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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' NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION AGAINST CACI INTERNATIONAL** Date: **[To be determined]** Time: Place: **FILED BY FACSIMILE**

PLEASE TAKE NOTICE THAT on _____, or as soon thereafter as the matter may be heard, in Courtroom ____ of this Court, located at 940 Front Street, San Diego, California 92101, plaintiffs will, and hereby does, move this Court, pursuant to Fed. R. Civ. P. 65, for an order requiring CACI to deploy only properly trained interrogators to Iraq and to train immediately any untrained interrogators who remain in Iraq.

This motion is made on the grounds that CACI International Inc. and the related companies ("CACI") violated the public trust by distorting the independence of the contracting process and sending to Iraq untrained interrogators who tortured detainees. As revealed in recent reports issued by the United States, CACI was found by military investigators to be involved in the torture at Abu Ghraib prison. Recently-released detainees have reported being tortured in July 2004, months after the public revelations regarding torture at the Abu Ghraib prison. Accordingly, given that CACI continues reaping financial benefits without regard to the detainees' safety, undersigned counsel are

compelled to protect their clients (the class of detainees who have been or will be harmed) by seeking a narrow and modest injunction.

Plaintiffs' motion is based on this Notice of Motion and Motion for Preliminary Injunction against CACI International, the accompanying Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction, as well as the complete file and records of this action and such other evidence and argument as the Court may consider at the hearing on this motion or thereafter.

Date: September 14, 2004

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CERTIFICATE OF SERVICE

I, Jonathan H. Pyle, do hereby certify that on the 14th day of September 2004, I caused a true and correct copy of the foregoing Plaintiff's Notice of Motion and Motion for Preliminary Injunction Against CACI International to be served via U.S. First Class Mail, postage prepaid, upon the following individuals at the addresses indicated:

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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** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AGAINST CACI INTERNATIONAL** Date: **[To be determined]** Time: Place: **FILED BY FACSIMILE**

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CACI International Inc. and the related companies ("CACI") violated the public trust by distorting the independence of the contracting process and sending to Iraq untrained interrogators who tortured detainees. As revealed in recent reports issued by the United States, CACI was found by military investigators to be involved in the torture at Abu Ghraib prison. As revealed in the accompanying declaration, recently-released detainees have reported being tortured in July 2004, months after the public revelations regarding torture at the Abu Ghraib prison. Accordingly, given that CACI continues reaping financial benefits without regard to the detainees' safety, undersigned counsel are compelled to protect their clients (the class of detainees who have been or will be harmed) by seeking a narrow and modest injunction. Specifically, we respectfully request that the Court enter an order requiring CACI to deploy only properly trained interrogators to Iraq and to train immediately any untrained interrogators who remain in Iraq.

STATEMENT OF FACTS

There is a growing body of evidence that CACI employees tortured detainees in prisons under United States control. The evidence includes three recently-released military reports (one issued on July 21, 2004; two issued on August 26, 2004) that found that torture occurred during interrogations sessions conducted by untrained or poorly trained CACI interrogators. These reports are attached in full as Exhibits A, B, and C.[1]

The Fay Report makes clear that CACI interrogators tortured detainees. According to the military investigators, CACI interrogators threatened detainees with dogs, forced detainees to simulate sex acts, placed detainees in the "hole," an isolation chamber that enforced sensory deprivation, enforced sleep deprivation, threatened detainees with violent soldiers, stripped detainees, and forced male detainees to wear women's underwear on their heads. *Fay Report at 130-35.* CACI interrogators repeatedly engaged in conduct prohibited by the United States, the Geneva Conventions and the military's *Field Manual 34-52: Intelligence Interrogation. See Fay*

[1] Exhibit A is Investigation of Intelligence Activities at Abu Ghraib, August 2004 [hereinafter "Fay Report"]; Exhibit B is Final Report of the Independent Panel to Review DoD Detention Operations, August 2004 [hereinafter "Schlesinger Report"]; Exhibit C is Detainee Operations Inspection of the Inspector General for the Department of the Army, July 21, 2004 [hereinafter "IG Report"].

Report at 135; see Field Manual 34-52: Intelligence Interrogation (included in pertinent part in the IG Report, Exhibit C, App. E at 44-57). In addition, CACI interrogators failed to report conduct by soldiers and others that violated United States law and the Geneva Conventions. CACI interrogators also made false statements during the military investigations. *Fay Report at 130-35.*

CACI BECAME PART OF THE TORTURE PROBLEM.

To understand how CACI became part of the torture problem, it is important to understand the background that led to the military reaching out to for-profit private parties for help with interrogations, an inherently governmental function.

First, the military reports establish what Plaintiffs allege in the Second Amended Complaint – certain government officials "migrated" interrogation techniques (*i.e*. torture) that had been deemed permissible in Guatanamo Bay, Cuba, to Iraq, where they clearly were prohibited by the Geneva Conventions and United States law. The Fay Report identified the multiple directives on torture to be one of the causes of detainee abuse in Iraq. *See Fay Report at 24-29*. Although as pointed out by the Schlesinger Report, some of the torture memoranda were later withdrawn and revised after objections by the United States military lawyers, confusion persisted. *See Schlesinger Report at 36*, explaining

> It is clear that pressure for additional intelligence and the more aggressive methods sanctioned by the Secretary of Defense memorandum resulted in stronger interrogation techniques.

See also Schlesinger Report at 33-38 and App. D & E; accord IG Report at 20-21 ("[a]mbiguous instructions concerning the handling of detainees also greatly increase the risk of abuse . . . . A command climate that encourages behavior at the harsher end of the acceptable range of behavior toward detainees may unintentionally[] increase the likelihood of abuse.").[2]

Although the Fay and Schlesinger Reports use the terms "stronger interrogation techniques" or "harsher interrogation techniques" rather than the word "torture" to describe the techniques authorized in Cuba, the term "torture" is the term used to describe the techniques in the IG Report,

[2] The IG Report also pointed out the "tolerance of inappropriate behavior by any level of the chain, even if minor, led to an increase in the frequency and intensity of abuse." *IG Report at 22.*

which straightforwardly defines torture.[3] *See IG Report, App. E at 44-57, which includes the pertinent portions of the United States' Army Field Manual 34-52, Intelligence Interrogation (hereinafter "Intelligence Manual")*. The Intelligence Manual identifies as "examples of physical torture" acts such as "infliction of pain through chemicals or bondage," "forcing an individual to stand, sit or kneel in abnormal positions for prolonged periods of time," "food deprivation," and "*any* form of beating" (emphasis added).[4] The Intelligence Manual also identifies "abnormal sleep deprivation" as a form of "mental torture." Thus, directives authorizing stress positions, use of dogs, physical contact, isolation for up to 30 days, 20-hour interrogations and sleep deprivation fall within the definition of torture used by military intelligence. *See Appendix E* to the Schlesinger Report for a list of the torture techniques authorized.

Torture does not actually result in the collection of more intelligence. As stated in the *Intelligence Manual*:

> [e]xperience indicates that the use of prohibited techniques is not necessary to gain the cooperation of interrogation sources. Use of torture and other illegal methods is a *poor technique that yields unreliable results*, may damage subsequent collection efforts, and can induce the source to say what he thinks the interrogator wants to hear.

IG Report, App. E. at 45 (emphasis added). See also Declarations of Marney Mason and Peter Bauer, attached as Exhibits D and E.

Second, the Reports also establish another fact Plaintiffs allege in their Second Amended Complaint – there was a constant demand from certain government officials for more "intelligence." As explained graphically in the Fay Report:

> JIDC personnel at Abu Ghraib believed the thirst for intelligence reporting to feed the national level systems was driving the train. There was then a focus to fill that perceived void and feed that system.

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[3] Interestingly, although the Schlesinger Report shies away from using the word torture, the Report simultaneously documents that scientific studies have shown that using "euphemistic language" such as "softening up" or "humane treatment" to describe immoral behaviors results in moral disengagement and allows for abusive treatment. Similarly, diffusing and displacing responsibility may lead to this harmful moral disengagement. *See Schlesinger Report, App. G at 6.*

[4] The Field Manual is described by the military as the controlling standard. *See IG Report, App. E. at 44-57.*

Fay Report at 42; see also Fay Report at 45 (explaining that the pressure for "intelligence" was "a contributing factor to the environment that resulted in abuses"). Additionally, the Schlesinger Report explains:

> [a] number of visits by high-level officials to Abu Ghraib undoubtedly contributed to this perceived pressure. Both the CJTF-7 commander and his intelligence officer visited the prison on several occasions. MG Miller's visit in August/September, 2003, stressed the need to move from simply collecting tactical information to collecting information of operational and strategic value. In November 2003, a senior member of the National Security Council Staff visited Abu Ghraib, leading some personnel at the facility to conclude, perhaps incorrectly, that even the White House was interested in the intelligence gleaned from their interrogation reports.

Schlesinger Report at 65-66.

CACI KNOWINGLY SUPPLIED UNTRAINED INTERROGATORS.

Without this demand for "intelligence" created by certain government officials, CACI would not have been needed to conduct interrogations in Iraq. As explained by the Fay Report, CACI was brought in to quench this "thirst for intelligence reporting" and meet the "constant demands for reports and documentation" that was overwhelming the military. *Fay Report at 42*. *See id. at 33* ("[S]till short of resources, the Army hired contract interrogators from CACI International, and contract linguists from Titan Corporation in an attempt to address shortfalls.").

CACI sent to Iraq persons who were willing to employ a range of unacceptable interrogation techniques and torture detainees to obtain "intelligence." That they engaged in such conduct shows they are not qualified interrogators capable of conducting effective interrogations without resort to physical and mental torture outlawed by the Geneva Conventions and other United States laws. The Reports make explicit the inescapable conclusion that CACI sent over persons who "lacked sufficient background and training." *Id. at 46.* CACI employees also admitted they lacked training in the Geneva Conventions. *See id. at 51* ("Likewise, numerous statements indicate that little, if any, training on the Geneva Conventions was presented to contractor employees."); *see also IG Report at 88-89* (describing the lack of formal training programs for contract interrogators).

TORTURE DURING INTERROGATIONS CONDUCTED BY UNTRAINED INTERROGATORS IS A FORESEEABLE AND PREDICTABLE RESULT.

The United States was and is entitled to the benefit of its bargain; namely, to be provided with trained persons who are able to conduct interrogations without resorting to violence. Torture during interrogations by untrained interrogators is a foreseeable and predictable result. As stated in the Schlesinger Report:

> the potential for abusive treatment of detainees during the Global War on Terrorism was entirely predictable based on a fundamental understanding of the principle of social psychology principles *[sic]* coupled with an awareness of numerous known environmental risk factors.

Schlesinger Report, App. G at 1. Further,

> [f]indings from the field of social psychology suggest that conditions of war and the dynamics of detainee operations carry inherent risks for human mistreatment, and therefore must be approached with great caution and careful planning and training.

Id. *See also IG Report at 35* ("[t]he potential for abuse increases when interrogations are conducted in an emotionally-charged environment with untrained personnel who are unfamiliar with the approved interrogation approach techniques.").[5]

Two experienced military interrogators attest to the predictability described in the reports. *See the Declarations of Marney Mason and Peter Bauer, attached as Exhibits D and E.* Mason served as an interrogator for the United States Army from March 1973 until retiring in September, 1991. *Mason Decl. ¶ 1*. After his retirement, he served as a consultant on intelligence-gathering activities. As a consultant, he worked for Premier Technology Group, the company acquired by CACI. *Id. ¶ 2*. He explains that torture of detainees is the predictable and foreseeable result of having untrained persons conduct interrogations. *Id. ¶ 5*. This dynamic towards violence has been well-documented by the Stanford Prison Study and other scholarly literature, and repeatedly

[5] Also predicted by the military's *Field Manual on Intelligence Interrogation* was the reality that "[r]evelation of the use of torture by US personnel will bring discredit upon the US and its armed forces while undermining domestic and international support for the war effort." *Id.*

observed by Mason in his eighteen years of training interrogators. *Id. ¶ 4*. *See also Schlesinger Report, App. G. at 1-3; http://www.prisonexp.org*.

Importantly, Mason explains that selecting the right type of person to receive interrogation training is critical. Persons with violent tendencies or with backgrounds who would fail to pass a security clearance are not suitable candidates for interrogation positions. *Mason Decl. ¶ 9*. Potential interrogators should receive, at a minimum, eight weeks at forty hours per week of training. *Id. ¶ 6*. That amount is not only the standard used by the United States Army, but is also the minimum amount needed to condition an interrogator to withstand the tendency towards violence. *Id. ¶ 6*. Mason explains that even with training, some persons simply should not be deployed because they fail to pass the testing that is administered to assess whether they have learned to withstand those violent tendencies. *Id. ¶¶ 7-8.*

In Mason's expert view, CACI failed to recruit the right type of person for the interrogation job. Instead of recruiting trained interrogators, they sought out persons with law enforcement backgrounds. *Id. ¶ 10*. Although on earlier occasions, Mason had conducted training for CACI's Premier Technology Group, CACI did not engage Mason to train and test potential interrogators. Further, CACI did not contact him to nor, to the best of his knowledge based on professional contacts, did it contact any of approximately 20 other skilled military interrogators serve in Iraq. *Id. ¶ 12*.

Peter Bauer, another experienced military interrogator with eleven years of experience in conducting interrogations, training interrogators, and designing training, confirms that interrogator training is essential to prevent violence against the persons being interrogated. *Id. ¶¶ 1, 9*. Bauer explains why:

> Without training, personnel serving as interrogators are more likely to believe that physical abuse and inhumane treatment of prisoners are permissible interrogation techniques. Such behavior not only causes needless suffering for the victim and is criminal, it jeopardizes the intelligence collection effort. Once a prisoner has been abused, gaining his or her willing cooperation is often impossible, even for a highly-skilled interrogator.

Id. ¶ 9.

Bauer points out that only certain personality traits, such as patience, tact, and self-control, make persons suitable candidates for interrogator training. *Id.* ¶ *5*. Other traits, such as lying, cheating and bullying, disqualify persons from being suitable candidates for interrogator training. *Id.* ¶ *6*. Some individuals simply are not capable of conducting interrogations even with extensive, high-quality training. *Id.* ¶ *7*.

Bauer describes from personal experience that much of the emphasis during training was on the avoidance, prevention and reporting of prisoner abuse. *Id.* ¶¶ *11-12*. Bauer describes how training exercises would include testing on how well interrogators remained within the legal boundaries prohibiting violence when subjected to attacks and casualties. *Id.* ¶ *13*. Persons who treated prisoners in a manner that violated the Geneva Conventions during these simulations would be re-trained and re-tested. *Id.* ¶ *13*. Bauer reviewed the Fay Report and concurs with the wisdom of the recommendation regarding training and testing contract interrogators prior to deployment. *Id.* ¶ *17*.

Based on his review of CACI advertisements, Bauer found that CACI was focusing on police-type interview techniques rather than interrogation skills. *Id.* ¶ *18*. To the extent CACI sought interrogation skills, it targeted counter-intelligence skill sets rather than interrogation skill sets. *Id.* ¶ *19*. And, as with Mason, no one from CACI contacted Bauer to serve as an interrogator or to train interrogators. *Id.* ¶ *20*. Bauer believes, to the best of his knowledge, that CACI simply did not try to recruit any former Army-trained experienced interrogators to serve in Iraq. *Id.* ¶ *21*.

CACI IMPROPERLY INFLUENCED THE PROCUREMENT SYSTEM.

Why did CACI fail to contact trained and experienced interrogators? Why was CACI permitted to send over untrained interrogators when the United States military knew it needed trained interrogators? Discovery is needed to answer fully these questions. What is known at present is that the United States military relied on the heavily-regulated procurement system to protect its interests, but that system had been improperly influenced by CACI. The Fay Report explains CACI employee Thomas Howard "participated" in "writing the Statement of Work" in the contract *before* CACI won the contract award. *Fay Report at 49*. It is clear from the text of the

Statement of Work referred to in the Reports that it was crafted to give CACI maximum flexibility because it only required "equivalent" training and experience rather than actually requiring interrogation training. *Id. at 51*.

There is really no such thing as training "equivalent" to interrogator training. Either an interrogator has been properly trained to resist the tendencies towards violence – which requires at minimum an 8-week, 40 hour-per-week, training course that constantly reinforces the Geneva Conventions – or not. *Mason Decl. ¶¶ 6-8*. *See also Fay Report at 117-18*. Such training serves as an important safeguard against torture by weeding out persons with violent tendencies.

Unfortunately for the detainees, CACI, and CACI alone, decided what constituted "equivalent" training and sent over the individual interrogators who engaged in the heinous acts described above and in the Fay Report. *See id. at 51*. As stated in the Fay Report, the United States military has concluded "the use of contract interrogators and linguists was problematic . . . from a variety of perspectives." *Id. 19*. The Fay Report found that the United States military personnel operated under a misunderstanding about their ability to discipline contractor personnel. *Id. at 19.* Instead, CACI interrogators, including perhaps some of those who tortured detainees, actually *supervised* government personnel. *Id. at 51-52*. CACI employees were shown as supervisors to subordinate military personal on organization charts. *Id. at 52*.

CACI ACTED AND CONTINUES TO ACT WITHOUT SUFFICIENT REGARD FOR THE LAW AND THE DETAINEES' SAFETY.

CACI is not taking steps to correct its past misdeeds. CACI is resisting responding to the requests for the employment files relating to interrogators in Iraq. CACI filed papers in the ongoing military criminal proceedings seeking to be protected from the demands by both prosecutors and defense attorneys for the employment files of those CACI employees assigned to Abu Ghraib. *See Declaration of Jonathan Pyle ("Pyle Declaration") at ¶ 2-3, attached as Exhibit F*.

CACI continues to disavow any responsibility for the acts. *Exhibit G* is a collection of CACI public statements, in which it claims internal reviews have found no wrongdoing and claim the Fay Report vindicates the company. Also, it does not appear that CACI has refunded any of the

funds paid to it relating to the services of those who engaged in torture and other wrongdoing. Despite these actions, and serious questions about the validity of the contracting process, CACI has procured an emergency extension of its contract. *See Exhibit H* for a letter reflecting concerns about the contracting process and *Exhibit I* for press clippings related to the contract extension.

DETAINEES WERE TORTURED IN JULY 2004, MONTHS AFTER THE ABU GHRAIB TORTURE BECAME PUBLIC.

Although standing alone, the CACI contract renewal would be troubling, it is potentially catastrophic to the detainees who may currently or in the future be tortured by untrained CACI interrogators. This is a very real concern because evidence obtained by counsel in Iraq in August reveals that detainees continue to be subjected to torture and mistreatment. Although at present counsel has no access to the class members who remain imprisoned, counsel Akeel spoke directly to persons who were tortured in the time period July 12 to July 25, 2004. As set forth in more detail in the Declaration of Shereef H. Akeel, attached as Exhibit J, a boy – only fifteen-years old – was stripped naked, starved, beaten, and repeatedly sodomized by Americans. His eighteen-year old brother and his uncle were also tortured.

ARGUMENT

Neither the individual Class Plaintiffs tortured in July nor Plaintiffs' counsel have yet to ascertain what role, if any, CACI interrogators played in their personal tragedies. Indeed, CACI interrogators may not even have been located at the particular facility where those events occurred. But given the severity of past CACI acts described by the military investigators and reported on by Generals Fay and Taguba, and given the reality that untrained interrogators predictably and foreseeably torture detainees, Plaintiffs respectfully request that this Court issue a narrow and limited injunction to protect the detainees from untrained CACI interrogators.

I. AN INJUNCTION IS NEEDED TO PROTECT PLAINTIFFS.

Although the United States military has begun to try to stop torture from occurring in prisons under its control, it is the depressing reality that much remains to be done. As revealed by the Reports, only torture at Abu Ghraib has been investigated. *Fay Report; Schlesinger Report.* There has not yet been any investigation about torture in other prisons. The military has begun to

take steps to ensure that its own personnel receive appropriate training and instruction on the law of war. As the IG Report reveals, however, much must be done before detainees will be safe. *See IG Report* (suggesting numerous recommendations, including that interrogations be videotaped). *See IG Report at 35-36* (noting one facility videotapes interrogations and commenting: "Because interrogations are confrontational, a monitored video recording of the process can be an effective check against breaches of the laws of land warfare and Army policy . . . . All facilities conducting videotaping would benefit from routine use of video recording equipment.").

Regardless of the ongoing efforts to solve the torture problem, this Court has the power and thus the responsibility to oversee one piece of the torture problem – the actions of CACI, a publicly-traded corporation. That power should be exercised immediately in a manner that does not burden the war effort, but rather merely stops CACI from improving its own bottom line at the United States' and detainees' expense by providing untrained and therefore dangerous interrogators to the war effort. This Court should enter an order (proposed form appended) that requires CACI at its own expense: (1) to train to Army standards those interrogators now in Iraq and those slated to be deployed in Iraq; and (2) to remove from the war theater those employees who should never have been recruited because they have been convicted or suspected of violence or other relevant transgressions in the past. Such an injunction would play a vital role in ensuring that CACI interrogators stop being part of the torture problem.

Because the balance of hardships tips so sharply in favor of those presently detained without any recourse to counsel or any other forms of protection from torture, and because the scars (both physical and mental) are permanent and irreparable, the motion for an injunction should be reviewed under the "alternative" approach and granted. Given the serious risks that plaintiffs might be tortured, this is clearly a case in which a preliminary injunction should issue.

A. The Court of Appeals for the Ninth Circuit's "Alternative" Test Applies Here.

Under the "alternative" test, the moving party must demonstrate that serious questions of liability are raised by the lawsuit and the balance of hardships tips sharply in his favor. *Teamsters Joint Council No. 42 v. Int'l Bhd. of Teamsters, AFL-CIO*, 82 F.3d 303, 307 (9th Cir. 1996) (citing *Oakland Tribune, Inc. v. Chronicle Pub. Co., Inc.*, 762 F.2d 1374, 1376 (9th Cir. 1985)).

The two parts of the alternative test are not unrelated but rather are "extremes of a single continuum." *Prescott v. County of El Dorado*, 915 F. Supp. 1080, 1084 (E.D. Cal. 1996) (citing *Benda v. Grand Lodge of Int'l Ass'n of Machinists & Aerospace Workers*, 584 F.2d 308, 315 (9th Cir. 1978), *cert. dismissed*, 441 U.S. 937 (1979)). Under this test, the required showing of merit varies inversely with the showing of harm. *City of Tenakee Springs v. Block*, 778 F.2d 1402, 1407 (9th Cir. 1985).

B. The Balance of Hardships Tips Sharply in Plaintiffs' Favor.

Here, the balance of hardships tips sharply in Plaintiffs' favor. Being tortured is precisely the type of irreparable harm suitable for injunctive relief. A case in point is the sad story of the fifteen-year-old boy, who was sexually molested. Courts have repeatedly held that such physical injuries constitute irreparable harm. *Miss. Women's Med. Clinic v. McMillian*, 866 F.2d 788, 795 (5th Cir. 1989) (threat of physical injury to patients by protestors would constitute irreparable injury); *Pennsylvania v. Porter*, 480 F. Supp. 686, 704-05 (W.D. Pa. 1979), *aff'd in part and rev'd in part*, 659 F.2d 306 (3d Cir. 1981), *cert. denied*, 458 U.S. 1121 (1982) (defendants enjoined from committing acts of physical violence, threats, harassment, and illegal detentions). For example, in *Doe v. Pataki*, 919 F. Supp. 691, 698 (S.D.N.Y. 1996), the Court held that the threat to the plaintiffs of physical harm, public ridicule, and scorn satisfies the irreparable harm prong of the preliminary injunction test.

Similarly, the threat of death at the hands of an untrained interrogator also satisfies the irreparable harm requirement. *See Lee v. Oregon*, 869 F. Supp. 1491, 1501 (D. Or. 1994) (possibility of unnecessary death constitutes irreparable harm). Courts regularly lower the burden of proof as to the plaintiff's likelihood of success when life is at risk. *See Ashmus v. Calderon*, 935 F. Supp. 1048, 1076 (N.D. Cal. 1996), *aff'd*, 123 F.3d 1199 (9th Cir. 1997), *rev'd on other grounds*, 523 U.S. 740 (1998).

C. A Serious Question Requiring Litigation Exists in This Case.

Here, there is a growing body of evidence acquired by military investigators that supports the allegations in Plaintiffs' Second Amended Complaint. Where the balance of harm tips strongly in favor of the plaintiffs, the moving party need only show a "fair chance of success on the merits,"

Nat'l Wildlife Fed'n v. Coston, 773 F.2d 1513, 1517 (9th Cir. 1985), or that a "serious question" as to liability exists. *Benda*, 584 F.2d at 315.

The Ninth Circuit has defined a "serious question" as one which is "only serious enough to require litigation," *Briggs v. Sullivan*, 886 F.2d 1132, 1143 (9th Cir. 1989) or one which cannot be resolved one way or the other at the hearing for the preliminary injunction and which is "substantial, difficult and doubtful, as to make [it] fair ground for litigation and thus for more deliberate investigation." *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988) (en banc) (quoting *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (2d Cir. 1952)), *cert. denied*, 490 U.S. 1035 (1989). *See also Metro-Goldwyn-Mayer v. Am. Honda Motor Co., Inc.*, 900 F. Supp. 1287 (C.D. Cal. 1995); *Gilder v. P.G.A. Tour, Inc.*, 936 F.2d 417, 422-23 (9th Cir. 1991). The court "is not required to make any binding findings of fact" to issue the injunction. *Int'l Molders & Allied Workers v. Nelson*, 643 F. Supp. 884, 888 (N.D. Cal. 1986), *remanded*, 799 F.2d 547 (9th Cir. 1986) (citing *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1423 (9th Cir. 1984)).

Here, the case fits precisely the definition of a case that is "substantial, difficult and doubtful, as to make [it] fair ground for litigation and thus for more deliberate investigation." *Republic of the Philippines*, 862 F.2d at 1362. The role of CACI in the torture problem is under investigation by multiple entities in addition to Plaintiffs. The United States Department of Justice has been asked by the military to consider whether to bring criminal charges against CACI employees. The military Criminal Investigative Division is investigating CACI. The Senate is holding hearings on the torture problem. CACI employees have already made substantial admissions of liability that appear in the appended reports. In short, there is clearly a question serious enough to require litigation.

Here, there is recent and controlling Supreme Court caselaw that permits Plaintiffs' claims to proceed to litigation. In June of this year, the Supreme Court ruled in *Sosa v. Alvarez-Machain*, 124 S. Ct. 2739, 2766 (2004), that the Alien Tort Claims Act (ATCA) provides a mechanism to challenge in United States courts conduct that violates "specific, universal and obligatory" norms of customary law. *Id.* (citation omitted). The Court expressly endorsed *In re Estate of Marcos*

Human Rights Litigation, 25 F.3d 1467, 1475 (9th Cir. 1994) and *Filartiga v. Pena-Irala*, 630 F.2d 876, 890 (2d Cir. 1980), which involved claims of torture, extrajudicial killing, causing disappearance, and cruel, in humane and degrading treatment. *See also Kadic v. Karadzic*, 70 F.3d 232, 239-40 (2d. Cir. 1995) (war crimes and crimes against humanity actionable under the ATCA).

Clearly corporations who aid and abet or act in concert with state actors in the commission of such violations are equally liable. *See, e.g.*, *Bigio v. Coca-Cola, Co.*, 239 F.3d 440 (2d Cir. 2000); *Bowoto v. Chevron Texaco Corp.*, 312 F. Supp. 2d 1229 (N.D. Cal. 2004); *Presbyterian Church of Sudan v. Talisman Energy Inc.*, 244 F. Supp. 2d 289 (S.D.N.Y. 2003) (reviewing the precedents in federal and international jurisprudence which support its holding that a corporation could be held liable under the ATCA); *Wiwa v. Royal Dutch Petroleum*, No. 96 Civ. 8386, 2002 WL 31 9887 (S.D.N.Y. Feb. 28, 2002); *Bodner v. Banque Paribas*, 114 F. Supp. 2d 117 (E.D.N.Y. 2001); *Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424, 445 (D.N.J. 1999); *Doe v. Unocal*, 963 F. Supp. 880 (C.D. Cal. 1997); *Nat'l Coalition Gov't of the Union of Burma v. Unocal, Inc.*, 176 F.R.D. 329 (C.D. Cal. 1997); *Eastman Kodak Co. v. Kavlin*, 978 F. Supp. 1078, 1091-92 (S.D. Fla. 1997).

D. The Proposed Injunction Merely Requires CACI to Do What It Should Have Done in the First Instance.

A preliminary injunction is always appropriate to grant intermediate relief of the same character as that which may be finally granted. *DeBeers Consol. Mines, Ltd. v. United States*, 325 U.S. 212, 220 (1945). Here, the narrow relief sought by Plaintiffs simply requires CACI to live up to its contractual obligation to provide to the United States properly trained interrogators who do not willingly participate in torturing detainees and who immediately report torture when they see it.

E. The Injunction Should Issue Before the Class Is Certified.

Although the injunction protects class members rather than the representative plaintiffs, it is clear class-wide injunctions may issue prior to litigation regarding class status. *Berg v. Richmond Unified Sch. Dist.*, 528 F.2d 1208 (9th Cir. 1975), *vacated and remanded*, 434 U.S. 158 (1977) (prior to class certification, defendants enjoined from preventing plaintiff from teaching class); *Dunn v. Tyler Indep. Sch.*, 460 F.2d 137 (5th Cir. 1972) (temporary restraining order granted same

day as complaint filed); *N.Y. Nat'l Org. for Women v. Terry*, 697 F. Supp. 1324, 1336 n. 16 (S.D.N.Y. 1988); *Lynch v. Rank*, 604 F. Supp. 30 (N.D. Cal.), *aff'd*, 747 F.2d 528 (9th Cir. 1984). *See also* 7B Wright, Miller & Kane, Federal Practice and Procedure § 1785 at 106-07 (1986) ("a suit brought under Rule 23 should be treated as a class action . . . until there is a determination that the action may not proceed under the rule"); *Robertson v. Nat'l Basketball Ass'n*, 389 F. Supp. 867 (S.D.N.Y. 1973) (preliminary injunction entered five years prior to class certification).

F. There Is a Substantial Risk of Irreparable Harm Absent an Injunction.

Thousands of Iraqis remain imprisoned and at serious risk of being tortured. Although even wrongdoers should not be tortured, the facts are even more compelling here because many of those imprisoned are innocents who just happened to be in the wrong place at the wrong time. As explained in the Schlesinger Report:

> Line units conducting raids found themselves seizing specifically targeted persons, so designated by military intelligence; but, lacking interrogators and interpreters to make precise distinctions in an alien culture and hostile neighborhoods, they reverted to rounding up any and all suspicious-looking persons – all too often including women and children. The flood of incoming detainees contrasted sharply with the trickle of released individuals.

Schlesinger Report at 28.

Accordingly, class members are subject to a threat of irreparable harm and are thereby entitled to a preliminary injunction pursuant to Fed. R. Civ. P. 65.

G. CACI's Interest in Its Reputation Does Not Outweigh the Risks of Physical Harm.

In making a determination on a preliminary injunction, the trial court must make the decision that, if wrong, will result in the least injury. *Am. Hosp. Supply Corp. v. Hosp. Prods. Ltd.*, 780 F.2d 589, 593 (7th Cir. 1986). In the matter at hand, if the preliminary injunction is denied, there is a substantial risk that one or more employees of CACI will inflict irreparable injury on one or more detainees. On the other hand, if the motion for a preliminary injunction is granted, as it should be, CACI is only being required to do that which it should have done in the first instance.

Similarly, any argument by CACI that granting the injunction unfairly labels them as complicit in torture before being so adjudicated should fall on deaf ears for two reasons: First, as a

factual matter, there are already admissions of liability that have been made by CACI employees. Such admissions lead to the inescapable conclusion that CACI interrogators tortured detainees. Second, even if the facts were not so compelling, a corporate interest in reputation does not outweigh the risk to plaintiffs of physical harm and mental harm, including death.

Courts have repeatedly rejected the contention that the threat of economic injury outweighs the threat of physical injury. For example, in *Lopez v. Heckler*, the Ninth Circuit stated that, "[f]aced with such a conflict between financial concerns and preventable human suffering, we have little difficulty concluding that the balance of hardships tips decidedly in plaintiffs' favor," 713 F.2d 1432, 1437 (9th Cir. 1995).

In *United States v. Laerdal Manufacturing Corp.*, 73 F.3d 852 (9th Cir. 1995), the court upheld the trial court's issuance of a preliminary injunction mandating the defendant to file a medical device recording with the U.S. Food and Drug Administration. Such filings are mandated by law when there is an incident in which the medical device caused or contributed to a death or serious injury. *Id*. at 854. Both the Court of Appeals for the Ninth Circuit and the district court in *Laerdal* soundly rejected the defendant's contention that the threat of injury to its reputation and the resulting economic injury somehow outweighed the plaintiff's interest in preventing serious injury and death. *Id*. at 857 (citing *Laerdal Mfg. Corp.*, 853 F. Supp. at 1239 (D. Or. 1994), *aff'd*, 73 F.3d 852).

Even in the absence of physical harm to humans, courts have granted injunctions when the only potential injury flowing from the injunction is economic. For instance, in *Earth Island Inst. v. Mosbacher*, 746 F. Supp. 964 (N.D. Cal. 1990), *aff'd*, 929 F.2d 1449 (9th Cir. 1991), the court granted plaintiffs' motion for a preliminary injunction enforcing the Marine Mammal Protection Act and thereby preventing the importing of tuna caught by means which endangered dolphins. In its issuance of the injunction, the court held "the risk of unnecessary dolphin deaths and injury to the dolphin population was a sufficient display of the possibility of irreparable injury to justify the granting of a preliminary injunction." *Id*. at 975.

The *Earth Island* court then went on to reject the defendant's contention that its economic interests somehow outweighed the injury to dolphins which would occur in the event the injunction

was denied. Specifically, the court held "the purely economic harm suffered by foreign fishing interests as a result of the enforcement of the MMPA is outweighed by 'the interests of the marine mammal populations at stake in this case.'" *Id.* at 975 (citation omitted). Other courts have also held that the threat to wildlife severely outweighs any economic interest. In *Federation of Japan Salmon Fisheries v. Baldridge*, 679 F. Supp. 37 (D.D.C. 1987), *aff'd*, 839 F.2d 795 (D.C. Dir. 1988), *cert. denied*, 488 U.S. 1004 (1989), the court likewise rejected the defendant's contention that the economic injury it would suffer should the injunction issue outweighed the threat to dolphins should the relief be denied.

This Court should treat detained Iraqis at least as well as the United States courts have treated dolphins. Plaintiffs' human rights interests unequivocally outweigh any CACI corporate interest in postponing any judicial oversight of its activities until all of the investigations and criminal prosecutions have been completed.

H. An Injunction Serves the Public Interest.

The public interest should always be considered in the context of deciding whether to grant an injunction. *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980); *Am. Motorcyclist Ass'n v. Watt*, 714 F.2d 962, 967 (9th Cir. 1983).

Here, the United States public has a strong interest in stopping and correcting the torture problem. As predicted years earlier by the military's *Field Manual on Intelligence Interrogation*, revelations of the United States torturing detainees has been the cause of substantial public distress and shame. An injunction will begin to repair the damage done to the United States' standing in the world community. An injunction will prevent innocent persons from being tortured by untrained interrogators sent into prisons by the United States. An injunction will prevent CACI from making money without performing in good faith under its contract with the United States.

There is also the public interest in stopping the needless deaths of American and Allied solders serving in Iraq now and in the future. As the Intelligence Manual states so succinctly:

> Revelation of the use of torture by US personnel will bring discredit upon the US and its armed forces while undermining domestic and international support for the war effort. It also may place US and allied personnel in enemy hands at greater risk of abuse by their captors.

(quoted in *IG Report, App. E at 45*).

There is no competing public interest served by denying the injunction. To let CACI continue to send over untrained interrogators, or to let them leave untrained interrogators in place without remedial training, benefits no one other than the CACI corporate fisc.

II. PLAINTIFFS SHOULD NOT BE REQUIRED TO POST A SUBSTANTIAL BOND.

In order to receive a preliminary injunction, an applicant is ordinarily required to give security for losses incurred by a party later found to have been wrongly enjoined. Fed. R. Civ. P. 65(c). A district court, however, has the discretion to grant a preliminary injunction without requiring the plaintiffs to post any security bond or upon the posting of a merely nominal bond. *People ex. rel. Van de Kamp v. Tahoe Reg'l Planning Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985), *amended on other grounds*, 775 F.2d 998; *see also Kaepa, Inc., v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996), *cert. denied*, 519 U.S. 821.[6]

The Ninth Circuit in *People ex. rel. Van de Kamp* noted that "special precautions to ensure access to the courts must be taken where Congress has provided for private enforcement of a statute." 766 F.2d at 1325-26. The ATCA is expressly designed to ensure that private plaintiffs can and will enforce the law of nations. Therefore, a substantial security bond requirement in this case would subvert the intent of the ACTA. *See Natural Res. Def. Council, Inc. v. Morton*, 337 F. Supp. 167, 169 (D.D.C. 1971), *motion for summary reversal denied,* 458 F.2d 827 (D.C. Cir. 1972). *See also Bartels v. Biernat*, 405 F. Supp. 1012, 1019 (E.D. Wis. 1975); *Bass v. Richardson*, 338 F. Supp. 478, 491 (S.D.N.Y. 1971). Since any difference between the language of Rule 65(c) and the clear Congressional intent embodied in a federal statute must be resolved in favor of the statute, *Bass*, 338 F. Supp. at 491, this Court should waive the posting of a security bond.

[6] A number of different factors can independently justify the waiver of bond. Specifically, a court may waive Rule 65(c) if any of the following circumstances are present: (1) the requirement would effectively bar judicial review, (2) the plaintiffs cannot afford to post security, (3) Congress has specifically provided for private enforcement, (4) the plaintiffs are litigating in the public interest, (5) the plaintiffs have made a strong showing of their likelihood of success on the merits, *or* (6) the hardships imposed on the plaintiffs by the security requirement outweigh the potential loss to the enjoined party.

In addition to these considerations, courts have found waiver of the Rule 65(c) security to be warranted where plaintiffs are engaged in public interest litigation. *Moltan Co. v. Eagle Picher Minerals, Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995); *Temple Univ. v. White*, 941 F.2d 201, 220 (3d Cir. 1991), *cert. denied*, 502 U.S. 1032 (1992). As noted above, this litigation is manifestly in the public interest, which justifies waiver of the security.

III. THE COURT SHOULD PERMIT A LIMITED AMOUNT OF DISCOVERY AND HOLD AN EVIDENTIARY HEARING.

Plaintiffs respectfully request that the Court issue a briefing and discovery schedule that permits the speedy resolution of this Motion. Plaintiffs suggest that CACI be required within twenty days to identify any contest to any of the facts set forth in the Statement of Facts, produce any and all documents relevant to any contested facts, and produce a Rule 30(b)(6) witness or witnesses able to testify on those disputed facts. After the close of this abbreviated discovery period, both parties would have ten days to prepare and submit briefs to the Court. Thereafter, the Court could hold the evidentiary hearing and decide the matter.

Alternatively, if working on such an expedited schedule creates difficulties for either the Court or CACI, plaintiffs respectfully request that the Court issue the Injunction immediately and thereafter permit CACI an opportunity to litigate any objections CACI may have to the entry of the Injunction.

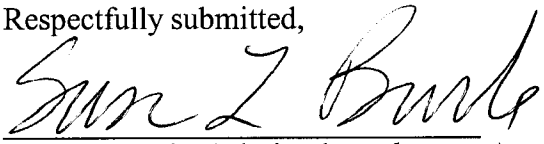
Plaintiffs attach for the Court's convenience two proposed Orders reflecting these alternative methods of proceeding.

CONCLUSION

For all of the foregoing reasons, Plaintiffs urge the Court to protect those detained from any potential harm inflicted by untrained CACI interrogators. There is no reason to stand by and permit the past tragedies to be reenacted with new victims. Rather, the Court should enter the limited and

narrow Injunction, which is suitably tailored to protect detainees in a manner that only minimally burdens CACI.

Respectfully submitted,



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INDEX OF EXHIBITS

Exhibit	Title of Document
A	Investigation of Intelligence Activities at Abu Ghraib, August 2004 ["Fay Report"]
B	Final Report of the Independent Panel To Review DoD Detention Operations, August 2004 ["Schlesinger Report"]
C	Detainee Operations Inspection of the Inspector General for the Department of the Army, July 21, 2004 ["IG Report"]
D	Declaration of Marny Mason Filed in Support of Plaintiffs' Motion for Preliminary Injunction Against CACI International, September 10, 2004
E	Declaration of Peter Bauer Filed in Support of Plaintiffs' Motion for Preliminary Injunction Against CACI International, September 9, 2004
F	Declaration of Jonathan Pyle Filed in Support of Plaintiffs' Motion for Preliminary Injunction Against CACI International, September 13, 2004
G	Collection of CACI Public Statements In Which It Claims Internal Reviews Have Found No Wrongdoing and That the Fay Report Vindicates the Company
H	Letter from J. Neurauter, U.S. General Services Administration to J.P. London, C.E.O. of CACI International, Inc., July 7, 2004
I	Press Clippings Related to CACI Contract Extension
J	Declaration of Shereef Akeel Filed in Support of Plaintiffs' Motion for Preliminary Injunction Against CACI International, September 13, 2004

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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** **[PROPOSED] ORDER SETTING DISCOVERY SCHEDULE FOR PRELIMINARY INJUNCTION**

PLEASE TAKE NOTICE that Plaintiffs' Motion for a Preliminary Injunction Against CACI International came before this Court on _____, 2004 in Courtroom #_____.

After reviewing the papers filed by the Plaintiffs,

THE COURT ORDERS THAT:

(1) No later than twenty days after the entry of this Order, Defendants CACI International, Inc., CACI Incorporated – Federal, and CACI N.V. (collectively "CACI") shall identify to Plaintiffs in writing any dispute regarding the facts set forth by Plaintiffs in their Statement of Facts in the Memorandum of Points and Authorities.

(2) No later than twenty days after the entry of this Order, CACI shall produce any and all documents relevant to any contested facts identified by CACI.

(3) No later than twenty days after the entry of this Order, CACI shall produce a witness or witnesses able to testify under Fed. R. Civ. P. 30(b)(6) about any fact contested by CACI.

(4) The parties shall have ten (10) days after CACI has complied with the foregoing paragraphs to prepare and submit briefs to this Court.

(5) No bond needs to be posted for the reasons set forth in Plaintiffs' supporting Memorandum.

DATED: _____

_____
The Honorable John S. Rhodes
District Court Judge

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Counsel for Plaintiffs

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** **[PROPOSED] ORDER GRANTING PRELIMINARY INJUNCTION**

PLEASE TAKE NOTICE that Plaintiffs' Motion for a Preliminary Injunction Against CACI International came before this Court on _____, 2004 in Courtroom #_____.

After reviewing the papers filed by the Plaintiffs, and responses and replies thereto,

THE COURT ORDERS THAT:

(1) Plaintiffs' Motion for a Preliminary Injunction Against CACI International is GRANTED.

(2) Defendants CACI International Inc., CACI Incorporated – Federal, and CACI N.V. (collectively "CACI") are required to certify in writing to this Court by no later than October _____, 2004, that each employee serving as an interrogator in Iraq or intended to be deployed to serve as an interrogator has received a 16-week training course (at 40 hours per week) on interrogation.

(3) CACI is required within five days of the date of this order to submit to Plaintiffs a full and complete copy of the employment files of those persons presently in Iraq or scheduled to be deployed in Iraq. Upon receipt of the files, Plaintiffs shall have ten days to review the files and file in writing with the Court any objections to the continued deployment of persons with violent or otherwise unsuitable backgrounds.

(4) No bond needs to be posted for the reasons set forth in Plaintiffs' supporting Memorandum.

DATED: _____

_____
The Honorable John S. Rhodes
District Court Judge

CERTIFICATE OF SERVICE

I, Jonathan H. Pyle, do hereby certify that on the 14th day of September 2004, I caused a true and correct copy of the foregoing Memorandum of Points and Authorities in Support Of Plaintiffs' Motion for Preliminary Injunction Against CACI International to be served via U.S. First Class Mail, postage prepaid, upon the following individuals at the addresses indicated:

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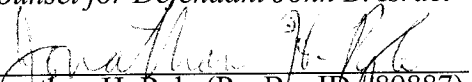

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