

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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ESTATE OF ALI HUSSAMALDEEN )  
ALBAZZAZ, )

Plaintiff, )

v. )

BLACKWATER WORLDWIDE, *et al.*, )

Defendants. )

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Case No. 07-cv-2273 (RBW)

***PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' MOTION TO DISMISS***

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Date: February 19, 2008

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## INTRODUCTION

Defendants seek to dismiss or transfer this action away from the Plaintiff's chosen forum to the Eastern District of Virginia, a neighboring jurisdiction with state statutory limitations on punitive damages.<sup>1</sup> This action belongs in this District because acts and omissions occurred here in the District of Columbia, which eventually culminating in the wanton and senseless killing of innocent persons in Baghdad.

## STATEMENT OF FACTS RELEVANT TO VENUE

The Complaint in this action ("Albazzaz Complaint") alleges that the following acts and omissions occurred in the District of Columbia:

### **A. The Complaint Alleges the Shootings Occurred as a Result of Prince and Blackwater Contracting with the Department of State.**

The Albazzaz Complaint alleges that heavily-armed Blackwater shooters were in Iraq killing innocents only because Blackwater was providing services to the Department of State. *Albazzaz Complaint* ¶¶ 17-19. The Albazzaz Complaint alleges that the Defendants routinely conduct business and enter into contracts (such as the State Department contract) in this District. *Albazzaz Complaint* ¶ 14.

It alleges that Erik Prince, who completely controls the web of Blackwater companies, has earned and is continuing to earn hundreds of millions of dollars (already exceeding one billion dollars) from contracting with the Department of State and other federal agencies.

*Albazzaz Complaint* ¶¶ 14, 51, 58-59.

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<sup>1</sup> Defendants are not seeking a transfer for reasons of convenience. Plaintiff was willing to transfer this action to the Eastern District of Virginia if the Defendants agreed not to argue that Virginia's statutory cap on damages should be applied to the claims. Defendants refused this offer. *See Declaration of William T. O'Neil* ("O'Neil Declaration") at ¶ 2.

The relevant Department of State offices are located in Washington, D.C. at 2201 C Street, N.W., Washington DC. *See O’Neil Declaration at ¶ 3, Exhibit 1.* Various individuals with reason to know have stated that Blackwater has or had an office either in or near the Department of State, but Plaintiffs have been unable to confirm these claims. *See O’Neil Declaration at ¶4.* Knowledgeable Department of State officials testified before Congress that the State Department supervised Blackwater from the District of Columbia:

High Threat Protection (HTP) Program Office (*in Washington*) individually reviews and approves candidates for key leadership positions. The contractor certifies that all other personnel meet the requirements. The Program Office may review qualifications and remove individuals not meeting contract requirements at any time.... The DS HTP program office (*in Washington*) meets weekly with contractor management and conducts periodic Program Management/Contract Compliance Reviews of task order operations at posts. In addition, the HTP office conducts announced and unannounced visits to contractor training facilities to monitor compliance with contract-training requirements.

*See O’Neil Declaration at ¶ 5, attaching as Exhibit 2 Statement of Richard J. Griffin, Assistant Secretary of State for Diplomatic Security, Oct. 2, 2007 (emphasis added).*

The Albazzaz Complaint alleges that Blackwater “routinely send heavily-armed shooters into the streets of Baghdad with the knowledge that some of those shooters are chemically influenced by steroids and other judgment-altering substances.” This knowledge was gained here in this District. Defendants knew many of the Blackwater shooters were using steroids because Department of State officials previously investigated that issue, found significant steroid use, and conveyed that information to Defendants. *See O’Neil Declaration at ¶ 6.*

**B. The Complaint Alleges Prince and Blackwater Made Misrepresentations in this District To Procure Business from the Department of State.**

The Albazzaz Complaint alleges that Defendants falsely held themselves out to the United States as operating legitimate companies, in order to procure government business that is

prohibited from being awarded to mercenary companies like Blackwater. *Albazzaz Complaint* ¶¶ 52-56.

**C. The Complaint Alleges Blackwater Misled Congress by Falsely Underreporting Blackwater’s Excessive and Unjustified Use of Force.**

The Albazzaz Complaint alleges that the many Blackwater shootings are being investigated by the Congressional Committee on Oversight and Government Reform (“Committee”). *Albazzaz Complaint* ¶ 47. The Albazzaz Complaint alleges that Prince and Blackwater produced to that Committee approximately 437 internal incident reports, which misled Congress about the actual number of instances of excessive force. *Albazzaz Complaint* ¶¶ 27, 47. That is, Blackwater employees told a Washington Post reporter (located in this District) that Blackwater documents produced to the Oversight Committee underreported the actual number of shootings. *Albazzaz Complaint* ¶ 35.

**D. The Complaint Alleges the Executive Branch Opened a Criminal Investigation of Blackwater Shootings in this District.**

The Albazzaz Complaint alleges that Blackwater’s actions are being investigated by the United States Department of Justice and the United States Federal Bureau of Investigation. *Albazzaz Complaint* ¶ 45. This investigation is occurring in this District. The Department of Justice has convened the Grand Jury in this jurisdiction. The Grand Jury has subpoenaed witnesses to testify in this District. *See O’Neil Declaration at* ¶ 7. An Assistant United States Attorney from this District communicated with the victims’ families about the Department’s investigation. *See O’Neil Declaration at* ¶ 8.

**E. Defendants’ Motion To Dismiss Fails To Discuss Any Activities by Prince and the Blackwater Companies in this District.**

The Defendants’ Motion To Dismiss is noticeably silent on facts within this District relating to venue, such as whether Prince and the other Defendants made telephone calls,

attending meetings, and otherwise engaged in conduct in this District that led to the award of the Department of State contracts. The Defendants' Motion To Dismiss does not deny that both Erik Prince and the Blackwater companies engaged in continuous contacts with Department of State officials and others within this District in order to win and keep the lucrative contracts that resulted in this action. The Defendants' Motion To Dismiss does not challenge this Court's ability to exercise personal jurisdiction over all of the Defendants.<sup>2</sup>

### ARGUMENT

This is an action alleging that Erik Prince and his Blackwater companies are lawless mercenaries who have obtained federal government business under the false pretense of operating lawful enterprises.<sup>3</sup> This is an action alleging that Erik Prince and his Blackwater companies wrongfully procured a contract and earned more than one billion dollars from the

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<sup>2</sup> This failure to challenge jurisdiction is dispositive on the venue issue for all defendants except Erik Prince because defendants other than individuals who fail to challenge jurisdiction "lose their venue argument because they are deemed to reside in the district in which they are subject to personal jurisdiction." *Halliburton Energy Svcs. Inc. v. N.L. Industries*, No. Civ. H-05-4160, 2006 WL 3949170 at \*11 (S.D.Tex. Jul. 25, 2006); *see also KMR Capital, L.L.C., v. Bronco Energy Fund, Inc.*, No. 06-189, 2006 WL 4007922, at \*5, n. 69 (W.D.Texas July 11, 2006) (collecting cases); *Centerville ALF, Inc. v. Balanced Care Corp.*, 197 F.Supp.2d 1039, 1048 (S.D. Ohio 2002) (defendant who concedes a district court's personal jurisdiction by failing to raise a 12(b)(2) defense in motion to dismiss is deemed to reside in district for purposes of venue); *Chavis v. A-1 Limousine*, No. 95 Civ. 9560, 1998 WL 78290, at \*3 (S.D.N.Y. Feb. 24, 1998) (defendants' concession that they are subject to personal jurisdiction in district establishes that venue is proper); *Soli-Tech, Inc. v. Halliburton Co.*, No. 91-CV-10232-BC, 1993 WL 315358 at \*2 (E.D.Mich. Jan. 26, 1993) ("Because Defendants did not raise personal jurisdiction as a defense in their 'first defensive move,' that defense is waived. Accordingly, defendant 'resides' within this Court's judicial district and as such venue is proper under 28 U.S.C. §1391(c).").

<sup>3</sup> Defendants submit supporting evidence and assert that Blackwater Worldwide, Blackwater USA, and Blackwater Canine are divisions of and/or fictional aliases for Defendant Blackwater Lodge, not separate legal entities, and should be dismissed. Plaintiff does not object to the dismissal of such parties as long as the dismissal is made without prejudice to the Plaintiff's right to reassert such claims in the event that discovery reveals they are entities capable of being sued in their own names.

United States Department of State by making misrepresentations in this District. This is an action alleging that Erik Prince and his Blackwater companies wrongfully permitted “shooters” known to be on steroids to repeatedly and routinely use excessive force against Iraqis. This is an action alleging that Erik Prince and his Blackwater companies are affirmatively misleading Congress about the extent of their consistent and excessive use of force.

The District of Columbia, as the seat of the federal government (including the Department of State), is the place where a substantial number of acts and omissions critical to Plaintiff’s claims occurred. Indeed, but for acts and omissions by Prince and the Blackwater companies in the District of Columbia, the innocents who lost their lives in Al Watahba Square on September 9 would be alive today.

**I. PLAINTIFFS’ CHOICE OF FORUM IS ENTITLED TO DEFERENCE.**

Defendants prefer to try this action in a forum that caps punitive damages, the Eastern District of Virginia. (See footnote one, above.) But Plaintiffs are entitled to deference on their forum choice as long as they select a venue permitted by 28 U.S.C. § 1391(b). *Great Socialist People’s Libyan Arab Jamahiraya v. Miski*, 496 F.Supp.2d 137, 144 (D.D.C. 2007); *Lentz v. Eli Lilly & Co.*, 464 F.Supp.2d 35, 38 (D.D.C.2006) (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255, 102 S.Ct. 252, 70 L.Ed.2d 419 (1981)); *see also Liban v. Churchey Group II*, 305 F.Supp.2d 136, 141 (D.D.C.2004) (stating that “courts generally must afford substantial deference to the plaintiff’s choice of forum”) (citation omitted).

**II. VENUE IS PROPER IN THIS DISTRICT UNDER 28 U.S.C. §1391(b)(2).**

Defendants devote the majority of their brief to arguing that venue would be proper in the Eastern District of Virginia under 28 U.S.C. §1391(b)(1). *Defendants’ Memorandum in Support of its Motion To Dismiss (“Defendants’ Memorandum”)* at pp. 4-8. Plaintiff does not

dispute that venue is proper in Virginia under Section 1391(b)(1), but that is not the relevant question.

The relevant question is whether the District of Columbia is also a proper venue under 28 U.S.C. §1391(b)(2). Defendants' Memorandum devotes only one paragraph (the second on page 3) of their ten-page paper to that dispositive question. The relevant paragraph makes a conclusory statement that "the alleged 'events or omissions' giving rise to Plaintiffs' claims occurred in Iraq, not in the District of Columbia – and not even in the United States for that matter." The paragraph next makes a demonstrably false statement: "Plaintiffs do not allege that *any* of the event giving rise to their claims occurred in the District of Columbia, much less 'a substantial part' of them." This paragraph should not persuade.

First, as a matter of procedure, Plaintiff is not required to plead the facts that support venue under 28 U.S.C. §1391(b)(2). *See Fed.R.Civ.P., Adv. Comm. Notes to Form 2*, at ¶ 3 ("Since improper venue is a matter of defense, it is not necessary for plaintiff to include allegations showing the venue to be proper."); *15 Wright & Miller, Federal Practice & Procedure*, at §3826. This Court is free to consider all facts supporting venue even if not specifically alleged in the complaint. *See S.E.C. v. Ernst & Young*, 775 F.Supp. 411 (D.D.C. 1991) (refusing to dismiss for failure to plead venue as plaintiff need not plead venue; rather, lack of venue is an affirmative defense).

Second, as a matter of law, this Court need not decide whether *more* acts and omissions resulting in the claim occurred in Iraq or the District of Columbia. "Nothing in section 1391(b)(2) mandates that a plaintiff bring suit in the district where the most substantial portion of the relevant events occurred, nor does it require a plaintiff to establish that every event that

supports an element of a claim occurred in the district where venue is sought.” *Modaressi v. Vedadi*, 441 F.Supp.2d 51, 57 (D.D.C. 2006) (emphasis in original).

Rather, as noted in *FC Investment Group v. Lichtenstein*, 441 F.Supp.2d 3, 11 (D.D.C. 2006), the venue statute, amended in 1990, no longer requires a court to determine the “best district,” or the district with the “most significant” connection to the claim. Instead, the statute assumes by its terms that there can be more than one district in which a substantial part of the events giving rise to the claim occurred. *See generally Wright & Miller, Federal Practice and Procedure* §3806 (1994 Supp.).

Venue is proper in the District of Columbia if a substantial part of the acts and omissions relevant to the claim occurred in the District of Columbia. Venue does not become improper merely because a substantial part of the acts and omissions occurred in another district or, in this instance, a foreign country, Iraq. *FC Investment Group v. Lichtenstein*, 441 F.Supp.2d 3, 11 (D.D.C. 2006) (citing, among others, *Setco Enterprises Corp. v. Robbins*, 19 F.3d 1278, 1281 (8<sup>th</sup> Cir. 1994)) (venue not improper even if another district the site of more acts and omissions.)

As explained by the Court of Appeals, the “forum court should not oppose the plaintiff’s choice of venue if the activities that transpired in the forum district were not insubstantial in relation to the totality of events giving rise to the plaintiff’s grievance and if the forum is generally convenient for all litigants.” *Sharp Elec. Corp. v. Hayman Cash Register Co.*, 655 F.2d 1228, 1229 (D.C.Cir.1981); *see also Great Socialist People’s Libyan Arab Jamahiraya v. Miski*, 496 F.Supp.2d 137, 144 (D.D.C. 2007). In evaluating where the event occurred for purposes of venue, “a court should not focus only on those matters that are in dispute or that directly led to the filing of the action,” but should review “the entire sequence of events underlying the claim.”

*FC Investment Group*, 441 F.Supp.2d at 11 (citing *Mitrano v. Hawes*, 377 F.3d 402, 405 (4<sup>th</sup> Cir. 2004)).

Third, and most importantly, as a matter of fact, Defendants are simply wrong in stating that Plaintiff fails to allege any events or omissions that give rise to Plaintiff's claims occurred in this District. As set forth in the Statement of Facts, above, Plaintiff alleged a litany of conduct and misconduct occurred in this District. Plaintiff alleges the essential Blackwater government contracts were entered into with government agencies in this District, were supervised by government officials in this District, and were paid by funds located in this District.

Defendants have not denied, and cannot deny, that they engaged in series of communications with Department of State and other government officials located in the District of Columbia designed to procure and keep their government business. All of these communications suffice to serve as basis for venue, because they were essential links in a chain of events culminating in the shootings in Al Watahba Square. The "substantial part of the events or omissions" test is satisfied "by a communication transmitted to or from the district in which the cause of action was filed, given a sufficient relationship between the communication and the cause of action.'" *FC Investment Group*, 441 F.Supp.2d at 11 (quoting *U.S. Titan, Inc. v. Guangzhou Zhen Hua Shipping Co.*, 241 F.3d 135, 153-54 (2d Cir.2001)).

Here, that relationship exists. Had Erik Prince and the Blackwater companies refrained from seeking that the Department of State to award contracts, and refrained from persuading the Department of State to continue to award such contracts even in the fact of compelling evidence that a substantial number of Blackwater shooter were using steroids, the innocents who were gunned down at Al Watahba Square would still be alive today.

### III. DISMISSAL IS NOT APPROPRIATE UNTIL PLAINTIFFS HAVE CONDUCTED VENUE DISCOVERY.

Further, even if Plaintiffs had not pled substantial activity in this district—which they did—the next step would not be dismissal of this action, as aggressively urged by Defendants. *Defendants’ Motion at 2, 4 and 9*. Rather, controlling law establishes that Plaintiffs are entitled to discovery to establish additional facts supporting their forum choice if there are disputes over Plaintiffs’ chosen venue.<sup>4</sup> *See Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n. 13 (1978) (“For example, where issues arise as to jurisdiction or venue, discovery is available to ascertain the bearing on such issues.”); *Franz v. United States*, 591 F.Supp. 374, 376 (D.D.C. 1984) (noting that “parties were allowed full discovery for the purpose of ascertaining facts relevant to the venue issue”); *Brumley v. Dep’t of Labor*, No. 87-3471, 1988 WL 75926, at \*2 (D.D.C. July 13, 1988) (allowing discovery as to jurisdiction and venue); *Diemer v. United States Postal Service*, No. 86-0647, 1987 WL 9037, at \*1 (D.D.C. Mar. 19, 1987) (noting previous discovery as to venue).

Such discovery is especially appropriate when, as in this case, “venue facts are within the knowledge of the defendant” which “may not be known to the plaintiff.” *Ferraioli v. Cantor*, 259 F.Supp. 842, 846 (S.D.N.Y 1966). Here, defendants are not publicly traded companies, and knowledge about their specific activities in the District of Columbia are not readily available.

For example, although Defendants assert that the contract was issued in Virginia by the Office of

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<sup>4</sup> In the alternative, and only to the extent necessary, Plaintiff will voluntarily dismiss without prejudice claims against Defendant Erik Prince. Under Federal Rule of Civil Procedure 41(a)(1), such a dismissal would have the effect of ensuring venue in this Court under Section 1391(b)(1) because the other Defendants have all conceded personal jurisdiction and thus reside in this District. *See* footnote 2, above. Rule 41(a)(1) “explicitly allows a plaintiff to voluntarily dismiss its case provided that the defendant has not served the adverse party with an answer or a motion for summary judgment.” *Black Ride III, Inc. v. West*, No. 04-1027, 2005 WL 1522055, at \*3 (D.D.C. June 28, 2005) (citing *Chambers v. Gesell*, 120 F.R.D. 1, 2 (D.D.C. 1998)).

Acquisition Management of the U.S. Department of State, (Roitz Dec. at 12), Defendants fail to attach the contract itself. Total Intelligence Solutions similarly identifies contracts formed with government entities or businesses in Virginia, but fails to identify contracts formed with government entities or businesses located in this District. (Devost Dec. at 5). Defendants' declarations simply skirt the key questions, and utterly fail to disavow or discuss the conduct and activities in this District.

#### **IV. DEFENDANTS FAIL TO MEET THE STANDARD FOR TRANSFERING THIS ACTION.**

Defendants' Motion both disavows and seeks transfer to the Eastern District of Virginia. *Compare* Motion at pp. 2 and 4 ("claims should be dismissed, not transferred"); p. 9 (it is appropriate to dismiss rather than transfer...) *with* p. 10 (Court should transfer the case to the Eastern District of Virginia). Here, Defendants do not articulate any reasons why this Court should use its discretionary power to transfer the action pursuant to 28 U.S.C. §1404(a). *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257, 102 S.Ct. 252, 70 L.Ed.2d 419 (1981) (recognizing court power and stating standard for reviewing request for transfer).

Section 1404(a) permits transfers for the convenience of parties and witnesses. However, "[i]n assessing the convenience to the parties [in the context] of the two potentially proper venues, the court recognizes that the plaintiff's choice of forum is usually accorded substantial deference in the venue analysis." *Reiffin v. Microsoft Corp.*, 104 F.Supp.2d 48, 52 (D.D.C.2000) (citations omitted).

Here, Defendants do not – and cannot – allege that the parties and witnesses suffer any inconvenience given the reality that this District courthouse is less than 10 miles from the Eastern District of Virginia courthouse. *See Modaressi*, 441 F.Supp.2d at 57 n. 7 (noting that in a case where both parties resided in Maryland, the geographic distance between the District of

Columbia and the District of Maryland “is far too small to present anything more than minor practical difficulties for the parties or their witnesses” and thus did not defeat the public-private interests that otherwise weighed against the transfer); *see also DSMC v. Convera*, 273 F.Supp.2d 14, 21 (D.D.C. 2002) (the effort to move the case to the “abutting” Eastern District of Virginia is itself evidence that no such inconvenience would arise from litigating in the District of Columbia and disproves any claim of inconvenience).

Defendants’ half-hearted effort to transfer the case cannot nullify the plaintiff’s choice of forum. *See Sheraton Operating Corp. v. Just Corporate Travel*, 984 F.Supp. 22, 26 (D.D.C.1997) (stating that “even if a transfer would significantly benefit the defendant, the Court will not grant the motion if the result merely would shift the inconvenience from the defendant to the plaintiff; the net convenience must increase”) (quoting *Kirschner Brothers Oil, Inc. v. Pannill*, 697 F.Supp. 804, 807 (D.Del.1988)).

### CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that Defendants’ motion to dismiss be denied.

Dated: February 19, 2008

/s/Susan L. Burke  
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*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I, William T. O'Neil, do hereby certify that on the 19th day of February 2008, I caused true and correct copies of Plaintiffs' Opposition To Defendants' Motion to Dismiss to be served electronically via the Court's cm/ecf system and by e-mail upon the following individual at the address indicated:

Michael Lackey, Esq.  
Peter White, Esq.  
Mayer Brown, LLP  
1909 K Street, N.W.  
Washington, D.C. 20006

/s/ William T. O'Neil  
William T. O'Neil

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____ ESTATE OF HIMOUD SAED ABTAN, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
v.	)	Case No. 07-cv-1831 (RBW)
	)	
BLACKWATER WORLDWIDE, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	
ESTATE OF ALI HUSSAMALDEEN ALBAZZAZ,	)	
	)	
Plaintiff,	)	Case No. 07-cv-2273 (RBW)
v.	)	
	)	
BLACKWATER WORLDWIDE, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**DECLARATION OF WILLIAM T. O'NEIL**

**William T. O'Neil** hereby declares as follows:

1. My name is William T. O'Neil, and I am counsel to plaintiffs in the above captioned matters.
2. In telephone conversations with counsel for defendants, Plaintiffs expressed a willingness to agree to transfer these actions to the Eastern District of Virginia if the Defendants agreed not to argue that Virginia's statutory cap on damages should be applied to the claims. Defendants refused this offer.

3. According to the United States Department of State Directory, a true and correct copy of which is attached as Exhibit 1, the headquarters of the Department of State is located at 2201 C Street, N.W., Washington, D.C. According to page OD-17 of Exhibit 1, the Assistant Secretary of State in charge of the Bureau of Diplomatic Security has his office in Room 6316 of State Department headquarters.

4. According to a prior Blackwater independent contractor, Blackwater has or had an office either in or near the Department of State, but Plaintiffs have been unable to confirm these claims.

5. Attached hereto as Exhibit 2 is a true and correct copy of *Statement of Richard J. Griffin, Oct. 2, 2007*.

6. According to a prior Blackwater independent contractor, the Department of State investigated the use and abuse of steroids by contractors in Iraq, including contractors working as shooters for Defendants. The State Department provided Defendants with the results of that investigation.

7. According to press reports, the United States Department of Justice has convened a Grand Jury in the District of Columbia and the Grand Jury has subpoenaed witnesses to testify in this District. Attached here to as Exhibit 3 is a true and correct copy of one such press report from the New York Times on November 20, 2007.

8. An Assistant United States Attorney from this District communicated with the victims' families through counsel.

9. Defendants Blackwater Security Consulting, LLC and Blackwater Lodge and Training Center, Inc., brought suit in the Superior Court for the District of Columbia on an unrelated matter only one day after defendants filed their motion to dismiss.

Attached hereto as Exhibit 4 is a true and correct copy of the lawsuit captioned *Blackwater Security Consulting, LLC, et al. vs. Wiley Rein, et al.*, case number 08-00530, filed on January 23, 2008 in the Superior Court of the District of Columbia.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 19, 2008 in Washington, D.C.

  
William T. O'Neil