

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

|                            |   |                                      |
|----------------------------|---|--------------------------------------|
| UNITED STATES OF AMERICA,  | ) |                                      |
|                            | ) |                                      |
| Plaintiff,                 | ) |                                      |
|                            | ) |                                      |
| v.                         | ) | Civil Action No. 1:10CV765 (GBL/TRJ) |
|                            | ) |                                      |
| ISHMAEL JONES, a pen name, | ) |                                      |
|                            | ) |                                      |
| Defendant.                 | ) |                                      |
| _____                      | ) |                                      |

**DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT  
AND/OR MOTION TO TRANSFER VENUE UNDER 28 U.S.C. § 1404**

COMES NOW, Defendant Ishmael Jones, by counsel, and pursuant to Federal Rules of Civil Procedure 12(b)(2), 12(b)(3), and 12(b)(6), and 28 U.S.C. § 1404, respectfully files this Motion to Dismiss Plaintiff’s Complaint and/or Transfer Venue Under 28 U.S.C. § 1404.

The grounds for this motion are set forth more fully in the attached memorandum incorporated by reference herein.

Date: December 14, 2010

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ James F. Peterson (VSB No. 36211)  
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*Counsel for Defendant Ishmael Jones*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 14, 2010, a true copy of the foregoing MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND/OR MOTION TO TRANSFER VENUE UNDER 28 U.S.C. §1404 was filed electronically with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to the following:

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Counsel for Plaintiff United States of America

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|                            | ) |                                      |
| Defendant.                 | ) |                                      |
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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT’S  
MOTION TO DISMISS PLAINTIFF’S COMPLAINT AND/OR MOTION TO  
TRANSFER VENUE UNDER 28 U.S.C. § 1404**

Defendant Ishmael Jones, by counsel, respectfully submits this memorandum of law in support of his Motion to Dismiss Plaintiff’s Complaint, or in the alternative, Motion to Transfer Venue pursuant to 28 U.S.C. § 1404(a) to the United States District Court for the Northern District of California. As grounds therefor, Defendant states as follows:

**BACKGROUND**

Defendant Ishmael Jones is a former CIA deep-cover officer. *See* Exhibit 1 (Declaration of Ishmael Jones (hereafter “Decl. ¶\_\_\_\_”) at ¶ 10) attached hereto. As a CIA officer, Mr. Jones conducted highly classified covert operations and also was responsible for recruiting foreign agents and assets. *Id.* Mr. Jones’ assignments and responsibilities included but were not limited to operations concerning Iraq, Iran, and chemical and biological weapons. *Id.*

Mr. Jones resides in Northern California. Decl. ¶ 12. He has no connection to Virginia, such as owning property, maintaining an office or an agent, or directing any business specifically to Virginia. *Id.* at 6.

During his approximately 18-year CIA career, Mr. Jones was never permanently assigned to Virginia or even the Washington, D.C. metropolitan area. Decl. ¶ 1. He traveled to Virginia or the Washington, D.C. area only for training courses and brief meetings. *Id.*

When traveling to the Washington, D.C. area, Mr. Jones stopped first in another city, such as New York, and then switched into alias documents before continuing on to the Washington, D.C. area. Decl. ¶ 2. This is because experienced CIA officers consider an association with the Washington, D.C. area to be hazardous for maintaining a secret identity. Foreign intelligence services believe that a person's time spent in the Washington, D.C. area suggests he is a United States government employee. *Id.*

Mr. Jones was hired in Northern California during the late 1980s in a process that took about a year, and occurred in Northern California. Decl. ¶ 3. Mr. Jones was not permitted to retain copies of any contracts he signed, but he believes he signed the bulk of his CIA contracts, when initially hired, while residing in Northern California. *Id.*

Mr. Jones' "Point of Hire" and "Home Leave Point" during his CIA career were both in Northern California. Decl. ¶ 4. These are officially-recognized CIA employee designations. During periodic home leave throughout his career, the CIA instructed Mr. Jones to travel to Northern California and paid for his travel there. *Id.*

In addition, between his foreign assignments, and throughout his career, the CIA ordered Mr. Jones and his family to travel to Northern California to take medical and other fitness

evaluations. Decl. ¶ 5. CIA employees traveled to Northern California in order to conduct these evaluations. *Id.* The CIA did not require Mr. Jones to travel to Virginia or the Washington, D.C. area for these purposes. *Id.*

Mr. Jones served as a CIA officer in multiple, consecutive, and successful foreign assignments for over 15 years. Decl. ¶ 10. During these foreign intelligence operations, Mr. Jones dealt with hundreds of people in countries such as Russia, Ukraine, Iran, Iraq, Pakistan, and Libya. *Id.* Those who provided secrets to the United States, especially on terrorist organizations, nuclear weapons programs, and organized crime, are at risk once Mr. Jones' identity and association with the CIA becomes known. *Id.* Revelation of his identity and thus the connection of these people to Mr. Jones can result in their arrest and/or execution. *Id.* Many of the people Mr. Jones dealt with had no espionage role, such as hotel clerks, visa providers, and social and cover company business contacts, but they too will be suspected of espionage and could be arrested, harassed, and/or executed. *Id.*

Mr. Jones' secret identity allowed him to live in and travel to rogue states. Decl. ¶ 11. He has never needed the protection of the security infrastructure of embassies, guards, or weapons, and he has been safe simply because his true identity has never been disclosed. *Id.*

In June 2008, Mr. Jones published a book highly critical of CIA management entitled "The Human Factor: Inside the CIA's Dysfunctional Intelligence Culture." Decl. ¶ 7. No classified information is revealed in the book. *Id.* The book was neither written in Virginia nor published in Virginia. *Id.*

On July 9, 2010, plaintiff filed this lawsuit against Mr. Jones, alleging claims of breach of contract and breach of fiduciary duty for publishing a book without the CIA's permission and in

violation of a purported “Secrecy Agreement” between Mr. Jones and the CIA. The alleged “Secrecy Agreement” is attached to the Complaint as Exhibit A, although it is unsigned and in part illegible. The CIA also requested permission to sue defendant by the pen name, “Ishmael Jones,” under which he published his book, due to the risks to Mr. Jones and the CIA’s operations should his true identity be disclosed. Dkt. Entry No. 3.

Mr. Jones was served with the Summons and Complaint in this case in California on September 22, 2010. By an order dated November 29, 2010, the Court granted the parties' joint motion to extend the time to submit a response to the Complaint until December 22, 2010. Dkt. Entry No. 9.

### **ARGUMENT**

#### **I. The Complaint Should Be Dismissed under Rule 12(b)(2) as Mr. Jones Is Not Subject to Personal Jurisdiction in This Court.**

Federal Rule of Civil Procedure 12(b)(2) requires dismissal of an action when the court lacks personal jurisdiction over the defendant. “When the exercise of personal jurisdiction is challenged pursuant to Rule 12(b)(2), Fed.R.Civ.P., the question ‘is one for the judge, with the burden on the plaintiff ultimately to prove the existence of a ground for jurisdiction by the preponderance of the evidence.’” *Rannoch, Inc. v. Rannoch Corp.*, 52 F. Supp. 2d 681, 683-84 (E.D. Va. 1999) (quoting *Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir. 1989)).

To establish jurisdiction over Mr. Jones, who does not reside in Virginia, this Court must first consider whether jurisdiction is authorized by Virginia law. The analysis of personal jurisdiction is normally a two-step inquiry, requiring the application of both statutory and constitutional components. *Young v. New Haven Advocate*, 315 F.3d 256, 261 (4th Cir. 2002). Since the Virginia Long-Arm Statute (Va. Code § 8.01-328.1) extends personal jurisdiction as

far as the Due Process Clause permits, this inquiry is “often merged into the question of whether asserting jurisdiction violates the Due Process Clause.” *RZS Holdings, AVV v. Commerzbank, AG*, 279 F. Supp. 2d 716, 720 and n.2 (E.D. Va. 2003); *Young*, 315 F.3d at 261.

The key factor of statutory jurisdiction is purposeful activity in the Commonwealth. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). Therefore it is necessary to examine carefully the nature of a defendant’s contacts with Virginia in order to determine whether he may fairly be subjected to suit. *Superfos Investments Ltd. v. FirstMiss Fertilizer, Inc.*, 744 F. Supp. 393, 398 (E.D. Va. 1991). To do so, the Court must first examine whether there were any activities in Virginia giving rise to the action, and any additional contacts that are unrelated to the action, as these different types of contacts are judged by different standards. *Superfos*, 744 F. Supp. at 398.

Where personal jurisdiction is exercised over a defendant in a lawsuit arising out of or related to the defendant’s contacts with the forum, the forum is said to be exercising “specific jurisdiction.” *Id.* at 398 n.3. “General jurisdiction” is the exercise of personal jurisdiction where the defendant’s contacts with the forum do not give rise to or relate to the suit. *Superfos*, 744 F. Supp. at 398 n.3 (citing *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)). General jurisdiction requires “continuous and systematic” contacts with the forum, compared to the less stringent standard that applies to specific jurisdiction. *Chung v. NANA Dev. Corp.*, 783 F.2d 1124, 1130 (4th Cir. 1986); *see Helicopteros*, 466 U.S. at 415, 416.

**A. Specific Personal Jurisdiction Does Not Exist Over Mr. Jones.**

The Fourth Circuit has established a three-part test to determine whether exercise of specific personal jurisdiction is appropriate. This test requires the Court to examine: “(1) the extent to which the defendant purposefully availed [himself] of the privilege of conducting

activities in the State; (2) whether the plaintiff's claims arise out of those activities directed at this State; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable.” *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 712 (4th Cir. 2002) (citations omitted).

**1. Mr. Jones Did Not Purposefully Avail Himself of the Privilege of Conducting Activities in Virginia.**

As to the first prong of this test the Fourth Circuit has provided a number of factors to consider in determining what constitutes “purposeful availment”:

- (a) Whether the defendant maintains offices or agents in the forum state;
- (b) Whether the defendant owns property in the forum state;
- (c) Whether the defendant reached into the forum state to solicit or initiate business;
- (d) Whether the defendant deliberately engaged in significant or long-term business activities in the forum state;
- (e) Whether the parties contractually agreed that the law of the forum state would govern disputes;
- (f) Whether the defendant made in-person contact with the resident of the forum in the forum state regarding the business relationship;
- (g) The nature, quality and extent of the parties’ communications about the business being transacted; and
- (h) Whether the performance of contractual duties was to occur within the forum.

*Consulting Eng’rs*, 561 F.3d at 278.

Here, Mr. Jones has never had an office, agent, or property in Virginia. Decl. ¶ 6. He has never reached into Virginia to solicit or initiate business. *Id.* Instead, plaintiff hired Mr. Jones in



Northern California and thereafter purposefully directed Mr. Jones' activities *away* from Virginia. Decl. ¶¶ 3-5. So much so that, in between his foreign assignments, and throughout his career, the CIA ordered Mr. Jones and his family to travel to Northern California (not Virginia) to take medical and other fitness evaluations. *Id.* at 5. CIA employees traveled to Northern California in order to conduct these evaluations. *Id.*

While Mr. Jones had an 18-year CIA career, he did not engage in a “significant or long-term” business activities in Virginia. In fact, Mr. Jones was never permanently assigned to Virginia. Decl. ¶ 1. He traveled to Virginia only for training courses and brief meetings. *Id.* Mr. Jones' “Point of Hire” and “Home Leave Point” during his CIA career were both in Northern California. *Id.* at 4.

Notably, the parties did not contractually agree that the law of Virginia would govern any dispute. Compl. Exh. A. To the extent that the document is legible, the purported Secrecy Agreement also does not appear to include a forum selection clause. *Id.*

In regard to the remaining factors, Mr. Jones always acted as an employee of the CIA, and the CIA always tried to minimize Mr. Jones' contact with Virginia. Decl. ¶¶ 3-5, 9. In regard to the publication of the book, plaintiff has not alleged that the book was written in Virginia or that it was published in Virginia, and Mr. Jones has attested that it was not. *Id.* at 7. In short, the nature, quality, and extent of the parties' communications were not related to any business in Virginia. Hence, in no meaningful way did Mr. Jones purposefully avail himself of the privilege of conducting business in Virginia. Accordingly, for each of these reasons, plaintiff cannot satisfy the first prong of the three-part test required to exercise personal jurisdiction over Mr. Jones.

**2. Plaintiff's Claims Do Not Arise Out of Activities Directed at Virginia.**

Under the second prong of the three-part test, the Court must consider whether plaintiff's claims arise out of activities directed at Virginia. *ALS Scan.*, 293 F.3d at 712. Here, they do not. As discussed above, Mr. Jones' activities as a CIA employee were directed *away* from Virginia. The activities at issue here, the writing and publication of a book, are not alleged to have arisen out of any activities directed at Virginia. Accordingly, plaintiff cannot satisfy the second prong of the three-part test because its claims do not arise out of activities directed at Virginia.

**3. The Exercise of Jurisdiction Would Not Be Constitutionally Reasonable.**

Neither Mr. Jones' activities as a CIA employee or the subsequent publication of a book were substantially related to Virginia. In fact, plaintiff directed Mr. Jones to disassociate himself from Virginia. Decl. ¶¶ 3-5. Accordingly, plaintiff cannot satisfy the third prong, or any prong, of the three-part test, and Virginia cannot exercise specific personal jurisdiction over Mr. Jones. *ALS Scan.*, 293 F.3d at 712; *Superfos*, 774 F. Supp. at 398-99.

**B. Virginia Lacks General Personal Jurisdiction Because Mr. Jones Does Not Have Continuous and Systematic Contacts with Virginia.**

“Even when a cause of action does not arise out of or relate to the [non-resident defendant's] activities in the Forum State, due process is not offended by the States subjecting the [non-resident defendant] to its in personam jurisdiction when there are sufficient contacts between the States and the [non-resident defendant].” *Helicopteros*, 466 U.S. at 414. These contacts must be “continuous and systematic” in order to support general personal jurisdiction over Mr. Jones. *Superfos*, 774 F. Supp. at 399.

It is clear that Mr. Jones has had few contacts with Virginia, consisting of training courses and brief meetings as CIA employee. Decl. ¶ 1. The book at issue was written and published outside of Virginia by Mr. Jones is not even tangentially related to Virginia or Mr. Jones' visits to Virginia. *Id.* at 6-7. Moreover, Mr. Jones' visits to Virginia should be viewed by the Court as a single contact, rather than a series of transactions, since his visits were made in the performance of his employment with the CIA. *See Superfos*, 774 F. Supp. at 398-99 (holding that a contract with performance over a 2.5 year period constitutes a single contact, rather than a series of transactions).

Based on the facts presented in this case, Mr. Jones' contacts with Virginia do not rise to the level of "continuous and systematic" as required by due process. Accordingly, the Court may not exercise in personam jurisdiction over Mr. Jones.

## **II. The Complaint Should Be Dismissed for Improper Venue Under Rule 12(b)(3).**

Plaintiff alleges that venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2). Compl. 2. That allegation is insufficient on its face, and this case should also be dismissed based on improper venue under Rule 12(b)(3).

In the Fourth Circuit, courts consider the "entire sequence of events underlying the claim" to determine where venue is appropriate. *See Mitrano v. Hawes*, 377 F.3d 402, 405 (4th Cir. 2004) (citation and quotation omitted). A court does not take all facts pled in the complaint as true, and is free to consider facts outside the pleadings. *Sucampo Pharmaceuticals, Inc v. Astellas Pharma, Inc.*, 471 F.3d 544, 549-50 (4th Cir. 2006). Once venue is challenged, the plaintiff bears the burden of showing that venue is proper. *Rice Contracting Corp. v. Callas*

*Contractors, Inc.*, No. 1:08cv1163, 2009 U.S. Dist. LEXIS 3, 2009 WL 21597, at \*1 (E.D. Va. Jan. 2, 2009). Plaintiff cannot meet its burden here.

In this case, the relevant sequence of events begins and ends outside of this district. Mr. Jones was hired in Northern California during the late 1980s in a process that took about a year, and occurred in Northern California. Decl. ¶ 3. Mr. Jones traveled to Virginia (or even the Washington, D.C. area) only for training courses and brief meetings. *Id.* at 1. Mr. Jones' "Point of Hire" and "Home Leave Point" -- as officially designated by the CIA -- were both in Northern California. *Id.* at 4. During periodic home leave throughout his career, the CIA instructed Mr. Jones to travel to Northern California and paid for his travel there. *Id.* In between his foreign assignments, and throughout his career, the CIA ordered Jones and his family to travel to Northern California to take medical and other fitness evaluations. *Id.* at 5. CIA employees traveled to Northern California in order to conduct these evaluations. *Id.* The CIA did not require Mr. Jones to travel to Virginia or even the Washington, D.C. area for these purposes. *Id.*

Finally, and importantly, the Complaint does not allege that the book was either written or published in Virginia. In regard to the alleged Secrecy Agreement, while Mr. Jones was not permitted to retain copies of any contracts he signed, he believes he signed the bulk of his CIA contracts, when initially hired, while residing in Northern California. Decl. ¶ 3.

In short, Mr. Jones was hired in California, lived in California while not stationed abroad, never visited Virginia but for training and brief meetings, and finally wrote a book outside of Virginia, and published the book outside of Virginia. No "substantial part" of those acts is alleged to have occurred in this district, and venue is therefore inappropriate here.

**III. The Complaint Fails to State a Claim on Which Relief Can Be Granted.**

Even if the Complaint were not barred by lack of personal jurisdiction and improper venue, it would nevertheless warrant dismissal under Rule 12(b)(6).

**A. The Breach of Fiduciary Duty Claim Should Be Dismissed As the Statute of Limitations Has Expired.**

The Complaint alleges a common law “breach of contract and fiduciary duty” claim against Mr. Jones. To the extent to that a Plaintiff’s fiduciary duty claim is distinct from its breach of contract claim, the fiduciary duty claim must be dismissed.

Under Virginia law a breach of fiduciary duty claim is subject to the two-year limitations period of section 8.01-248. *See Tabler v. Litton Loan Servicing, LP*, No. 3:09-cv-146, 2009 U.S. Dist. LEXIS 70768, \*9 (E.D. Va. Aug. 12, 2009). Significantly, a cause of action in Virginia for breach of fiduciary duty accrues not on the date of discovery, but the date the breach or injury occurred. *Id.* (citing *Professionals I. Inc. v. Pathak*, 47 Va. Cir. 476, 480-81 (Va. Cir. Ct. 1998)). The Complaint notably omits any allegation as to when the book was published, although it does reference Mr. Jones’ attempt to go through the pre-publication review process in the period between April 2007 and March 2008. Compl. ¶¶ 19-25. Mr. Jones, however, has attested to the fact that the book was published in June 2008. Decl. ¶ 7. By delaying until July 9, 2010 -- more than two years after publication -- to file this action, plaintiff has waited too long. Plaintiff’s claim, to the extent it involves any alleged breach of fiduciary duty, is time-barred.

**B. The Complaint Fails to Satisfactorily Plead a Claim for Unjust Enrichment.**

The Complaint only vaguely asserts the type of damages sought, but it appears that plaintiff is making a claim of unjust enrichment. Compl. ¶ 36 (“defendant Jones has been unjustly enriched in the amount of profits, advances, royalties, and other advantages resulting

from the unauthorized publication of his book.”). A claim of unjust enrichment is quasi-contract theory, but the Complaint itself alleges the existence of an express contract governing the parties' relationship. Compl. 8; *Tabler v. Litton Loan Servicing, LP*, 2009 U.S. Dist. LEXIS 70768, \*10. Hence, plaintiff cannot recover under a quasi-contract theory when an express or implied contract already governs the parties' relationship. *Id.* (citing *Acorn Structures, Inc. v. Swantz*, 846 F.2d 923, 926 (4th Cir. 1988) (stating “an action for unjust enrichment is quasi-contractual in nature and may not be brought in the face of an express contract”).

**C. The Complaint Fails to State a Claim on Which Relief May Be Granted for Compensatory Damages.**

To the extent that plaintiff may attempt to characterize its claims for damages as compensatory in nature, this claim must also be rejected. Compensatory damages are, in fact, the only type of damages specifically contemplated in the alleged Secrecy Agreement between the parties. Compl. Exh A ¶10. In Virginia, compensatory damages are damages “allowed as a recompense for loss or injury actually received and include loss occurring to property, necessary expenses, insult, pain, mental suffering, injury to the reputation, and the like.” *Bennett v. R&L Carriers Shared Servs., LLC*, No. 3:08cv498, 2010 U.S. Dist. LEXIS 104884 (E.D. Va. Sept. 30, 2010) (citing *Pigg*, 152 S.E.2d at 276).

Here, plaintiff has not identified any specific loss or injury actually incurred by plaintiff such that plaintiff's claim can be viewed as seeking compensatory damages. Because plaintiff has not identified any other plausible theory under which it is entitled to damages, plaintiff's claim for damages should be dismissed.

**IV. In the Alternative, This Case Should Be Transferred to the Northern District of California.**

In the event that this case is not dismissed for the foregoing reasons, Mr. Jones requests that this Court transfer venue of this action to the U.S. District Court for the Northern District of California.

“For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). The Court should exercise its power to transfer a case in order “to prevent the waste of time, energy, and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense.” *Original Creatine Patent Co., Ltd. v. MET-RX USA, Inc.*, 387 F. Supp. 2d 564, 566 (E.D. Va. 2005) (internal quotations omitted).

Transfer in this case is proper for the following reasons:

*First*, requiring Mr. Jones to defend this case in Virginia would be extremely inconvenient, burdensome, expensive and prejudicial to Mr. Jones based on the fact that he resides 3,000 miles away in California. Conversely, an order transferring venue of this matter to the Northern District of California would not inconvenience or prejudice plaintiff in any way because of its essentially limitless resources and its ability to litigate this case in any forum.

*Second*, an order compelling Mr. Jones to defend this action in Virginia would place Mr. Jones at increased risk of revelation of his true identity, and therefore would place Mr. Jones, his family and many others at risk.

As set forth above, Mr. Jones has had minimal contact with Virginia. This is because experienced CIA officers consider an association with the Washington, D.C. area to be hazardous for maintaining a secret identity. Decl. ¶ 2. Foreign intelligence services believe that

a person's time spent in the Washington, D.C. area suggests he is a United States government employee. *Id.* Moreover, the Washington, D.C. area is a center of espionage. *Id.* at 9. Most foreign intelligence services have agents in the Washington D.C., area, as do many terrorist organizations. *Id.* It would be logistically more difficult for them to conduct surveillance in California than in the Washington, D.C. area. *Id.* Simply by requiring Mr. Jones to defend this matter in this district adds to the risk his identity will be revealed.

Compelling Mr. Jones to defend this matter in Virginia will place others at risk as well. During his years of foreign intelligence operations, Mr. Jones dealt with hundreds of people in countries such as Russia, Ukraine, Iran, Iraq, Pakistan, and Libya. Decl. ¶ 10. Those who provided secrets to the United States, especially regarding terrorist organizations, nuclear weapons programs, and organized crime, are at extreme risk if Mr. Jones's identity and association with the CIA becomes known. *Id.* Revealing his identity and thus the connection of these people to Mr. Jones can result in their arrest and/or execution. *Id.* Many of the people Mr. Jones dealt with had no espionage role, such as hotel clerks, visa providers, and social and cover company business contacts, but they too will be suspected of espionage and can be arrested, harassed, and/or executed. *Id.*

*Third*, in the event that Mr. Jones' identity is revealed during the course of this action, a transfer of venue would allow Mr. Jones to more easily defend against the consequences of such exposure. Mr. Jones believes that a possible result of this lawsuit (and perhaps the goal of it) will be the revelation of his identity. Decl. ¶ 11. If he is in the Washington, D.C. area when his identity is revealed, he will be vulnerable in his hotel room and rental car, and he will be unable to defend his family back at home. *Id.* at 12. But when he is in California, in his own vehicles



and at his own property, and with good knowledge of the local operating environment, he will be able to defend himself and his family. *Id.* As a private citizen and local California resident, for example, Mr. Jones will be able to carry firearms in California, which would be more difficult to do during travel and hotel stays in the Washington, D.C. area. *Id.*

In addition, although Mr. Jones's wife has always been a private citizen, except for a few CIA training courses, she was involved in many of Jones's operational activities overseas as is common for the spouses of deep-cover officers. Decl. ¶ 11. She is a counter-surveillance expert and a linguist. Having her nearby is an important additional protection. Together, in California, Mr. Jones and his wife are an effective team, but separated -- with Mr. Jones in Washington, DC and his wife in California -- they would both be more vulnerable. *Id.*

Finally, the identity and location of any witnesses relevant to this breach of contract action are at best uncertain. In the event that plaintiff identifies any CIA employees as witnesses, it can hardly be inconvenient for such employees to travel to California for the purpose of the lawsuit. As set forth above, CIA employees routinely traveled to California to see Mr. Jones, in between Mr. Jones' foreign assignments, in order to help safeguard his identity by minimizing his contact with the Washington, D.C. area. Decl. ¶ 5. Asking that any CIA employees who might be witnesses in this matter make the same trip to California is entirely reasonable and cannot reasonably be deemed inconvenient. In addition, the identities and locations of the CIA publications review employees involved in this matter are unknown. *Id.* at 8.

Accordingly, it is neither convenient nor in the interests of justice that this case be heard in Virginia.

### Conclusion

For all the foregoing reasons, the Court should enter an order: (1) dismissing the Complaint in its entirety under Rules 12(b)(2) and 12(b)(3); under 12(b)(6), dismissing any claim for breach of fiduciary duty and any claim for damages. In the alternative, this action should be transferred to the Northern District of California under 28 U.S.C. § 1404(a).

Date: December 14, 2010

Respectfully submitted,

/s/ James F. Peterson

VSB No. 36211

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Counsel for Defendant Ishmael Jones

**CERTIFICATE OF SERVICE**

I hereby certify that on December 14, 2010, a true copy of the foregoing  
MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT AND/OR MOTION TO TRANSFER VENUE was filed  
electronically with the Clerk of Court using the CM/ECF system, which will send a notification  
of such filing to the following:

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*Counsel for Defendant Ishmael Jones*

# **EXHIBIT 1**

**DECLARATION OF ISHMAEL JONES**

I, Ishmael Jones, declare and state as follows:

1. I served approximately 18 years in the CIA. I was never permanently assigned to Virginia or the Washington, DC area. I only traveled to the area for temporary training courses and brief meetings.
2. When I traveled to the Washington, DC area, I stopped first in another city, such as New York, and then switched into alias documents for travel to Washington, DC. Experienced CIA officers consider an association with the Washington, DC area to be bad for maintaining a secret identity. Foreign intelligence services believe that a person's time spent in the Washington, DC area suggests he is a U.S. government employec.
3. I was hired in Northern California during the late 1980s in a process that took approximately one year, and occurred in Northern California. I was not permitted to retain copies of any contracts I signed, but I believe that I signed the bulk of the CIA contracts, when initially hired, while residing in Northern California.
4. My "Home Leave Point" and "Point of Hire" during my CIA career were both in Northern California. During periodic home leave throughout my career, the CIA instructed me to travel to Northern California and paid for my travel there.
5. In between my foreign assignments, and throughout my career, the CIA ordered me and my family to travel to Northern California to take medical and other fitness evaluations. CIA employees traveled to Northern California in order to conduct these evaluations. The CIA did not require for me to travel to the Washington, DC area for these purposes.

6. I have no connections to Virginia. I do not own any property in Virginia. I do not maintain an office in Virginia or have an agent in Virginia. I have no business activities that are directed at Virginia.
7. I am the author of a book highly critical of CIA management entitled "The Human Factor: Inside the CIA's Dysfunctional Intelligence Culture." The book, published in June 2008, was not written in Virginia or published in Virginia. No classified information is revealed in the book.
8. The identity of the CIA publications review employees is openly known. However, the CIA employees with whom I communicated during the publication review process of the book chose to use aliases and a false address. They were not covert employees and therefore had no need to hide their identities.
9. The Washington, DC area is a center of espionage. Most foreign intelligence services have agents there, as do many terrorist organizations. It would be logistically more difficult for them to conduct surveillance in California than in the Washington, DC area.
10. I served this country as a deep cover CIA officer with more than 15 years of multiple, consecutive, successful foreign assignments. As a CIA officer, I conducted highly classified covert operation and was also responsible for recruiting foreign agents and assets. My assignments and responsibilities included but were not limited to operations concerning Iran, Iraq, and chemical and biological weapons programs. I have dealt with hundreds of people in countries such as Russia, Ukraine, Iran, Iraq, Pakistan, and Libya. Those who provided secrets to the United States, especially on terrorist organizations, nuclear weapons programs, and organized crime, are at risk once my identity and association with the CIA becomes known. Revealing my identity and thus the connection

of these people can result in their arrest and/or execution. Many of the people I have dealt with had no espionage role, such as hotel clerks, visa providers, and social and cover company business contacts, but they too will be suspected of espionage and can be arrested, harassed, and/or executed.

11. The secrecy of my identity has allowed me to live in and travel to rogue states. I have never needed the protection of the security infrastructure of embassies, guards, or weapons. I believe that there is a substantial probability that this lawsuit will result in the exposure of my identity, which will result in a need for physical security which can be provided for much more effectively at my home in California. While my wife has always been a private citizen, except for a few CIA training courses, she was involved in many operational activities overseas, as is common for the spouses of deep cover officers. She is a counter-surveillance expert and a linguist. Having her nearby is an important additional protection. Together, in California, we are an effective team, but separated – with me in Virginia and my wife in California – we would both be more vulnerable.
12. In the event this lawsuit results in my exposure in the Washington, DC area I will be vulnerable in my hotel room and rental car, and will be unable to defend my family back home. In the event the lawsuit results in the exposure of my identity in California, I will be in my own vehicles and at my own property, and with good knowledge of the local operating environment, and therefore will be able to defend myself and my family. As a private citizen and local California resident, for example, I will be able to carry firearms in California, which would be more difficult to do during travel and hotel stays in the Washington, DC area.

If called as a witness I could testify personally and competently to the foregoing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 9, 2010.



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ISHMAEL JONES