

UNITES STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

VIRGINIA E. GAFFNEY, et al.

Plaintiffs,

v.

TRICARE Management Activity, et al.

Defendants.

No.: 1:11-cv-01800-RLW

**NOTICE OF FILING OF  
MOTION FOR TRANSFER AND  
CONSOLIDATION PURSUANT TO 28  
U.S.C. § 1407**

Interested Party Science Applications Internal Corporation (“SAIC”) gives notice that on March 8, 2012, it filed with the United States Judicial Panel on Multidistrict Litigation a Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings. A copy of SAIC’s motion, the supporting memorandum, and the schedule of cases is attached.

Dated: March 8, 2012

/s/ Gunjan R. Talati

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 8, 2012, I caused a copy of the foregoing document with exhibits to be filed electronically with the Clerk of the Court through ECF, and that ECF will send an e-notice of the electronic filing to all counsel of record.

/s/ Gunjan R. Talati

**BEFORE THE UNITED STATES JUDICIAL PANEL  
ON MULTIDISTRICT LITIGATION**

**IN RE BACKUP TAPE THEFT INCIDENT  
IN SAN ANTONIO, TEXAS ON  
SEPTEMBER 12, 2011**

**MDL Docket No. \_\_\_\_\_**

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**MOTION OF DEFENDANT SCIENCE APPLICATIONS INTERNATIONAL  
CORPORATION FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407  
FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS**

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*Attorneys for Defendant Science Applications  
International Corporation*

Defendant Science Applications International Corporation (“SAIC”) respectfully moves the Judicial Panel on Multidistrict Litigation, pursuant to 28 U.S.C. § 1407, for an order transferring the actions listed on the Schedule of Actions (the “Related Actions”) attached to the accompanying memorandum for coordinated or consolidated pretrial proceedings.

The cases at issue all relate to identical or similar class action claims flowing from a single incident -- the theft from an SAIC employee of computer backup tapes containing certain personal information relating to some 4.9 million individuals who were insured through the Department of Defense’s TRICARE program. As indicated in the Schedule of Actions, there are currently eight such putative class actions pending in four different districts, the most recent of which was filed on or about March 1, 2012. As set forth below and in the accompanying memorandum, the Related Actions satisfy the requirements for transfer and coordination or consolidation because they concern common questions of fact, and coordination or consolidation will best serve the convenience of the parties and witnesses and will promote the just and efficient conduct of such actions.

As explained more fully in the accompanying memorandum, transfer of these actions for centralized pretrial proceedings is appropriate:

1. There are currently eight putative class actions pending in four different districts: five actions in the District Court for the District of Columbia, one action in the Western District of Texas, one action in the Southern District of California, and one action in the Northern District of California (filed on or about March 1, 2012).

2. The eight Related Actions have all been brought as putative class actions on behalf of putative classes consisting of individuals whose personal information was included in the stolen data. All of the Related Actions but one name SAIC as a defendant, and all but three

name TRICARE Management Activity, the Department of Defense, and Secretary of Defense Leon Panetta as a defendant.

3. Plaintiffs in the five cases pending in the District Court for the District of Columbia have filed a motion in that court to consolidate those five cases.

4. All of the Related Actions are based on the same underlying factual allegations, namely that backup tapes containing certain personal information of TRICARE members were stolen from the vehicle of an SAIC employee, resulting in the alleged exposure of personal data and allegedly causing plaintiffs and the putative class members purportedly to suffer various asserted impacts as a result. The Related Actions thus involve “common questions of fact” as required by 28 U.S.C. § 1407.

5. As a consequence of these overlapping common questions, centralization will eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve judicial resources.

6. Plaintiffs have pled a variety of common legal theories, including similar or identical claims of negligence and public disclosure of private facts, claims under the California Civil Code and California’s Confidentiality of Medical Information Act, and claims under the Fair Credit Reporting Act, the Privacy Act, and the Administrative Procedure Act.

7. To date, there has been no discovery exchanged in any of the Related Actions and no initial disclosures have been made. There has been no material activity in any of the cases. Although motions to dismiss have been filed in certain actions, no hearings have been held and no decisions have been rendered. As a result, no prejudice or inconvenience will result from the transfer, consolidation, or coordination.

8. SAIC believes that any of the districts where cases are currently pending would be an appropriate forum for transfer. The District Court for the District of Columbia would be an appropriate forum given that five of the Related Actions are currently pending in that district before a judge with no other MDL actions on his docket, and all Defendants in all Related Actions have their headquarters in Northern Virginia, within the Washington, D.C. metropolitan area. The Western District of Texas would be an appropriate forum because the theft of the backup tapes occurred in San Antonio, within that District, and a substantial portion of documents and witnesses related to the theft are likely located within that District.

WHEREFORE, SAIC respectfully requests that the Panel issue an Order transferring the actions listed in the accompanying Schedule of Actions, as well as any subsequently filed related actions, for coordinated or consolidated pretrial proceedings.

Dated: March 8, 2012

Respectfully submitted,

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**BEFORE THE UNITED STATES JUDICIAL PANEL  
ON MULTIDISTRICT LITIGATION**

**IN RE BACKUP TAPE THEFT INCIDENT  
IN SAN ANTONIO, TEXAS ON  
SEPTEMBER 12, 2011**

**MDL Docket No. \_\_\_\_\_**

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**MEMORANDUM OF LAW IN SUPPORT OF SCIENCE APPLICATIONS  
INTERNATIONAL CORPORATION'S MOTION FOR TRANSFER OF ACTIONS  
PURSUANT TO 28 U.S.C. § 1407**

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Pursuant to 28 U.S.C. § 1407, Science Applications International Corporation (“SAIC”) respectfully moves to transfer the eight actions listed on the accompanying Schedule of Actions (the “Related Actions”) to a single district for coordinated or consolidated pretrial proceedings.

### **BACKGROUND**

This litigation consists of eight putative class actions alleging identical or similar claims all arising out of one common incident: the theft from an SAIC employee of backup computer tapes containing personally identifiable information of some 4.9 million individuals. In September 2011, SAIC discovered that certain backup computer tapes had been stolen from an SAIC employee’s vehicle. The backup tapes contained certain personal information of participants in TRICARE, the health care program of the United States Department of Defense Military Health System, which provides health benefits for military personnel, retirees, and their families. SAIC was contracted by the Department of Defense to perform certain services related to the TRICARE program and its members’ data. After the public announcement of the theft of the backup tapes, a wave of putative class actions ensued, with eight lawsuits currently pending in four different federal districts: five actions in the District Court for the District of Columbia, one action in the Western District of Texas, one action originally filed in California state court but removed to and now pending in the Southern District of California, and one action in the Northern District of California.<sup>1</sup> The Northern District of California case is the most recent lawsuit, filed on or about March 1, 2012.

Plaintiffs in the Related Actions generally allege that as a result of the theft, plaintiffs’ and the putative class members’ personal information has been exposed, causing plaintiffs and the putative class members to suffer various harms. All but one of the eight pending cases name

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<sup>1</sup> A ninth action was originally filed in the Northern District of Florida, but that case has been voluntarily dismissed.

SAIC as a defendant and the five cases pending in the District Court for the District of Columbia name as defendants the United States Department of Defense, Secretary of Defense Leon E. Panetta, and TRICARE Management Activity (“TRICARE”). Plaintiffs have pled a variety of legal theories including negligence, negligence per se, breach of contract, and invasion of privacy, as well as statutory claims for violations of the Fair Credit Reporting Act, the Privacy Act, the Administrative Procedure Act, state consumer protection statutes, and state data breach notification statutes. Many of the claims asserted in the different complaints are identical or similar. But all of the claims arise out of the same theft of data from the SAIC employee. Pursuant to this Panel’s Rule 6.1(b)(iv), copies of the complaints and docket sheets filed in each of the Related Actions are submitted herewith.

This Panel has on many occasions recognized the appropriateness of MDL treatment for class action litigation flowing from allegations of data breach or data theft. *See In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, 588 F. Supp. 2d 1368 (J.P.M.L. 2008); *In re Lending Tree, LLC, Customer Data Sec. Breach Litig.*, 581 F. Supp. 2d 1367 (J.P.M.L. 2008); *In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 559 F. Supp. 2d 1405 (J.P.M.L. 2008); *In re TJX Cos., Inc., Customer Data Sec. Breach Litig.*, 493 F. Supp. 2d 1382 (J.P.M.L. 2007); *In re Dep’t of Veterans Affairs Data Theft Litig.*, 461 F. Supp. 2d 1367 (J.P.M.L. 2006). For the reasons set forth below, MDL treatment is also appropriate for the instant cases.

### **ARGUMENT**

Coordination or consolidation of the eight pending cases will alleviate the inefficiencies posed by litigating substantially similar cases in four different jurisdictions. Actions may be transferred to any district for coordinated or consolidated pretrial proceedings where civil actions

pending in different districts involve “one or more common questions of fact” and where doing so will serve the “convenience of parties and witnesses and will promote the just and efficient conduct of such actions.” 28 U.S.C. § 1407. The Related Actions clearly satisfy these requirements. The pending cases involve common factual allegations, assert similar causes of action, and are brought on behalf of overlapping putative classes allegedly harmed by the data theft. Moreover, consolidation is particularly appropriate because each of the pending cases is in the early stages of litigation.

**I. TRANSFER IS APPROPRIATE BECAUSE THE RELATED ACTIONS INVOLVE COMMON QUESTIONS OF FACT**

The Panel has recognized that data breach class actions are well-suited for transfer and consolidation because they involve common questions of fact. *See In re Countrywide*, 588 F. Supp. 2d at 1369 (finding that all actions share factual questions related to defendant’s alleged failure to limit access or adequately safeguard customer information); *In re Lending Tree*, 581 F. Supp. 2d at 1367-68 (same); *In re Hannaford Bros.*, 559 F. Supp. 2d at 1406 (finding common questions of fact related to intrusion into defendant’s computer network); *In re TJX*, 493 F. Supp. 2d at 1383 (same); *In re Dep’t of Veterans Affairs*, 461 F. Supp. 2d at 1368 (transfer warranted where actions shared allegations related to theft of computer equipment from defendant’s employee).

Similar considerations are present here. Indeed, several plaintiffs have recognized as much by filing a motion to consolidate five of the pending cases in the District Court for the District of Columbia.<sup>2</sup> In doing do, the plaintiffs contend that the cases “all share numerous

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<sup>2</sup> Plaintiffs have moved to consolidate (1) *Gaffney v. TRICARE*, No. 1:11-cv-01800-RLW; (2) *Richardson v. TRICARE*, No. 1:11-cv-01961-RLW; (3) *Biggerman v. TRICARE*, No. 1:11-cv-02142-RLW; (4) *Moskowitz v. TRICARE*, No. 1:11-cv-02283-RLW; and (5) *Palmer v. TRICARE*, No. 1:12-cv-00008-RLW. The motion to consolidate is currently pending.

common questions of law and fact” and “arise from the same core set of facts and contain substantially similar allegations.” *See* Br. in Supp. of Mot. for Entry of Order Consolidating Related Actions and Appointing Pls.’ Co-Lead Counsel at 2-3, *Gaffney v. TRICARE*, No. 1:11-cv-01800-RLW (D.D.C. Jan. 27, 2012), ECF No. 18.

The same considerations apply equally to the three additional cases pending in the federal districts courts of California and Texas. All of the Related Actions are based on the same underlying factual allegations, namely that backup tapes containing personal information of TRICARE members were stolen from the vehicle of an SAIC employee, resulting in the alleged exposure of personal data and allegedly causing plaintiffs and the putative class members to suffer various damages as a result.<sup>3</sup> Thus, the Related Actions share “common questions of fact” as required under 28 U.S.C. § 1407.<sup>4</sup>

## **II. TRANSFER OF THE RELATED ACTIONS SERVES THE CONVENIENCE OF THE PARTIES AND WITNESSES AND ENSURES THE JUST AND EFFICIENT CONDUCT OF THE ACTIONS**

Transfer and consolidation will also serve the convenience of the parties and witnesses and will conserve judicial resources.

As indicated, all of the Related Actions involve essentially the same factual allegations concerning the theft of the backup tapes in San Antonio, Texas. Thus, much of the discovery (assuming the cases proceed that far) of the defendants is likely to focus on the same core set of facts, witnesses, and documents, many of which will likely be located in Texas, where the theft occurred, and to a lesser extent, in the Washington, D.C. metropolitan area, where all of the

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<sup>3</sup> In the various motions to dismiss filed to date, SAIC has consistently challenged plaintiffs’ assertion that they have suffered a cognizable injury or harm, and plans to proceed with such arguments should the cases be transferred and consolidated.

<sup>4</sup> Although SAIC asserts that the Related Actions share common questions of fact, it expressly reserves its right to pursue its objections to class treatment.

defendants are headquartered. Without consolidation, each case will subject the parties to the same or similar discovery, will require duplicative testimony from the same witnesses, and will raise the potential for the same discovery disputes.

In addition to common factual allegations, plaintiffs in the Related Actions have pursued similar legal theories against SAIC and the other defendants. The eight cases pending against SAIC and the other defendants include over 30 claims, many of which are identical or substantially similar. For instance, overlapping claims against SAIC include: common law claims for negligence (three cases); claims under the California Civil Code (three cases); claims under California's Confidentiality of Medical Information Act (three cases); claims under the Fair Credit Reporting Act (two cases); and common law claims for public disclosure of private facts (three cases). The claims arising under California law are not limited to the complaints filed in the district courts of California; one of the more recent complaints filed in the District Court for the District of Columbia also asserts California claims.<sup>5</sup> The five cases pending against TRICARE, the DOD, and Secretary Panetta also involve overlapping causes of action, including claims under the Privacy Act (five cases); claims under the Administrative Procedure Act (four cases); and claims for declaratory relief (two cases).

Given the common factual allegations and legal claims, the cases will present similar, if not identical, legal issues, including the interpretation of various statutes, the propriety of class certification, and the appropriate scope of relief, if any. Transfer will thus minimize the burden of the parties having to respond to duplicative discovery and litigate substantively similar issues in multiple fora. Consolidation is therefore appropriate so that the actions can be "before a single judge who can structure pretrial proceedings to accommodate all parties' legitimate

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<sup>5</sup> See Palmer Compl.

discovery needs while ensuring that common parties and witnesses are not subjected to discovery demands that duplicate activity that will or has occurred in other actions.” *In re Dep’t of Veterans Affairs*, 461 F. Supp. 2d at 1368-69. In filing their motion to consolidate the cases pending in the District Court for the District of Columbia, several plaintiffs similarly recognize that consolidation will avoid duplicative pleadings and discovery, contending that the cases “arise from the same series of events or facts, contain common questions of law and fact, involve similar parties, and are likely to involve substantially the same witnesses.” Br. in Supp. of Mot. for Entry of Order Consolidating Related Actions and Appointing Pls.’ Co-Lead Counsel at 4-5.

Consolidation is also particularly appropriate because plaintiffs seek certification of essentially identical and/or overlapping classes. For instance, several of the pending actions allege overlapping national classes of individuals,<sup>6</sup> and three of the pending actions allege overlapping classes (or subclasses) of individuals within California.<sup>7</sup> Absent consolidation, there is a possibility of inconsistent rulings on class certification and other class-related issues. *See In re TJX*, 493 F. Supp. 2d at 1383 (“Centralization under Section 1407 is necessary in order to

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<sup>6</sup> Compare Biggerman Compl. ¶ 71 (defining the class as all persons similarly situated “who are TRICARE members and whose Confidential Information was compromised as a result of the Confidential Information Theft”), with Moskowitz Compl. ¶ 104 (defining the class as all persons similarly situated “who are TRICARE members and whose Confidential Information was compromised as a result of the Breach”), and Richardson Compl. ¶ 107 (same); see also Arellano Compl. ¶ 41 (alleging a national class of “[a]ll persons whose [identifying information] was contained on the backup data tapes stolen from an SAIC employee’s car on or about September 12, 2011, in San Antonio, Texas”); Palmer Compl. ¶ 81 (defining the class as “[a]ll natural persons within the United States whose personal information was entrusted to Defendants and compromised”).

<sup>7</sup> See Palmer Compl. ¶ 82 (defining as a sub-class “[a]ll natural persons within California whose personal information was entrusted to Defendants and compromised”); Losack Compl. ¶ 27 (defining the class as “[a]ll persons within California who subscribed to TRICARE, and whose PII/PHI was compromised as a result of the events surrounding the data theft on September 14, 2011”); Deatrick Compl. ¶ 14 (defining the class as “[a]ll California residents whose confidential medical information was contained on the tapes that were stolen on or about September 12, 2011”).

eliminate duplicative discovery; [and] prevent inconsistent pretrial rulings, especially with respect to class certification[.]”).

Furthermore, although the complaints were filed in four different districts, several cases include plaintiffs who reside throughout the country. For instance, cases pending in the District Court for the District of Columbia include plaintiffs residing in Kentucky (*see* Richardson Compl. ¶¶ 14-15); Texas (*see* Palmer Compl. ¶¶ 9, 14); and Indiana (*see* Biggerman Compl. ¶ 8), among others. Plaintiffs in the case pending in the Western District of Texas reside in Virginia, Kentucky, South Carolina, Tennessee, Missouri, North Carolina, Mississippi, Oregon, Florida, Michigan, Georgia and Texas. *See* Arellano Compl. ¶¶ 7-20. Moreover, the two cases pending in the district courts of California are not the only cases involving California plaintiffs or California claims. Cases pending in both the District Court for the District of Columbia and the Western District of Texas involve California plaintiffs (*see* Palmer Compl. ¶ 13; Arellano Compl. ¶ 8); and as noted, one of the more recent complaints filed in the District Court for the District of Columbia also asserts claims under California law. Consolidation is thus necessary to bring these cases – which are national in scope – to a common district.

Finally, transfer and consolidation is appropriate because the Related Actions are in the early stages of litigation. Indeed, just within the last week, a new action was initiated in the Northern District of California (*Deatrick*). In addition, the plaintiff in *Losack* recently filed an amended complaint, to which SAIC has yet to respond, and plaintiffs in the cases pending in the District Court for the District of Columbia recently sought leave to file a new, consolidated complaint. Although motions to dismiss have been filed in certain actions, there have been no hearings and no decisions on those motions. There also has been no discovery exchanged in any of the Related Actions to date and no initial disclosures have been made. As a result, no party

has expended significant resources litigating in any jurisdiction and no prejudice or inconvenience will result from transfer and consolidation at this time.

### III. TRANSFER TO ANY OF THE DISTRICTS WOULD BE APPROPRIATE

While SAIC strongly believes that transferring the cases to a common district is appropriate here, SAIC does not have a strong preference for a transferee district. Each of the current districts could be appropriate, albeit for different reasons.

The District Court for the District of Columbia would be an appropriate district for several reasons. First, there are currently five individual putative class actions pending in that court. Each of these cases has been assigned to District Judge Robert L. Wilkins, before whom a motion to consolidate the five cases is currently pending. Both the number of cases filed in the District of Columbia and the pending consolidation motion suggest that court would be an appropriate district for transfer. *See, e.g., In re Hannaford Bros.*, 599 F. Supp. 2d at 1406 (determining that transfer to a given district appropriate where majority of actions already pending there). Further, according to the Panel's most recent listing of pending multi-district litigations,<sup>8</sup> only six MDL actions are currently pending in the District Court for the District of Columbia, none of which is before Judge Wilkins. *See, e.g., In re Lending Tree*, 581 F. Supp. 2d at 1368 (considering a transferee district's capacity to handle the docket in ordering transfer).

Second, SAIC, TRICARE, the DOD, and Secretary Panetta are all headquartered in Northern Virginia, in the Washington, D.C. metropolitan area. The likelihood that witnesses and discovery will be located nearby thus further supports transfer to the District Court for the District of Columbia. *See, e.g., In re TJX*, 493 F. Supp. 2d at 1383 (finding appropriate to

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<sup>8</sup> *See* MDL Statistics Report - Distribution of Pending MDL Dockets (Jan. 2012), *available at* [http://www.jpml.uscourts.gov/Pending\\_MDL\\_Dockets-By-District-January-2012.pdf](http://www.jpml.uscourts.gov/Pending_MDL_Dockets-By-District-January-2012.pdf).

transfer to district where defendant's headquarters are located and documents and witnesses likely to be found).

The Western District of Texas would also be an appropriate district because it has the strongest nexus to the common factual issues raised in the pending cases. Central to the allegations in each case, and a main issue for discovery, will be the events surrounding the vehicle burglary, which occurred in San Antonio, Texas. As a result, a substantial share of documents and witnesses related to the data theft are likely to be located in the Western District of Texas. *See, e.g., Dep't of Veterans Affairs*, 461 F. Supp. 2d at 1369 (appropriate to transfer to forum within close proximity to where data theft occurred). Currently, there are no pending MDL actions in the Western District of Texas.

### **CONCLUSION**

For the foregoing reasons, SAIC respectfully requests that the Related Actions be transferred for consolidated or coordinated pretrial proceedings.

Dated: March 8, 2012

Respectfully submitted,

s/ Kenneth L. Chernof

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**BEFORE THE UNITED STATES JUDICIAL PANEL  
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**IN RE BACKUP TAPE THEFT INCIDENT  
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**MDL Docket No. \_\_\_\_\_**

**SCHEDULE OF ACTIONS**

<b>Case Captions</b>	<b>Court</b>	<b>Civil Action No.</b>	<b>Judge</b>
<b>Plaintiffs:</b> Ella Deatrick  <b>Defendants:</b> Science Applications International Corporation	N.D. California (San Francisco Div.)	3:12-01055	Elizabeth D. Laporte
<b>Plaintiffs:</b> Mark Losack  <b>Defendants:</b> SAIC, Inc.	S.D. California (San Diego Div.)	3:12-00097	Larry Alan Burns
<b>Plaintiffs:</b> Virginia E. Gaffney, J.G., E.G., Adrienne Taylor  <b>Defendants:</b> TRICARE Management Activity; United States Department of Defense; Leon E. Panetta  <b>Interested Party:</b> Science Applications International Corporation.	District of D.C.	1:11-01800	Robert L. Wilkins
<b>Plaintiffs:</b> Von W. Richardson; Allie J. Richardson, III  <b>Defendants:</b> TRICARE Management Activity; Science	District of D.C.	1:11-01961	Robert L. Wilkins

<p>Applications International Corporation; United States Department of Defense; Leon E. Panetta</p> <p><b>Non-Party Petitioner:</b> Virginia E. Gaffney</p>			
<p><b>Plaintiffs:</b> James F. Biggerman, Jr.</p> <p><b>Defendants:</b> TRICARE Management Activity; Science Applications International Corporation; United States Department of Defense; Leon E. Panetta</p> <p><b>Non-Party Petitioner:</b> Virginia E. Gaffney</p>	District of D.C.	1:11-02142	Robert L. Wilkins
<p><b>Plaintiffs:</b> Murry Moskowitz; Barbra Moskowitz</p> <p><b>Defendants:</b> TRICARE Management Activity; Science Applications International Corporation; United States Department of Defense; Leon E. Panetta</p> <p><b>Non-Party Petitioner:</b> Virginia E. Gaffney</p>	District of D.C.	1:11-02283	Robert L. Wilkins
<p><b>Plaintiffs:</b> Jessica Palmer; H.P.; C.P.; C.P. III; Shanna Hartman; Antoinette Morelli; Claudia Falubebres</p> <p><b>Defendants:</b> TRICARE Management Activity; Science Applications International Corporation; United States Department of Defense; Leon E. Panetta</p> <p><b>Non-Party Petitioner:</b> Virginia E. Gaffney</p>	District of D.C.	1:12-00008	Robert L. Wilkins
<p><b>Plaintiffs:</b> Fernando Arellano; Michael Bacon; Michael; Erickson; Joshua Gorrell; Theodore Martin; Brian; McUmb; Benny Miller; Alfred Newman; Amandah Peting; Jennifer Pineirovigo; Kyle Roe; Matthew Walters; Henry Warner; Dorothy Yarde</p> <p><b>Defendants:</b> Science Applications International Corporation</p>	W.D. Texas (San Antonio Div.)	5:11-00884	Fred Biery

**BEFORE THE UNITED STATES JUDICIAL PANEL  
ON MULTIDISTRICT LITIGATION**

**IN RE BACKUP TAPE THEFT INCIDENT  
IN SAN ANTONIO, TEXAS ON  
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**PROOF OF SERVICE**

I hereby certify that a copy of the foregoing Motion, Brief, Schedule of Actions, and this Proof of Service was served by First Class Mail on March 8, 2012, to the following:

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