

NO. 2011-CI-09757

DAKOTA MEYER	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
VS.	§	
	§	BEXAR COUNTY, TEXAS
	§	
	§	
BOBBY MCCREIGHT, and	§	
BAE SYSTEMS, INC.	§	
	§	
Defendants.	§	166 <sup>th</sup> JUDICIAL DISTRICT

**PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION**

**I.**

1. **Discovery Control Plan:** Discovery should be conducted in accordance with a discovery control plan under Texas Rule of Civil Procedure 190.4 (Level 3).

2. **Parties:** Plaintiff Dakota Meyer is a former resident of Austin, Travis County, Texas. He currently resides in Green County, Kentucky.

3. Defendant Bobby McCreight is a resident of Bexar County, Texas and works for defendant BAE Systems OASYS, LLC in Bexar County, Texas. Mr. McCreight has been served and has entered an appearance in this lawsuit.

4. Defendant BAE Systems OASYS, LLC ("BAE") is, on information and belief, a Delaware limited liability company with its principal place of business in Virginia. BAE has been served and has entered an appearance in this lawsuit.

5. **Jurisdiction, Venue and Jury Demand:** Venue is appropriate in Bexar County, Texas pursuant to § 15.002 TEX. CIV. PRAC. & REM. CODE because all or a substantial part of the

events or omissions giving rise to the claims occurred in Bexar County, Texas. Specifically, and without limitation, BAE employed McCreight in Bexar County, Texas. McCreight's home office was in Bexar County, Texas. McCreight, acting in the course and scope of his employment for BAE, made defamatory statements about Meyer and tortiously interfered with Meyer's business relationships while, on information and belief, McCreight was in Bexar County, Texas.

6. The amount in controversy exceeds the minimum jurisdictional limits of this Court. This Court has personal jurisdiction over the Defendants because they either reside or conduct substantial business in Texas.

7. Having paid the appropriate fee, a trial by jury is hereby demanded.

## **II. Facts**

### **About Dakota Meyer**

8. Former Marine Sgt. Dakota Meyer ("Meyer") is a skilled, courageous, and decorated former soldier. Dakota Meyer's actions in combat, particularly during a horrific battle against Pakistani insurgents in Gangjal, Afghanistan on September 8, 2009, have been called by one knowledgeable writer "the greatest act of courage in the [Afghan] war."<sup>1</sup>

9. On September 15, 2011, President Obama presented Sgt. Meyer with the Congressional Medal of Honor, making him the first living Marine to receive that honor since the Vietnam War.

10. Sgt. Meyer was honorably discharged from the U.S. Marine Corps in May 2010. From June 2010 until March 2011, Sgt. Meyer worked for AUSGAR Technologies, a defense contractor that provides training and expertise to the United States Military and its allies. Due in

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<sup>1</sup> West, Bing, "The Wrong War" 106 (2011).

part to his combat experience and his Marine training as a sniper, Sgt. Meyer was employed by AUSGAR to train U.S. soldiers in the use of thermal imaging and optical equipment used primarily by snipers and to find improvised explosive devices (“IEDs”).

11. Sgt. Meyer received rave reviews for his performance at AUSGAR. Sgt. Meyer’s manager at AUSGAR, Tom Grant, has testified that Meyer was consistent, dependable, conscientious and very insightful in his work for AUSGAR. In particular, AUSGAR’s manager has testified that Meyer’s combat experience made him a better employee and lauded Meyer for his work identifying improvements to make weapons gear more effective for soldiers on the battlefield. Meyer never received any form of performance or conduct warning or counseling from AUSGAR.

12. In March 2011, Meyer resigned his employment with AUSGAR to accept a position with BAE Systems OASYS, LLC.

**About BAE Systems OASYS, LLC**

13. BAE Systems OASYS, LLC is the U.S. Subsidiary of BAE Systems, plc, which was formed when British Aerospace merged with Marconi Electronic Systems. BAE is one of the world’s largest defense contractors. In 2009, BAE generated revenue of approximately \$1.6 billion from the U.S. military. In 2010 it generated \$1.9 billion from the U.S. military.

14. Meyer was hired by BAE in early March 2011. Meyer’s primary supervisor was Defendant Bobby McCreight (“McCreight”). During his employment with BAE, Meyer performed his job competently. He was never written-up for any performance or conduct deficiency and was never subject to any warning or discipline.

### **Sgt. Meyer Objected to BAE's Planned Deal with Pakistan**

15. In April 2011, Sgt. Meyer was disappointed to learn that BAE, through Meyer's supervisor McCreight, was pursuing sales of BAE's advanced thermal optic scopes to Pakistan. Meyer made his objections known respectfully but directly. On April 29, 2011, Meyer emailed his supervisor, Bobby McCreight, respectfully expressing his disapproval of the plan to sell to Pakistan. Meyer's email read in part:

The reason I came on with BAE OASYS was to use the knowledge I had gained from the experiences I had while serving in combat operations to improve gear and make items to save the lives of U.S. troops. This is where I could see me still "doing my part" for the guys who are in the same situation now that I was in 18 months ago. I feel that by selling this to Pakistan we are doing nothing but the exact opposite. We are simply taking the best gear, the best technology on the market to date and giving to guys that are known to stab us in the back... These are the same people who are killing our guys... I think that one of the most disturbing facts to the whole thing is that we are still going forth with the PAS-13 optic and issuing these outdated sub-par optics to our own U.S. troops when we have better optics we can put in their hands right now but we are willing to sell it to Pakistan. This is very disturbing to me as an American and as a United States Marine.

### **BAE Retaliates Against Sgt. Meyer**

16. After Sgt. Meyer made his views known about the potential deal with Pakistan, Sgt. Meyer's supervisor, Bobby McCreight, began berating and belittling Sgt. Meyer for ridiculous things. For example, Sgt. Meyer travelled to New Hampshire at the request of Vadim Plotsker, the President of the BAE division for which Meyer and McCreight worked. McCreight took Sgt. Meyer to task for not asking McCreight's permission to go. In an email, McCreight told Sgt. Meyer that he needed to understand who his boss was. Apparently McCreight felt like Sgt. Meyer was out of line for following the direction of the President of the entire division. McCreight wrote: "May I remind you whom [sic] works for who [sic]? You report to me, not Jerry [a peer] or Vadim [the division President]. Are we clear on that?"

17. McCreight taunted Sgt. Meyer and, in reference to Sgt. Meyer's heroism in battle and his nomination for the Congressional Medal of Honor, sarcastically and disdainfully ridiculed what he called Sgt. Meyer's "pending star status."

18. At no time did McCreight issue Sgt. Meyer an actual reprimand or warning about job performance or conduct. BAE never asked Sgt. Meyer to leave or suggested that his job was in jeopardy.

**Sgt. Meyer Seeks Return to AUSGAR; BAE Defames Meyer and Tortiously Interferes**

19. Sgt. Meyer was not going to work for an organization like BAE that would sell these weapons systems to Pakistan. Sgt. Meyer believed BAE's actions gave lie to its motto, "protecting those who protect us." Nor was Sgt. Meyer going to continue working under a man like McCreight who would attempt to bully and retaliate against him for respectfully raising his concerns. On May 31, 2011, Meyer resigned his employment with BAE Systems, providing two weeks' notice.

20. Sgt. Meyer had earlier contacted AUSGAR to see if there was a spot open on the RCOS/Keyhole team at AUSGAR. The RCOS/Keyhole team was a team of AUSGAR employees assigned to a contract with the United States government. The team members were employed by AUSGAR and assigned to train U.S. soldiers on the use of thermal optic equipment designed for use by snipers and teams hunting enemy IEDs.

21. In the spring of 2011, AUSGAR had anticipated that it would soon have openings on its RCOS/Keyhole team. The AUSGAR hiring manager for the RCOS/Keyhole team was Tom Grant, who had been Sgt. Meyer's manager during his employment with AUSGAR in 2010 and 2011. Grant wanted Sgt. Meyer for the RCOS/Keyhole team. Grant had inquired of the two

AUSGAR team leads about Meyer returning to AUSGAR to join the RCOS/Keyhole team, and the two team leads had strongly endorsed hiring Sgt. Meyer back.

22. Grant was required to get the approval of the U.S. Government's program manager, Bob Higginson, for every new team member he hired. Higginson knew Sgt. Meyer from Sgt. Meyer's work for AUSGAR. In fact, Higginson had very recently given AUSGAR a preliminary green light to hire Sgt. Meyer should a spot become available on the RCOS/Keyhole team. In March 2011, Higginson had been aware that Sgt. Meyer was leaving AUSGAR to work for BAE. During March 2011, having known Sgt. Meyer and his work for nine months at AUSGAR, Higginson told Tom Grant that, if Sgt. Meyer should want to come back to AUSGAR from BAE, Higginson would approve Meyer for the RCOS/Keyhole team. However, that was before defendants BAE and McCreight interfered with Sgt. Meyer's opportunity.

23. In late May, 2011, two spots did open on the RCOS/Keyhole team. Grant wanted Sgt. Meyer for the role. Grant's two team leads had strongly endorsed Sgt. Meyer for the role based on Sgt. Meyer's excellent work for AUSGAR previously. Grant had been led to believe by Bob Higginson, the government contract manager, that he was on board with Sgt. Meyer's joining the team.

24. However, sometime during the last ten days of May 2011, Bobby McCreight, acting in the course and scope of his employment for BAE, told Bob Higginson that Sgt. Meyer was mentally unstable, that Sgt. Meyer was not performing BAE tasks assigned and that Sgt. Meyer had a problem related to drinking in a social setting. On information and belief, McCreight's statements about Sgt. Meyer to Higginson were made verbally over the telephone in one or more conversations during the last ten days of May 2011.

25. McCreight's statements to Higginson were false, defamatory, and malicious.

26. McCreight's statements prevented Meyer from being hired by AUSGAR on the RCOS/Keyhole team. On June 1, 2011, Tom Grant emailed Sgt. Meyer to inform him that AUSGAR could not hire him for the RCOS/Keyhole team because Higginson was now refusing to approve Sgt. Meyer for the position based upon McCreight's statements about Sgt. Meyer. On June 1, 2011, Grant sent Sgt. Meyer an email stating:

Dakota, we have recently decided as of last Monday, 23 May to hire (2) additional RCOS/Keyhole team members. I had talked in previous months with the government customer about rehiring you if the opportunity arose. He was onboard back in March and April when we had discussed. Also our AUSGAR training leads both overseas and here in the States (Mark Slatton and John Tamborino) were in concurrence with bringing you back if additional positions opened up.

After decision was made by the RCOS/Keyhole government manager that (2) additional hires were required to support the program, it was requested that we move forward with hiring you. After contact with the government PM, I was told that you would not be a good fit coming back to the program. That was based on discussions via phone that the program manager had with Bobby McCreight from OASYS.

Bottom line, it was determined that based on conversations between Mr. Bobby McCreight and Mr. Bob Higginson, the RCOS/Keyhole government PM, that you were not recommended to be placed back on the team due to being mentally unstable and no performing on OASYS tasks assigned. Details were not provided but RCOS/Keyhole PM was basically told that based on your current work performance and not doing what was assigned as well as your activities in a social setting related to drinking you were not performing as required to support our effort going forward.

As a result, Bob recommended to me, based on phone conversations with Mr. McCreight, that you should not be brought back to the team.

Any questions, let me know.

### **III. Causes of Action**

#### **A. Defamation - Slander**

27. Meyer incorporates and re-alleges paragraphs 1-26 above.

28. Defendants made verbal statements of fact referring to Plaintiff that were false and defamatory. Defendants were acting with actual malice when making these statements. As a result, Meyer has suffered pecuniary injury.

**B. Tortious Interference with Contract**

29. Meyer incorporates and re-alleges paragraphs 1-28 above.

30. Defendants have willfully, tortiously and without legal justification interfered with Meyer's prospective employment relationships. Defendants' interference has caused harm to Meyer.

**V. Prayer for Relief**

WHEREFORE, Meyer requests that Defendants be cited to appear and that the Court grant Meyer the following relief

1. Judgment against Defendants for actual damages and punitive damages;
2. Judgment against Defendants for costs of court, pre-judgment and post-judgment interest;
3. Attorneys' fees, costs and expert witness fees and costs; and
4. Such other and further relief to which Plaintiff may show himself justly entitled.

Respectfully submitted,

/s/ Thomas A. Nesbitt

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**COUNSEL FOR PLAINTIFF**

**DAKOTA MEYER**

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of November, 2011, I served this pleading by electronic service on the following counsel of record:

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