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5

6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

8 SALEH, et al., )

9 Plaintiffs, )

10 v. )

11 TITAN CORPORATION, et al., )

12 Defendants. )

Case No. 04 CV 1143 R (NLS)

**CLASS ACTION**

**PLAINTIFF'S MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN OPPOSITION TO  
DEFENDANT ADEL LOUIS  
NAKHLA'S MOTION TO  
DISMISS THE COMPLAINT FOR  
LACK OF PERSONAL  
JURISDICTION AND FAILURE  
TO STATE A CLAIM UPON  
WHICH RELIEF COULD BE  
GRANTED**

**FILED BY FACSIMILE**

Date: March 14, 2005  
Time: 2:00 p.m.  
Dept. 5  
Judge: Hon. John A. Rhoades

21 Defedent Adel Louis Nakhla has moved to dismiss Plaintiffs' Second Amended Complaint  
22 for the same reasons set forth in the corporate Defendants' Motions To Dismiss and on the  
23 additional grounds that the Court lacks personal jurisdiction over him. Plaintiffs respectfully  
24 submit this Motion should be denied for the reasons set forth in Plaintiffs' Oppositions to the Titan  
25 and CACI Defendants' Motions and because the Court has personal jurisdiction over Defendant  
26 Nakhla under the Racketeer Influenced and Corrupt Organizations Act ("RICO") nationwide  
27 service of process provision. This provision allows the District Court to exercise personal  
28

1 jurisdiction over Defendant Nakhla because he has minimum contacts with the United States as a  
2 whole. Because the District Court can exercise personal jurisdiction over the RICO claims against  
3 Defendant Nakhla, the Court may also exercise personal jurisdiction over all additional claims  
4 against him through pendant personal jurisdiction.

5 In the alternative, if the Court were to find that Plaintiffs failed to allege RICO claims that  
6 survive Defendants' motions to dismiss, the Court may nonetheless exercise specific personal  
7 jurisdiction over Defendant Nakhla because he established sufficient minimum contacts with  
8 California when he affirmatively sought out and commenced employment with Defendant Titan  
9 Corporation ("Titan"), a California company.

### 10 ARGUMENT

11 Plaintiffs served Defendant Nakhla at his home in the state of Maryland.<sup>1</sup> Service on  
12 Defendant Nakhla establishes personal jurisdiction because he could be subjected to the jurisdiction  
13 of a California state court, Fed. R. Civ. P. 4(k)(1)(A), and because the RICO statute specifically  
14 authorizes jurisdiction, Fed. R. Civ. P. 4(k)(1)(D).

#### 15 I. THIS COURT HAS JURISDICTION OVER DEFENDANT NAKHLA UNDER RICO

16  
17 The RICO statute provides for nationwide service of process in federal district court over  
18 defendants outside of the district, if "the ends of justice require" it. 18 U.S.C.S. § 1965(b). Such  
19 nationwide service of process allows a district court to obtain personal jurisdiction over the non-  
20 resident defendant who is served under the statute as long as that person has minimum contacts  
21 with the United States. *Butcher's Union Local No. 498 v. SDC Inv., Inc.*, 788 F.2d 535, 538 (9th  
22 Cir. 1986).

23 Defendant Nakhla has sufficient minimum contacts with the United States both as a resident  
24 of Maryland and a former employee of an American corporation. Courts test these contacts under  
25 the "ends of justice" test set forth in *Butcher's Union*, 788 F.2d at 539. The test requires that two  
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27 <sup>1</sup> See Docket #21, Proof of Service of Class Action Complaint, filed Sept. 10, 2004, showing  
28 that Defendant Nakhla's wife was served personally on July 22, 2004 at Defendant Nakhla's  
residence and that the Complaint was subsequently mailed to Defendant Nakhla at his residence.

1 specific conditions be met: that (1) “the court . . . have personal jurisdiction over at least one of the  
2 participants in the alleged multidistrict conspiracy” and (2) that no other district would be able to  
3 exercise personal jurisdiction over all of the conspirators. Once the “ends of justice” test has been  
4 satisfied, sufficiency of minimum contacts is determined by contacts with the United States as a  
5 whole and not contacts with the forum state. *Wordtech Sys., Inc. v. Programmer’s Paradise, Inc.*,  
6 No. C 97-0327, 1997 U.S. Dist. LEXIS 15902, at \*5 (N.D. Cal. Oct. 8, 1997).

7 Here, the “ends of justice” test is satisfied and the Court may exercise personal jurisdiction  
8 over Defendant Nakhla. First, the Court clearly has personal jurisdiction over Titan Corporation,  
9 which is headquartered in the district and is one of alleged Torture Conspirators. *See SAC ¶ 72*.  
10 Titan did not argue that it is not subject to personal jurisdiction in California.

11 Second, no other district can exercise personal jurisdiction over all of the Torture  
12 Conspirators. Defendant Steven A. Stefanowicz lives in Pennsylvania, Defendant Nakhla lives in  
13 Maryland, and Defendant Israel lives in California. There is no evidence that any of them has  
14 sufficient minimum contacts in the same state for the joint exercise of personal jurisdiction. In  
15 *LeDuc v. Kentucky Central Life Insurance Co.*, 814 F. Supp. 820 (N.D. Cal. 1992), jurisdiction in  
16 California was improper where there was a clear alternative forum: defendant was incorporated in  
17 Kentucky, the officers and directors resided in Kentucky, and a second defendant was amenable to  
18 process in Kentucky. 814 F. Supp. at 826. Here, by contrast, there is no clear forum. Relevant  
19 events took place in Iraq and throughout the United States. California is the home state of  
20 Defendant Titan, which employed Defendants Nakhla and Israel. It is also the home state of  
21 Defendant Israel and a place of business for the CACI Defendants. Virginia is the home state of  
22 Defendant CACI, which employed Defendant Stefanowicz. Pennsylvania is the home state of  
23 Defendant Stefanowicz. Maryland is the home state of Defendant Nakhla’s employer. Thus, no  
24 single state other than California is an obvious choice. This situation is comparable to that in *Lentz*  
25 *v. Wooley*, No. 89-0805 JGD, 1989 U.S. Dist. LEXIS 12651 (C.D. Cal. June 12, 1989).

26 In *Lentz*, the court determined that it had personal jurisdiction over defendants based on  
27 RICO nationwide service. Noting that “the defendants . . . reside in different states,” but that three  
28 of the defendants resided in California. The court found that the basic “ends of justice” test had

1 been met. *Id.* at \*14. Similarly, in this case, defendants reside around the country, but several of  
2 them are based in California or have significant specific contacts with California. Therefore, the  
3 ends of justice test has been met; and the defendants are subject to personal jurisdiction in  
4 California.

5 This case falls directly within the purpose of the RICO nationwide service of process  
6 provision, “to enable plaintiffs to bring all members of a nationwide RICO conspiracy before a  
7 court in a single trial.” *Butcher’s Union*, 788 F.2d at 539. Here, the court is faced with a Torture  
8 Conspiracy that spanned the globe. Nationwide service and personal jurisdiction are necessary to  
9 bring all of the claims and defendants together in a single trial. Claims against the individual  
10 Torture Conspirators involve the same single conspiracy, the same facts and the same witnesses.  
11 To deny a single trial in which to try all of the Torture Conspirators would waste the resources of  
12 the court. For all of these reasons, the court can exercise jurisdiction over Defendant Nakhla under  
13 RICO.

14 **II. THE COURT MAY ASSERT PENDANT PERSONAL JURISDICTION OVER**  
15 **DEFENDANT NAKHLA’S OTHER CLAIMS**

16 Because the Court has proper personal jurisdiction over the RICO claim against Defendant  
17 Nakhla, it may exercise pendant personal jurisdiction over the other claims asserted against  
18 Defendant Nakhla, all of which involve the same common nucleus of operative facts. It is black-  
19 letter law that “a court may assert pendent personal jurisdiction over a defendant with respect to a  
20 claim for which there is no independent basis of personal jurisdiction so long as it arises out of a  
21 common nucleus of operative facts with a claim in the same suit over which the court does have  
22 personal jurisdiction.” *Action Embroidery Corp. v. Atlantic Embroidery, Inc.*, 368 F.3d 1174, 1180  
23 (9th Cir. 2004). The doctrine of pendent personal jurisdiction furthers the purposes of “judicial  
24 economy, avoidance of piecemeal litigation, and overall convenience of the parties.” *Id.* at 1181.

25 Although the application of this doctrine is in the discretion of the district court, the current  
26 case is exactly the type of case to which the doctrine traditionally applies. In this case, the non-  
27 RICO claims all involve the same Torture Conspiracy, the same facts, the same witnesses, and the  
28 same participants. Not only do the claims involve the same nucleus of operative facts, but judicial

1 resources will be sorely wasted if these related claims are separated. Therefore, the court can  
2 exercise pendent personal jurisdiction over all of the non-RICO claims.

3 **III. EVEN IF THE RICO CLAIMS ARE DISMISSED, THIS COURT HAS SPECIFIC**  
4 **PERSONAL JURISDICTION OVER DEFENDANT NAKHLA**

5 Defendant Nakhla is subject to specific jurisdiction<sup>2</sup> in California because he (1)  
6 purposefully availed himself of the forum, (2) the injury claimed arises out of or is related to his  
7 contacts with the forum, and (3) the exercise of personal jurisdiction is reasonable. *Id.* A  
8 defendant is subject to specific jurisdiction when he “reach[es] out beyond one state and create[s]  
9 continuing relationships and obligations with citizens of another state.” *Burger King Corp. v.*  
10 *Rudzewicz*, 471 U.S. 462, 473 (1985) (quoting *Travelers Health Ass’n v. Virginia.*, 339 U.S. 643,  
11 647 (1950)). When a “defendant ‘deliberately’ has engaged in significant activities within a State,  
12 or has created ‘continuing obligations’ between himself and residents of the forum, he manifestly  
13 has availed himself of the privilege of conducting business there, and because his activities are  
14 shielded by the ‘benefits and protections’ of the forum’s laws it is presumptively not unreasonable  
15 to require him to submit to the burdens of litigation in that forum as well.” *Id.* at 475-76 (citations  
16 omitted)<sup>3</sup>.

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17 <sup>2</sup> The threshold for minimum contacts differs, depending on whether the jurisdiction is general  
18 or specific. “General jurisdiction” may be asserted over a defendant when his “activities in the  
19 state are ‘substantial’ or ‘continuous and systematic,’” even if the activities are not related to the  
20 cause of action. *Haisten*, 784 F.2d at 1396 (quoting *Data Disc, Inc. v. Sys. Tech. Assoc., Inc.*, 557  
21 F.2d 1280, 1287 (9th Cir. 1977)). In the Ninth Circuit, a defendant will be subject to “specific  
22 jurisdiction,” if his forum contacts meet a three-part test: “(1) The nonresident defendant must do  
23 some act or consummate some transaction with the forum or perform some act by which he  
24 purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking  
25 the benefits and protections of its laws. (2) The claim must be one which arises out of or results  
26 from the defendant’s forum-related activities. (3) Exercise of jurisdiction must be reasonable.”  
27 *Data Disc*, 557 F.2d at 1287.

28 <sup>3</sup> Jurisdiction over Defendant Nakhla is proper because he could be subject to the jurisdiction of  
a California court. Fed. R. Civ. P. 4(k)(1)(A). California Civil Procedure Code § 410.10 provides  
that California courts may exert personal jurisdiction over a defendant, so long as the exercise of  
jurisdiction does not run afoul of the California Constitution or the Federal Constitution. This has  
been interpreted by the Ninth Circuit to extend personal jurisdiction in California to the boundaries  
of the Due Process Clause. *Haisten v. Grass Valley Med. Reimbursement Fund, Ltd.*, 784 F.2d  
1392, 1396 (9th Cir. 1986). Due process under the Federal Constitution “requires only that in order  
to subject a defendant to a judgment *in personam*, if he be not present within the territory of the  
forum, he have certain minimum contacts with it such that the maintenance of the suit does not  
offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326  
U.S. 310, 316 (1945) (quoting *Miliken v. Meyer*, 311 U.S. 457, 463 (1940)).

1 Defendant Nakhla states that he should not be subject to personal jurisdiction in California  
2 because he has not visited the state in person. (Nakhla Mem. of P. & A. in Supp. of Mot. to  
3 Dismiss at 3). However, the Supreme Court has “consistently rejected the notion that an absence of  
4 physical contacts can defeat personal jurisdiction.” *Burger King*, 471 U.S. at 476. In fact, Nakhla  
5 has established sufficient contacts with California, regardless as to his physical presence elsewhere.  
6 He reached out into and created continuing obligations with California when he sought out and  
7 commenced employment with Titan, and, as a result, has purposefully availed himself of the forum.  
8 Although a non-resident employee’s personal jurisdiction may not be based on his employer’s  
9 contacts with the forum, *Calder v. Jones*, 465 U.S. 783, 790 (1984), that is not the basis of the  
10 argument in this case. “Each defendant’s contacts with the forum State must be assessed  
11 individually,” *id.* at 790, and it is by virtue of Defendant Nakhla’s *own* purposeful direction of  
12 activities towards California that he is subject to personal jurisdiction here.

13 While pursuing an employment contract with and later working for Titan, Defendant Nakhla  
14 likely had numerous contacts with California residents through phone, email, fax, and mail. Such  
15 interstate and international communications do not, without more, establish purposeful availment.  
16 *Peterson v. Kennedy*, 771 F.2d 1244, 1261-62 (9th Cir. 1985). However, those types of  
17 communications, with additional contacts, such as reaching into the forum for employment, payroll  
18 and human resources interactions, or employment contract negotiations, can surpass the threshold  
19 of minimum contacts.<sup>4</sup> In addition, in seeking out employment with Titan, Nakhla was not the  
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21 <sup>4</sup> See *T.M. Hylwa, M.D., Inc. v. Palka*, 823 F.2d 310, 314 (9th Cir. 1987) (holding that  
22 defendant was subject to personal jurisdiction when he “purposefully engaged in a business  
23 relationship with a California employer,” and his contacts with the forum were largely non-  
24 physical). See also *Equifax Servs., Inc. v. Hitz*, 905 F.2d 1355, 1358 (10th Cir. 1990) (holding that  
25 a California branch manager was subject to personal jurisdiction in Kansas when his “contacts with  
26 Kansas ar[o]se mainly from the fact that he was employed by a corporation with its principal  
27 offices in Kansas”); *Pittsburgh Terminal Corp. v. Mid Allegheny Corp.*, 831 F.2d 522, 528-529 (4th  
28 Cir. 1987) (“[N]on-resident directors of domestic corporations . . . purposefully availed themselves  
of the privilege of doing business” in the forum, and were subject to personal jurisdiction.); *Alta  
Analytics Inc. v. Muuss*, 75 F. Supp. 2d 773, 776-77 (S.D. Ohio 1999) (holding that an Illinois  
resident was subject to personal jurisdiction in Ohio due to his “conduct and clear relationship to  
Ohio” as an employee for an Ohio corporation, including his “constant telephonic and electronic  
mail contact[s]” with the forum); *Hall v. LaRonde*, 56 Cal. App. 4th 1342, 1344, 1347 (1997)  
(holding that personal jurisdiction attaches when a non-resident defendant reaches out into the  
forum in a search for business, and “that the use of electronic mail and the telephone by a party in

1 victim of unilateral activities of plaintiffs or third parties of the sort that would prevent personal  
2 jurisdiction. *See Kulko v. Superior Court*, 436 U.S. 84, 93-94 (1978). Nakhla, himself,  
3 purposefully directed his activities toward California, and created continuing obligations with  
4 California residents when he knowingly and affirmatively sought employment with a California  
5 company and commenced employment with them, and therefore has purposefully availed himself  
6 of the forum.

7 For purposes of specific jurisdiction, the Ninth Circuit has adopted a “but for” test for  
8 determining whether a plaintiff’s injuries are related to or arise out of a defendant’s forum contacts.  
9 *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th Cir.  
10 2002). The test is whether, but for the defendant’s forum activities, the plaintiff would not have  
11 been injured. In this case, though the injuries Defendant Nakhla inflicted upon the Iraqi victims of  
12 the Torture Conspiracy occurred in Iraq, the injuries would not have been inflicted but for Nakhla’s  
13 pursuit of and commencement of employment at Titan. Nor would the injuries have occurred but  
14 for Defendant Nakhla’s involvement in the Torture Conspiracy with Titan and the other Torture  
15 Conspirators, part of which took place in California.

16 Once purposeful availment is established, a presumption arises that the exercise of personal  
17 jurisdiction is “*presumptively reasonable.*” *Roth v. Marquez*, 942 F.2d 617, 625 (9th Cir. 1991)  
18 (emphasis in original). In order to rebut the presumption, “the defendant ‘must present a  
19 compelling case that the presence of some other considerations would render jurisdiction  
20 unreasonable.’” *Haisten*, 784 F.2d at 1400 (quoting *Burger King*, 471 U.S. at 478).

21 In this case, Defendant Nakhla purposefully availed himself of the forum, and now has the  
22 burden of making a “compelling case” for why jurisdiction is unreasonable in this case. Such a  
23 compelling case cannot be made. The Ninth Circuit looks at seven factors to determine when the  
24 exercise of jurisdiction is reasonable:

- 25 (1) the extent of the defendants’ purposeful injection into the forum state’s affairs;  
26 (2) the burden on the defendant of defending in the forum; (3) the extent of conflict  
with the sovereignty of the defendant’s state; (4) the forum state’s interest in

27  
28 another state may establish sufficient minimum contacts with California to support personal  
jurisdiction”).

1 adjudicating the dispute; (5) the most efficient judicial resolution of the controversy;  
2 (6) the importance of the forum to the plaintiff's interest in convenient and effective  
3 relief; and (7) the existence of an alternate forum.

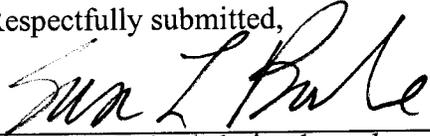
4 *Dole Food Co. v. Watts*, 303 F.3d 1104, 1114 (9th Cir. 2002).

5 Here, Defendant Nakhla purposefully interjected himself in California affairs when he  
6 affirmatively sought out and commenced employment with a California company. Nakhla  
7 purposefully directed his activities towards the forum, to the extent that "he should reasonably  
8 anticipate being haled into court there." *Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. 286,  
9 297 (1980). The fact that Defendant Nakhla lives in the United States, and is not a foreign resident  
10 also weighs in favor of exercising personal jurisdiction over him in California, as the travel burden,  
11 though not insignificant, is less than "[t]he unique burden[] placed upon one who must defend  
12 oneself in a foreign legal system." *Asahi Metal Indust. Co. v. Superior Court*, 480 U.S. 102, 114  
13 (1987). In addition, the interests of judicial economy and the lack of an alternate forum that could  
14 exercise personal jurisdiction over all of the defendants similarly supports the fact that exercise of  
15 personal jurisdiction over Defendant Nakhla is reasonable.

16 For all of the foregoing reasons, this Court has jurisdiction over Defendant Nakhla. At the  
17 ever least, before granting any motion to dismiss on jurisdictional grounds, this Court should grant  
18 Plaintiffs discovery to establish jurisdictional facts

19 DATED: October 22, 2004

Respectfully submitted,

  
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1 CERTIFICATE OF SERVICE

2 I, Jonathan H. Pyle, do hereby certify that on the 22nd day of October 2004, I caused a true  
3 and correct copy of the foregoing Memorandum of Points and Authorities in Opposition to  
4 Defendant Adel Louis Nakhla's Motion to Dismiss the Complaint for Lack of Personal Jurisdiction  
5 and Failure to State a Claim Upon Which Relief Could be Granted to be served via U.S. First Class  
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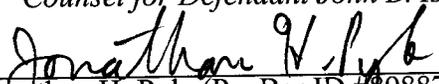
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