefanowicz or John Israel. General, cursory allegations about convenience to only a portion of defendants do not satisfy CACI's "heavy burden" to demonstrate the clear balance of inconveniences.

CACI goes so far as to assert that it is more convenient to the plaintiffs to litigate in the Eastern District of Virginia or the District of Columbia. Def. Mem. at 2, 11-12. Courts around the country have repeatedly ruled that defendants have no standing to raise convenience arguments of plaintiffs. *See, e.g.*, *Rhodes v. Barnett*, 117 F. Supp. 312 (D.N.Y. 1953); *Thomas v. United States Lines, Inc.*, 371 F. Supp. 429 (E.D. Pa 1974); *American Can Co v. Crown Cork & Seal Co.*, 433 F.

Supp. 333 (E.D. Wis. 1977); *Heiser v. United Air Lines, Inc,* 167 F. Supp. 237 (D.C.N.Y. 1958) (any inconveniences plaintiffs may suffer through choice of forum are entirely their concern).[3]

IV. SAN DIEGO IS MORE CONVENIENT FOR NUMEROUS WITNESSES

"One of the most important factors in determining whether to grant a motion to transfer venue is the convenience of the witnesses." *See Strigliabotti v. Franklin Res., Inc.*, 2004 WL 2254556, at *5 (N.D. Cal. 2004). To demonstrate inconvenience, the moving party "should produce information regarding the identity and location of the witnesses, the content of their testimony, and why such testimony is relevant to the action . . . . The Court will consider not only the number of witnesses located in the respective districts, but also the nature and quality of their testimony." *Royal Queentex*, 2000 WL 246599, at *6. In balancing the convenience of the witnesses, primary consideration is given to third party, as opposed to employee witnesses. *Strigliabotti*, 2004 WL 2254556, at *5. The moving party "must provide information as to the identity and location of its third party witnesses, the content of their testimony, and indicate why their testimony is relevant to this case." *Id. citing Royal Queentex*, 2000 WL 246599, at *6. *See also Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 89 F.R.D. 497, 500-01 (C.D. Cal. 1981) (motion for transfer denied where defendants made no specific showing of inconvenience for witnesses, while Plaintiffs clearly identified witnesses and bases for inconvenience). *Royal Queentex*, 2000 WL 246599, at *6 (movant's showing was inadequate because of its "failure to specify its third party witnesses by identity, location, and testimonial content"). In *Pratt v. Rowland*, 769 F. Supp. 1128, 1132-33 (N.D. Cal. 1991), the court denied a motion to transfer, finding no showing of lack of convenience where "potential witnesses are likely to be divided between this district and the [transferee] district." *See also Climax Portable Machine Tools, Inc. v. Durango Assoc., Inc*., No. 90-1296, 1991 U.S. Dist. LEXIS 2281, at *4 (D. Or. Feb. 13, 1991) ("A transfer which would merely shift the inconvenience from one party to another should also be denied.").

[3] CACI also attempts the argument that transfer is proper because it would be more convenient and appropriate for Plaintiffs' counsel. Def. Mem. at 11-12. This also is of no consequence; California law states plainly that "[c]onvenience of counsel is not a consideration" when evaluating transfer motions. *E. & J. Gallo*, 899 F. Supp. at 467.

Here, CACI has only given general assertions that "non-party witnesses for the military and other government agencies, and officials charged with investigating the incidents at the detention facilities in Iraq, are expected to be critical witnesses in this matter." Def. Mem. at 13. According to CACI, these unidentified and unspecified – yet "critical" – witnesses are "overwhelmingly concentrated either in Iraq…or at the Pentagon and its immediate environs." *Id.* CACI offers no support for this conclusion, and even qualifies it by admitting that the witness concentration may be diluted by the fact that "critical non-party witnesses" may also be "located elsewhere, *e.g,*. in military installations throughout the United States and in the Middle East and European theaters." *Id*. CACI does not provide – by name or title or other identifier – any specific party or non-party witnesses, their domiciles or places of business, their testimony subjects or potential relevance. Thus, the Court is being asked to authorize a motion to transfer solely on presumption and guesswork, rather than a demonstration of the "balance of inconveniences."

By contrast, the attached Declaration of Jonathan Pyle specifies an extensive number of witnesses, their locations and information about their potential testimony. Pyle Decl. ¶ 25. In addition, the Pyle Declaration elaborates on the apparent meaning of Defendants reference to "military installations throughout the United States" by naming a variety of bases where specific events relevant to the complaint took place. *Id.* ¶¶ 18-19, 23-24. These bases are located throughout the United States, including a number in California, Arizona, Nevada and Washington – locations quite inconvenient to Virginia or Washington, D.C., yet quite convenient to plaintiffs' chosen forum in California. *Id.*

This Declaration clearly controverts CACI's claim that "the only connection between this litigation and the Southern District of California" is the location of Titan's corporate office. Def. Mot., at 1. Either CACI has failed to consider or investigate during the past several months all of the potential witnesses and issues relevant to the subject litigation, or they are choosing to ignore them. Regardless, such limited consideration and/or description of the issues in this case should not mask the true scope of the case for the Court, nor be permitted to provide a sufficient basis for transfer under 1404(a).

The Northern District considered just such a case in *Florens Container v. Cho Yang Shipping,* 245 F. Supp. 2d 1086 (N.D. Cal, 2002). *Florens Container* involved a lawsuit brought by the lessor of shipping containers against a lessee, and its agent, who had failed to pay its bills. The plaintiff brought the case in the Northern District of California, which was identified in a forum selection clause, as well as the district where the container loading and unloading. Defendants moved to transfer the case to Ohio, where another action was pending and where defendants had a variety of contacts. *Id.* at 1087-88. The Court denied the motion, finding a complete lack of specificity about party or witness inconvenience on which to base a decision to transfer. *Id.* at 1093. First, the Court discounted the fact that neither corporate defendant had its headquarters in California. *Id.* at 1092. Second, in reviewing the Defendants' claims of "witness convenience" – against a background of specific identification by the Plaintiffs of the individuals and locations that would be involved in the litigation – the Court found:

> Defendants, on the other hand, offer no such account [i.e., like that of Plaintiffs] other than to say that their witnesses reside in Alabama and Korea. Without a more persuasive account, Defendants, as the parties with the burden of proof, fail to establish that the convenience of the witnesses factor weighs in favor of litigation of California. *The party seeking a transfer cannot rely on vague generalizations as to the convenience factors. The moving party is obligated to identify the key witnesses to be called and to present a generalized statement of what their testimony would include.* Defendants have not done so. Accordingly, the Court finds in favor of [Plaintiff] with respect to this factor.

Id. at 1093 (emphasis added). *See also, E. & J. Gallo Winery*, 899 F. Supp. 465 (denying motion for transfer where defendants' categories of potential witnesses – Italian restaurants and delis – were deemed to be relevant, but not sufficient for transfer because "these witnesses are not identified and their anticipated testimony has not been presented to the Court in the form of required affidavits or declarations").

Even the authority relied on by CACI holds that where there is "no evidence" supporting assertions arguing for transfer of venue, the court should reject the motion for transfer. In *Ravelo Monegro v. Rosa,* 211 F.3d 509 (9th Cir. 2000) (cited in Def. Mem. at 7-8), dismissal for forum non conveniens was denied because, although defendants alleged the case would be more appropriately

and conveniently litigated in the Dominican Republic, they presented "no evidence to support these assertions" 211 F.3d at 514. In *Aquatic Amusement Assocs. v. Walt Disney World Co.,* 734 F. Supp. 54 (N.D.N.Y. 1990) (cited in Def. Mem. at 12-13), the Court denied transfer to Florida in a case concerning Disney World construction. In this case, both sets of defendants presented a range of specific evidence regarding identity of witnesses and testimony, location of documents and the site itself. Plaintiffs responded by identifying a number of non-party witnesses resident outside Florida, as well as a variety of evidence beyond that available at Disney's corporate site, and specifically located in or close to the original chosen forum. 734 F. Supp. at 57-59. The Court found that "neither jurisdiction [was] decidedly more convenient than the other" and denied the motion on the grounds that "a mere shifting of inconveniences is not grounds for transfer." *Id.* at 60 (citation omitted). In *State Street Capital Corp v. Dente,* 855 F. Supp. 192 (S.D. Tex. 1994) (cited in Def. Mem. at 12), defendants' motion for transfer was denied because defendants had offered specifics on only one witness other than themselves, but no explanation as to the relevance of the witness. *Id.* at 197. In contrast, plaintiffs offered a list of nine witnesses, as well as the possibility of others. That court found that defendants were merely seeking to shift inconvenience. *Id.* at 197-98.

CACI asserts that because these witnesses are located on the east coast, they would be inconvenienced if forced to travel to the west coast. Here, too, CACI has failed to identify the location of a single specific witness, much less detail the specific inconvenience. Traveling to another state for any of these non-parties for the purpose of attending trial is inconvenient and burdensome. These witnesses will be inconvenienced whether they must travel to Northern Virginia or California. Indeed, CACI does not even assert that their witnesses would be unable to travel to California to defend suit here. *See Cochran v. NYP Holdings, Inc.*, 58 F. Supp. 2d 1113, 1119-20 (C.D. Cal. 1998) (finding that failure to assert with particularity witness inability to travel "utterly fails" standard required for motion to transfer); *Aquatic Amusement*, 734 F. Supp. at 58.

In *Goodyear Tire & Rubber Co. v. McDonnell Douglas Corp.*, 820 F. Supp. 503 (C.D. Cal. 1992), which CACI cited as providing the applicable standard, Def. Mem. at 8, 18, the United

States District Court for the Central District of California denied Goodyear's motion to transfer the case to Texas. 820 F. Supp. at 508. In that case, the court permitted the case to go forward in California despite Goodyear's argument that the accident occurred in Texas, two "key" witnesses were located in Texas, and neither the Plaintiff nor the defendant were headquartered in California. *Id.* at 507. The court denied the motion to transfer, nothing that the defendant, McDonnell Douglas Corporation, was a Maryland corporation with its principal place of business in Missouri and offices in Texas, and it had an operation in California. *Id.* The court also found that transfer would introduce delay, *id.*, and found that forum shopping was the motivation behind the motion for transfer, *id.* at 508.

Just as Texas was a relevant location in *Goodyear*, the Washington, D.C. area is a relevant location in this case; but as in *Goodyear*, that is not enough to justify a motion to transfer. As in *Goodyear*, although there are a number of states with connections to the case, California is home to number of important witnesses. Furthermore, given that the residents of the Washington, D.C. can thank government contractors for the region's economic boom, it is possible that CACI's motivation for the motion to transfer, like Goodyear's, is based on impermissible forum shopping.

CACI also argues that many of the witnesses are located in Iraq, and to the extent they would be available to testify, it would be more convenient for them to fly to the East Coast than the West Coast. Def. Mem. at xxx. This is an argument deemed "feeble" by the Ninth Circuit in *Am. Int'l Underwriters (Philippines) Inc. v. Continental Ins. Co.*, 843 F.2d 1253, 1258 (9th Cir. 1998). While perhaps true that there is a difference in the geographic distance measurement from Iraq to Alexandria, VA or Washington, DC than from Iraq to San Diego, there is no appreciable difference in overall convenience, which is the required standard, for someone traveling from Iraq to fly to the East Coast than the West. It is inconvenient to travel from Iraq to anywhere in the United States.

In addition, it would seem that since a number of the potential witnesses alluded to by the defendant are largely employees of the defendant, the difficulties of commanding their appearance are lessened, because the defendant has considerable sway over its employees. *See Lajaunie v. L & M Bo-Truc Rental, Inc.,* 261 F. Supp. 2d 751, 754 (S.D. Tex. 2003) ("[T]he convenience of key

witnesses who are employees of the Defendant is entitled to less weight because [the Defendant] will be able to compel their testimony at trial.") (quotations omitted). The defendant is also entitled to less consideration of the inconvenience and expense incurred by itself or by its employees. Since CACI is likely to compensate any employees for time and money spent in attending proceedings in California. *Wiwa v. Royal Dutch Petroleum,* 226 F.3d 88, 107 (2d Cir. 2000) (ability of corporation to move witnesses and documents).

CACI has not identified a single particular witness unlikely to testify without compulsory process. As in the other claims, the Defendant merely points to a broad, undefined class of witnesses (in this case, unnamed government witnesses) without detailing the nature or importance of their testimony. Def. Mem. at 13-15. If the Defendant wishes to bear the burden it assumes by bringing this motion, it must specifically allege the witnesses it expects will be called. *See Excelsior Designs, Inc. v. Sheres*, 291 F. Supp. 2d 181, 187 (E.D.N.Y. 2003) (holding that a failure to produce an affidavit from any witness stating that he would not testify absent compulsory process nullified the claim); *Houk v. Kimberly Clark Corp.,* 613 F. Supp. 923 (W.D. Mo. 1985). The vast majority of witnesses are plaintiffs and employees of the corporate defendants, who will likely appear willingly.

Considering the absolute lack of any specificity in the Defendant's motion and supporting papers, the balance concerning the availability of witnesses is clearly in favor of the plaintiffs.

V. SAN DIEGO PROVIDES EASE OF ACCESS TO THE EVIDENCE

Once again, CACI does not identify a single specific piece of evidence that would be unavailable to the parties if this case were to remain before this Court. In addition, absent any other grounds for transfer, the fact that records are located in a particular district is not itself sufficient to support a motion for transfer. *See STX, Inc. v. Trik Stik, Inc.*, 708 F. Supp. 1551, 1556 (N.D. Cal. 1988). Further, Defendants are large corporations with multiple operations around the world. Simply stating that their headquarters are in Virginia does not, in and of itself, provide the Court with anything more than a superficial basis for authorizing transfer. Thus, because CACI provides no specific justification for their motion, and seek to do so in a manner that would not serve the

interests of this litigation or Court, the Motion must be denied. *See also E. & J. Gallo Winery,* 899 F. Supp. at 467 (motion denied where, although defendant contended that voluminous business records of its customers were located in venue sought for transfer, the assertion was supported by little evidence, and Court found it would be as cumbersome to ship documents to one court as the other); *Wiwa*, 226 F. 3d at 108 (ease for large corporations to transfer documents).

Courts around the country are capable of dealing with classified and confidential information and defendants make no showing that they are not. In addition, numerous cases have allowed third party subpoenas of government agencies. Defendants resort to arguing that a supposed requirement of an SCI ("sensitive compartmentalized information") facility militates in favor of venue in the Eastern District of Virginia. The defendant fails to make any specific showing of particular documents subject to classification that would require such a facility. The defendant does not even specify what aspect of this suit relates in any way to national security. At issue in the suit, essentially, are the policies of the defendant corporations and the United States government in interrogating and detaining detainees. Yet these matters are discussed openly and with some specificity in public reports and in the media. Four major government reports have now been issued discussing the allegations before this Court, and hundreds of documents have been released under FOIA. *See* http://www.aclu.org/torturefoia.

This is not an espionage case or a case where any sort of "terrorism exception" applies. Should any classified documents become a subject of discovery and alternate arrangements could not be made for them to be transferred to this jurisdiction, this would be analogous to the more mundane situation where documents are located in one place, or where premises must be inspected. Defendants and subpoenaed third parties have to make documents available to plaintiffs' counsel, and plaintiffs' counsel must be willing to travel to review documents. Counsel in this case have experience reviewing documents in SCI facilities. *See In re Guantanamo Detainee Cases*, No. 02-CV-0299, 2004 WL 2525136 (D.D.C. Nov. 8, 2004). In that case, the SCI facility was not located in the courthouse, but in a neighboring state. If it becomes necessary for the judge to review documents that are classified at a level higher than top secret – and there are no indications as of yet

that this will be necessary – it will not be difficult to make an SCIF facility available for the judge. This case was brought not in a far-flung locale, but in one of the nation's centers of military intelligence and its supporting industries, where a court-martial involving detainee abuse is ongoing. Pyle Decl. ¶ 19.

VI. SAN DIEGO IS A PREFERABLE FORUM WHEN MEASURED BY FAMILIARITY WITH THE APPLICABLE LAW

This jurisdiction is more familiar with the applicable law than is the Eastern District of Virginia. The Fourth Circuit has never considered a human rights claim under the Alien Tort Claims Act. Plaintiffs' claims under the Alien Tort Claims Act, 28 U.S.C. 1350 (ATCA) are within a body of law with which this jurisdiction is familiar. In fact, the recent Supreme Court decision in *Sosa v. Alvarez-Machain,* cited with approval the Ninth Circuit' s interpretation of ATCA and its application to that case. 124 S. Ct. 2739, 2766 (2004) (citing to *In re Estate of Marcos Litig.*, 25 F.3d 1467, 1475 (9th Cir. 1994). This Circuit has considered applicable international law in a number of other cases which involve similar claims of torture and summary execution. *See, e.g., Trajano v. Marcos (In re Estate of Ferdinand E. Marcos Human Rights Litigation)*, 978 F.2d 493 (9th Cir. 1992), *cert. denied*, 113 S. Ct. 2960 (1993) (Estate I). This Circuit has repeatedly reiterated this holding *Hilao v. Marcos* (*In re Estate of Ferdinand E. Marcos Human Rights Litigation*), No. 95-15779, 1996 U.S. App. LEXIS, 32974 (9th Cir. Dec. 17, 1996) (Estate III); *Alvarez Machain v. United States,* 96 F.3d 1246 (9th Cir. 1996); *Hilao v. Marcos (In re Estate of Ferdinand E. Marcos Human Rights Litigation), 25 F.3d 1467, cert. denied* 115 S. Ct. 934 (1995) (Estate II); see also *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699 (9th Cir. 1992), *cert. denied*, 507 U.S. 1017 (1993) (Foreign Sovereign Immunities Act claim; court found torture to be nonderogable violation of international law). Also pending before the Northern District of California is *Bowoto v. Chevron,* Case No. C99-2506 (N.D. Cal. 1999); a recent ruling carefully analyzed the standards to be applied for aiding and abetting liability for a corporation charged with

complicity for human rights abuses. *Bowoto v. Chevron,* 312 F. Supp. 2d 1229 (N.D.Cal. 2004). In contrast, the Fourth Circuit has never considered human rights claims brought under the ATCA.[4]

VII. SAN DIEGO HAS A LOCAL INTEREST IN THE CONTROVERSY

This jurisdiction has an interest in the conduct of corporations headquartered within its boundaries. The formation of policies by Titan Corporation in California will likely play a major role in the litigation. Where the contested events are not initial harms, but the conditions that set the stage for those harms, venue is proper where the contributory conditions were set. *See Holmes v. Freightliner*, 237 F. Supp. 2d 690, 693-94 (M.D. Ala. 2002) (holding in a product liability case that, though the accident leading to injury happened in Georgia, the product was placed into the stream of commerce in Alabama and venue was proper there); *Dwyer v. General Motors Corp*., 853 F. Supp. 690, 694 (S.D.N.Y. 1994) (holding that the locus of operative facts lay where the "business decisions" leading to the accident were made, not the site of the accident and it was reasonable to presume that a principal place of business would be the locus of such decision making). Since Titan's headquarters is in the Southern District of California, the locus of facts can be presumed to lie, at least partially, in the Southern District. CACI has not produced any evidence to suggest that Titan Corporation's relevant business decisions were made outside California.

As gross human rights violations are of universal concern, as opposed to more pedestrian torts, the state of California has a significant interest in preventing the abuse of detainees in Iraq, particularly as corporations domiciled in California are involved in such conduct and encourage it from their offices in the state. Indeed, the state has already taken steps to do so. *See* California State Treasurer's Office, Press Release *available at* http://www.treasurer.ca.gov/news/releases/2004/090104_cacistrs.pdf (noting that the State Treasurer had suggested that the state teacher pension fund divest from its holdings in CACI on the basis of abuses in Abu Ghraib).

[4] In one 1992 case, *Goldstar (Panama) S.A. v. United States*, 967 F.2d 965 (4th Cir. 1992), a business brought a property damage claim alleging violations of the Hague Convention governing the laws and customs of war and arguing that ATCA provided a waiver of U.S. sovereign immunity; that argument was rejected.

California has an interest in enforcing its laws regulating the conduct of its own corporations. On October 1, 2004, Titan won a five-year "indefinite-delivery, indefinite-quantity multiple-award" technical contract from the U.S. Navy valued at over $1 billion. In addition, the Navy awarded Titan a separate five-year $109 million contract. *See* Pyle Decl. ¶ 11. The formation of these contracts and the resulting conduct are of course part of California's interest in the controversy now before this Court.

While CACI has yet to produce the contract to which it has frequently cited, it refers to it in arguing that venue is proper in Virginia. Def. Mem. at 4. CACI states that agents of a subsidiary, CACI Premier Technology, formed the alleged contract with members of the government. *Id.* The defendant then states the subsidiary is based in Arlington, Virginia. *Id.* Absent from defendant's argument and supporting declaration is any allegation that the contract was actually *entered into* in Virginia. If the contract has any bearing on the case at all, the place of formation of the contract will be the relevant factor in this case, not the primary place of business of the entity that produced the contract. Since CACI is in the best position to know where such a contract, if it exists, was entered into, the Plaintiffs suggest that the defendant's careful silence on the place of formation indicates that the contract was *not* entered into in the state of Virginia.

Of course, this unknown contract, including its content and place of formation, has not been shown to the court, and is not necessarily or even likely to be a key document in this case. This is not a contract case. This is not even a tort case between two parties who had entered into a contract (as an employer-employee suit). The contract may be relevant to showing the larger conspiracy, but it is unlikely to be dispositive of issues in contention in the case. The contract is unlikely to stipulate explicitly that interrogators from CACI should torture detainees. The agreement underlying the conspiracy likely will not take the form of document like a contract.

There would be no unfairness in burdening San Diego residents with jury duty in this case. *See* San Diego has already seen cases involving mistreatment of Iraqis. *See* Pyle Decl. ¶ 22. There are 175,000 military personnel and family members of military personnel in San Diego. Pyle Decl.

¶ 15. They are as interested as anyone in the Washington, D.C. area in holding government contractors accountable for putting soldiers at risk by conspiring to torture detainees in Iraq.

VIII. THE RELATIVE COURT CONGESTION AND TIME OF TRIAL IN EACH FORUM DOES NOT FAVOR TRANSFER

CACI claims that relative court congestion warrants transfer. Def. Mot. at 17. This is not a persuasive ground for a motion to transfer in this case. First, the factor is relatively disfavored as a § 1404 factor. *Geo. F. Martin Co. v. Royal Ins. Co. of Am.*, No. C 03-5859, 2004 U.S. Dist. LEXIS 8927, at *18 (N.D. Cal. May 14, 2004) ("Relative court congestion is at best, a minor factor in the section 1404 calculus.") (citation omitted); *United States v. Switzer Bros., Inc.*, 115 F. Supp. 49, 51-52 (N.D. Cal. 1953) ("While this court, like other federal district courts in metropolitan areas, is burdened with a heavy volume of litigation, this does not appear to be a sound reason to shift the venue."); *United States v. Nat'l City Lines*, 80 F. Supp. 734, 743 (S.D. Cal. 1948) ("Speculations as to possible time of trial are not determinative of [a motion to transfer]. Regardless of the condition of their calendars, district courts have it within their power to advance cases when public interest so requires.") This court is not so congested that it cannot handle this case.

Second, if CACI is truly interested in avoiding delay, it must explain the timing of its motion. At the time that CACI filed the instant motion to transfer venue, six substantive motions, supported by extensive evidentiary records, had already been filed in this case; CACI's own motion to dismiss, the four co-defendants' motions to dismiss, plaintiffs' motion to enjoin a duplicative action. The motion to enjoin a duplicative action has been fully briefed and argued, and the five motions to dismiss have been fully briefed and are scheduled for argument on February 7, 2005. In addition, plaintiffs filed a motion for a preliminary injunction on November 12, 2004 and a motion for class certification on November 22, 2004. Thus, any claim CACI may have had for judicial economy is weakened by its delay in filing the pending motion.

As described above, there are already more than a half dozen motions pending before this court, one already argued and five more fully briefed and scheduled for argument. Transferring to the Eastern District of Virginia would force the plaintiffs to begin anew. Given defendant's careful

language concerning personal jurisdiction, it is possible that any or all of the defendants might challenge personal jurisdiction there. The plaintiffs filed their action in June in the Southern District of California. Ever since the date of filing, the defendant CACI has known of the venue for the action. Yet the defendant CACI waited five months to file its motion to transfer. A five month waiting period has in several instances precluded a motion to transfer. *See Los Angeles Mem'l Coliseum Com. v. National Football League*, 89 F.R.D. 497 (C.D. Cal. 1981) (citing five other cases where delay of five months or less precluded transfer in otherwise eligible circumstances). In the present case, the parties have already filed briefs in a motion to dismiss, dates have been set for argument, and cases have been built around the relevant law. The defendant cannot invoke a savings of time in proceeding in the Eastern District of Virginia after showing that five months means nothing to it. *See Telephamarcy Solutions, Inc. v. Pickpoint Corporation*, 238 F. Supp. 2d 741 (E.D. Va. 2003) (court found that primary reason for selection of Eastern District of Virginia was that court's accelerated docket, found this to be insufficient, and transferred the case). *See also Pratt v. Rowland*, 769 F. Supp. 1128, 1133 (N.D. Cal. 1991) ("The Ninth Circuit has frequently held that a motion for transfer may properly be denied where, as here, a case has been pending for some time in the original court or where a transfer would lead to delay.") (citing *Allen v. Scribner*, 812 F.2d 426, 436-37 (9th Cir. 1987); *Commodity Futures Trading Comm'n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979); *Moore v. Telfon Communications Corp.*, 589 F.2d 959, 968 (9th Cir.1978)).

IX. THIS CASE SHOULD NOT BE TRANSFERRED TO D.C. SIMPLY BECAUSE A SIMILAR SUIT WAS FILED THERE

Plaintiffs have sought to enjoin the *Ibrahim* action, which is still in its preliminary phase. It is not clear that there is jurisdiction.

Transfer is favored where it will allow consolidation with another pending action and conserve judicial resources. First and foremost, it is unclear whether defendant's proposed "alternate" forum even has personal jurisdiction over all defendants. CACI's own memorandum in support of its motion does not put such concerns to rest: at 20, it states, "it might be possible to

conclude that Plaintiffs' allegations concerning Defendants' government contracts are sufficient to sustain venue in the District of Columbia." Second, as stated above, the *Ibrahim* action is in a very preliminary phase: filed in July 2004, the only action in the case to date has been a motion to dismiss filed in October 2004, a request for an extension of the time to respond, pro hac vice motions and the voluntary dismissal of one of the plaintiffs, who subsequently joined this action. In addition, an analysis of both the private and public interest factors indicates that it will not conserve judicial resources to transfer this action either to the Eastern District of Virginia or to the District of the District of Columbia.

CONCLUSION

For the foregoing reasons, CACI Defendants' Motion to Transfer Venue should be denied.

Date: December 13, 2004

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APPENDIX A

Summary of Balance of Factors For and Against § 1404 Transfer

Factor	Reasons supporting the factor		
	Tipping in favor of non-movants	**Neutral**	**Tipping in favor of movant**
Convenience of third-party witnesses	California has more military bases than any other state (brigades in California, including ones in San Diego, have been specifically linked to abuses of Iraq.) More Titan recruits (Arabic speakers) are located in California than any other state. The district is more convenient for witnesses from the military intelligence headquarters, Fort Huachuca, Arizona. San Diego is convenient for the 95,000 local military personnel.	Military witnesses are located abroad or throughout the country. Employees of CACI and Titan are located throughout the country; it will just as expensive and inconvenient to transport them to the east coast as it will be to transport them to the west coast. Translators appear to cluster in Michigan and California, and interrogators appear to cluster in Arizona, probably because of Fort Huachuca; the location of all the non-party witnesses will not be known until discovery.	Some third-party witnesses are located in the D.C. area.
Plaintiffs' choice of forum	Plaintiffs chose this forum after balancing concerns about personal jurisdiction and availability of potential witnesses.	Plaintiffs are predominantly located in Iraq.	
Convenience of parties	Israel and Titan are located in California. Only the CACI Defendants moved to transfer the case.	The plaintiffs, who are more numerous than the defendants, are located in Iraq (except for Saleh, who lives in Michigan and Sweden). Stefanowicz is located in Pennsylvania; Nakhla is located in Maryland; CACI and Titan both have offices throughout the country.	CACI is headquartered in Arlington.
Parties' contacts with forum	San Diego is home of Titan's headquarters and CACI's west coast headquarters. California contains the largest Arab-American population in the country, which is therefore likely to have the greatest connection with family members in Iraq.	CACI and Titan are gigantic corporations with employees throughout the country.	CACI is headquartered in Arlington.

Factor	Reasons supporting the factor		
	Tipping in favor of non-movants	**Neutral**	**Tipping in favor of movant**
The location where the relevant agreements were negotiated and executed, and the contacts relating the cause of action to the forum	Some of the events giving rise to the cause of action occurred at Titan's headquarters in San Diego. Titan's recruitment efforts were likely centered around California's large population of Arabic speakers, a significant cluster of whom are located in the San Diego area. The Navy is prosecuting Navy SEALs involved in wrongdoing at Abu-Ghraib in San Diego.	Many of the events giving rise to the cause of action occurred in Iraq; those that occurred in the United States took place throughout the country, including Titan headquarters in San Diego and CACI headquarters in Arlington. Moreover, the vast majority of the events that took place in the United States can only be revealed in discovery.	Some of the events giving rise to the cause of action occurred in Arlington at the Pentagon or at CACI headquarters.
Differences in the costs of litigation in the two forums		As distinct from issues of convenience, there are no differences in cost of litigation; CACI did not argue there were.	
Availability of compulsory process to compel attendance of unwilling non-party witnesses	Since San Diego has a very large military community, many non-party witnesses are likely to be amenable to compulsory process in San Diego. Since the largest portions of California's Arabic speakers are located in and around the counties of San Diego, San Bernardino, Orange, and Los Angeles, many former Titan employees are likely to be subject to compulsory process in San Diego.	As discussed above under "Convenience of non-party witnesses," non-party witnesses are located throughout the country, so that any forum will be inconvenient for this purpose. Moreover, the location of all the non-party witnesses will not be known until discovery.	Like San Diego, Arlington is a community with many military personnel.
Ease of access to sources of proof	Some of the evidence is likely located at Titan headquarters, at Fort Huachuca in Arizona, or at nearby military installations (California has more military installations than any other state; San Diego itself has six.)	In the age of electronic information, this case can be conveniently litigated anywhere in the country. To the extent that sources of proof are stationary, the bulk of the evidence exists in Iraq and throughout the United States; other sources of proof can only be revealed through discovery.	Some of the evidence is likely located at CACI headquarters

Factor	Reasons supporting the factor		
	Tipping in favor of non-movants	**Neutral**	**Tipping in favor of movant**
Public interest of the forum state	The Treasurer of California has expressed grave concerns about CACI's involvement in torture; having more military bases than any other state, California is home to large numbers of military personnel who believe that the torture that occurred at Abu Ghraib violates military values and puts soldiers at risk.	The public interest of every state in the country favors accountability for government contractors who engage in torture.	
State that is most familiar with the governing law	Some of the causes of action are based on California law, with which California courts are most familiar. The Ninth Circuit has litigated numerous human rights cases under the Alien Tort Statute; the Fifth Circuit has litigated none.	The bulk of the governing law is federal law and international law with which all federal courts are familiar.	

CERTIFICATE OF SERVICE

I, Jonathan H. Pyle, do hereby certify that on the 13th day of December 2004, I caused a true and correct copy of the foregoing Plaintiff's Opposition to CACI Defendants' Motion to Transfer Venue to be served via U.S. First Class Mail, postage prepaid, upon the following individuals at the addresses indicated:

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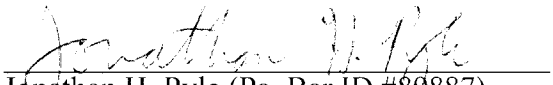

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