

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
NO. 2:06-CV-49 (F)

BLACKWATER SECURITY)
CONSULTING, LLC, a Delaware Limited)
Liability Company; BLACKWATER)
LODGE AND TRAINING CENTER, INC.,)
a Delaware Corporation,)

Plaintiffs/Petitioners,)

v.)

RICHARD P. NORDAN, as Ancillary)
Administrator for the separate Estates of)
STEPHEN S. HELVENSTON, MIKE R.)
TEAGUE, JERKO GERALD ZOVKO and)
WESLEY J.K. BATALONA,)

Defendant/Respondent.)

DEFENDANT'S MOTION TO DISMISS,
OR IN THE ALTERNATIVE,
MOTION TO STAY

COMES NOW Defendant in the above-entitled action, pursuant to 28 U.S.C. § 12(b)(3)
and (6), as well as the Colorado River abstention doctrine, and hereby moves the Court for an
Order dismissing Plaintiff's entire action, including the Petition for Order Directing Arbitration,
or in the alternative, staying the entire proceeding until the resolution of the pending, duplicative
North Carolina state court action. This motion is based upon the following grounds:

- 1. Pursuant to the abstention doctrine articulated by the U.S. Supreme Court in
Colorado River Water Conservation District v. United States, 420 U.S. 800 (1976), the instant
matter should be dismissed in favor of Plaintiff's compulsory counterclaim in the pending state
court action entitled Richard P. Nordan, etc. v. Blackwater Security Consulting, LLC, et al.
(Case No. 05CV000173).

2. The Plaintiff's petition for order directing arbitration fails to state a claim upon which relief may be granted, since the claim may not be brought by way of an independent action, but instead is a compulsory counterclaim to the pending state court action entitled *Richard P. Nordan, etc. v. Blackwater Security Consulting, LLC, et al.* (Case No. 05CV000173), and thus should be dismissed pursuant to *Federal Rules of Civil Procedure* Rule 12(b)(6).

3. This Court is the improper venue for the instant petition to compel arbitration, since the arbitration claim brought by Plaintiff is a compulsory counterclaim to the pending state court action entitled *Richard P. Nordan, etc. v. Blackwater Security Consulting, LLC, et al.* (Case No. 05CV000173), and thus should be dismissed pursuant to *Federal Rules of Civil Procedure* Rule 12(b)(3).

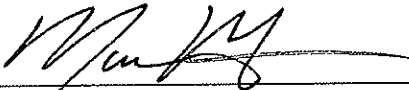
In support of this motion to dismiss, or in the alternative, motion to stay, the Defendant concurrently submits herewith the Defendant's Memorandum of Law in Support of Motion to Dismiss, or in the alternative, Motion to Stay and a Request for Judicial Notice.

WHEREFORE, Defendant, by his undersigned attorneys, moves this Court for an Order dismissing the instant action in its entirety, or in the alternative, staying the matter until the resolution of the pending state court case.

This 10th day of January 2007.

CALLAHAN & BLAINE, APLC

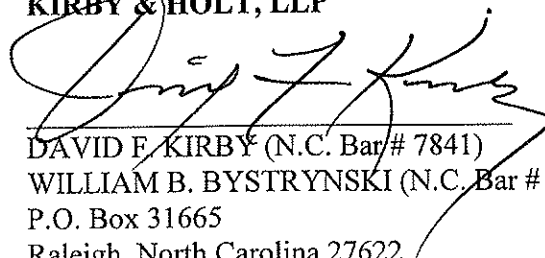
By:


DANIEL J. CALLAHAN (Cal. Bar No. 91490)
BRIAN J. McCORMACK (Cal. Bar No. 167547)
MARC P. MILES (Cal. Bar No. 197741)
3 Hutton Centre Drive, Suite 900
Santa Ana, California 92707
(714) 241-4444
Fax: (714) 241-4445

Attorneys for Plaintiff
RICHARD P. NORDAN, as the Ancillary Administrator of
the separate Estates of STEPHEN S. HELVENSTON,
MIKE R. TEAGUE, JERKO GERALD ZOVKO and
WESLEY J.K. BATALONA

KIRBY & HOLT, LLP

By:



DAVID F. KIRBY (N.C. Bar # 7841)
WILLIAM B. BYSTRYNSKI (N.C. Bar # 20883)
P.O. Box 31665
Raleigh, North Carolina 27622
(919) 881-2111
Fax: (919) 781-8630
LR 83.1 Counsel
Attorneys for Plaintiff
RICHARD P. NORDAN, as the Ancillary Administrator of
the separate Estates of STEPHEN S. HELVENSTON,
MIKE R. TEAGUE, JERKO GERALD ZOVKO and
WESLEY J.K. BATALONA

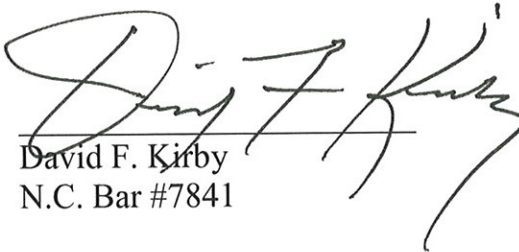
CERTIFICATE OF SERVICE

I hereby certify I electronically served **Defendant's Motion to Dismiss, or in the Alternative, Motion to Stay** by sending notification via email addressed to the following:

Kirk G. Warner
kwarner@smithlaw.com
Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP
P. O. Box 2611
Raleigh, NC 27602

This the 10 day of January, 2007.

KIRBY & HOLT, L.L.P.



David F. Kirby
N.C. Bar #7841