UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

SUHAIL NAJIM ABDULLAH AL SHIMARI, et al.,	
Plaintiffs,	Case No. 1:08-CV-00827-GBL-JFA
v.	
CACI INTERNATIONAL INC, et ano,	
Defendants.	

REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR RECONSIDERATION OF THE COURT'S ORDER DENYING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT BASED ON THE STATUTE OF LIMITATIONS [Dkt. #76]

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I. INTRODUCTION

The Virginia Supreme Court's rulings as to the content of Virginia law are conclusive and binding on this Court.[1] So, too, are Fourth Circuit decisions construing Virginia law.[2] Both the Fourth Circuit and the Virginia Supreme Court have squarely held that, as a matter of Virginia law, the pendency of a putative class action does not toll the running of the statute of limitations for claims by putative class members. *Wade v. Danek Med., Inc.*, 182 F.3d 281, 288-89 (4th Cir. 1999); *Casey v. Merck & Co.*, 722 S.E.2d 842, 845-46 (Va. 2012). Undeterred, Plaintiffs ask this Court to defy the rulings of these courts, and to refuse to apply clear Virginia law, either by unilaterally decreeing that *Casey* shall be applied prospectively only, or by reversing the Court's prior holding that Virginia's statute of limitations applies and applying Ohio law in contravention of a decision by the United States Supreme Court. The Court should reject Plaintiffs' appeal for a lawless, results-oriented decision, and should apply clear Virginia law in entering judgment in CACI's[3] favor on the common-law claims asserted by Plaintiffs Rashid, Al Zuba'e, and Al-Ejaili.

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[1] *Erie R. Co. v. Tompkins*, 304 U.S. 64, 77 (1938); *Gay v. Am. Motorists Ins. Co.*, 714 F.2d 13, 15 (4th Cir. 1983).

[2] *Virginia Soc'y for Human Life, Inc. v. Fed. Election Com'n*, 263 F.3d 379, 393 (4th Cir. 2001) (federal court of appeals decision binding within the court's circuit); *Sleeper v. City of Richmond*, No. 3:12-cv-441, 2012 WL 3555412, at *8 (E.D. Va. Aug. 16, 2012) (Fourth Circuit construction of Virginia law binding on district courts until overruled).

[3] "CACI" refers, collectively, to Defendants CACI Premier Technology, Inc., and CACI International Inc.

II. ANALYSIS

A. There Is No Basis for Refusing to Give Effect to the Virginia Supreme Court's Statement of Virginia Law in *Casey*

Plaintiffs' opposition is based on the fiction that the Virginia Supreme Court's decision in *Casey* changed settled Virginia law in rejecting tolling of statutes of limitations for putative class members. From that false premise, Plaintiffs urge the Court to usurp the role of the Virginia Supreme Court by announcing that *Casey* would be applied prospectively only. The flaws in Plaintiffs' argument are myriad.

Contrary to Plaintiffs' intimation, judicial decisions are rarely given only prospective effect. *Cash v. Califano*, 621 F.2d 626, 628 (4th Cir. 1980). Instead, the presumptive rule is that courts faithfully apply binding precedent, even precedent issued while a case is pending, in an effort to get the law right. *Am. Canoe Ass'n v. Murphy Farms*, 326 F.3d 505, 515 (4th Cir. 2003) ("The ultimate responsibility of the federal courts, at all levels, is to reach the correct judgment under law."); *Sejman v. Warner-Lambert Co., Inc.*, 845 F.2d 66, 69 (4th Cir. 1988). Moreover, limiting precedent to prospective treatment is not only rare, but is limited to decisions that "establish a new principle of law." *Chevron Oil Co. v. Huson*, 404 U.S. 97, 106-07 (1971) ("First, the decision to be applied nonretroactively must establish a new principle of law . . ."); *City of Richmond v. Blaylock*, 440 S.E.2d 598, 599 (Va. 1994) (same). Here, the Virginia Supreme Court made clear that it was not establishing a new principle of law, but enforcing principles of law that had always been a part of Virginia law.

In denying CACI's summary judgment motion, this Court adopted Plaintiffs' argument that the Virginia Supreme Court's decision in *Welding, Inc. v. Bland County Service Authority*, 541 S.E.2d 909 (Va. 2001) provided for the *equitable* tolling of Plaintiffs' statutes of limitations during the pendency of the *Saleh* action. *Welding*, however, dealt solely with *statutory* tolling

under Virginia Code § 8.01-229(E)(1) and has nothing to do with equitable tolling. As respects *equitable* tolling, the Virginia Supreme Court in *Casey* did not establish a new principle of law in rejecting equitable tolling, but rather reiterated the longstanding rule of Virginia law that equitable tolling is *never* allowed under Virginia law. As the court explained:

> It is ***well-established*** that "statutes of limitations are strictly enforced ***and must be applied*** unless the General Assembly has clearly created an exception to their application." *Rivera v. Witt*, 257 Va. 280, 283, 512 S.E.2d 558, 559 (1999). ***A statute of limitations may not be tolled, "or an exception applied, in the absence of a clear statutory enactment to such effect."*** *Arrington v. Peoples Sec. Life Ins. Co.*, 250 Va. 52, 55-56, 458 S.E.2d 289, 291 (1995)."[A]ny doubt must be resolved in favor of the enforcement of the statute." *Id.* at 55, 458 S.E.2d at 290-91.
>
> Given these principles, ***there is no authority in Virginia jurisprudence for the equitable tolling of a statute of limitations based on the pendency of a putative class action in another jurisdiction***.

Casey, 722 S.E.2d at 845 (emphasis added); *see also Wade*, 182 F.3d at 286 n.4 ("In light of the policy that surrounds statutes of limitation, the bar of such statutes should not be lifted unless *the legislature* makes unmistakably clear that such is to occur in a given case." (quoting *Burns v. Bd. of Supervisors*, 315 S.E.2d 856, 860 (Va. 1984)). Thus, the Virginia Supreme Court's rejection of equitable tolling in *Casey* did not represent a new principle of Virginia law, but simply enforcement of what has *always* been Virginia law – that statutes of limitations are tolled only through legislation and never equitably by courts.

Similarly, the Virginia Supreme Court's rejection of *statutory* tolling in *Casey* did not represent a new principle of law, but merely enforced Virginia Code § 8.01-229(E)(1) according to its terms. As CACI pointed out in its summary judgment reply, *Welding* did not involve class action tolling, but only whether a plaintiff was entitled to tolling during the pendency of a prior suit filed in another jurisdiction in which the plaintiff had also been a named plaintiff. CACI S.J.

Reply at 3 [Dkt. # 62] ("*Welding* has nothing to do with class actions, and has nothing to do with judge-made equitable tolling. Rather, *Welding* was a simple matter of statutory construction."); *see also Welding*, 541 S.E.2d at 911. Plaintiffs have not cited, and CACI is not aware of, a single case in the history of Virginia jurisprudence where a Virginia state court held that plaintiffs were entitled to a tolling of their statutes of limitations based on the pendency of a putative class action in which they were unnamed putative class members. Indeed, prior to this Court's summary judgment ruling in 2008, the *only* statement of Virginia law concerning whether Virginia law would adopt class action tolling for unnamed putative class members was the Fourth Circuit's decision in *Wade*, where the Fourth Circuit unambiguously held that Virginia would not adopt such a rule. *Wade*, 182 F.3d at 288-89.

In *Casey*, the Virginia Supreme Court did not adopt a new principle of Virginia law. Rather, the court merely reaffirmed that the Fourth Circuit's 1999 decision in *Wade* was correct and that *Welding* was distinguishable from cases involving proposed class action tolling because, as CACI argued in its summary judgment papers, *Welding* only addressed the rights of actual, named plaintiffs and not unnamed putative class members. *Casey*, 722 S.E.2d at 845 ("*Welding* differs from the instant case because it concerns a situation where the same plaintiff initially sued in federal court on the same cause of action he subsequently pursued in state court. The plaintiff in both actions was clearly the same. Whereas, in the instant matter, it is undisputed that the four plaintiffs were not named plaintiffs in the putative class action that they claim triggered the tolling.").

Given that the Fourth Circuit had already held in 1999 that Virginia would not toll the statute of limitations for unnamed putative class members during the pendency of a putative class action, *Wade*, 182 F.3d at 288-89, and there were no decisions at all between the Fourth Circuit's

decision in *Wade* and this Court's summary judgment decision that addressed the tolling rights (or lack thereof) of unnamed putative class members, Plaintiffs cannot credibly assert that *Casey* was somehow a watershed decision that changed the content of Virginia law. Indeed, there were exactly zero cases predating this Court's members decision that purported to extend *Welding* to unnamed putative class members, so this is not a case where a mountain of case law justified such ingrained reliance by parties as to the availability of class action tolling that the correct rule of Virginia law should be ignored.

Plaintiffs seek to wave off as insignificant the fact that every court to apply *Casey* has enforced the decision in that case and declined to toll statutes of limitations that had run *before* the Virginia Supreme Court decided *Casey*. *See Casey*, 678 F.3d 134, 138 (2d Cir. 2012) (affirming summary judgments based on statutes of limitation that had run before the Virginia Supreme Court decided *Casey*); *Sanchez v. Lasership*, No. 1:12-cv-246, 2012 WL 3730636, at *15 (E.D. Va. Aug. 27, 2012) (same);[4] *Flick v. Wyeth, LLC*, No. 3:12-cv-0007, 2012 WL 4458181, at *6 (W.D. Va. June 6, 2012) (same). Indeed, the Fourth Circuit in *Wade* affirmed the entry of summary judgment, in a case that predated even *Casey*, based on its conclusion that Virginia would not toll the statute of limitation for unnamed members of a putative class action. *Wade*, 182 F.3d at 288. According to Plaintiffs, because these decisions did not explicitly address a plea to limit *Casey* to prospective application only, their uniform application of *Casey* retroactively should be disregarded. But the better explanation for the absence of a prospectivity

[4] Plaintiffs correctly note that the plaintiffs in *Sanchez* filed their suit in this court four days after the Virginia Supreme Court decided *Casey*. The relevant point, however, is that the putative class action on which the plaintiffs relied for their tolling argument was *prior to* the Virginia Supreme Court's decision in *Casey*, and the entire period for which the plaintiffs sought tolling was therefore prior to the *Casey* decision. Thus, if *Casey* were entitled to prospective application only, this Court's decision in *Sanchez* would have come out the other way because class action tolling would have rendered the unnamed class members' claims timely.

analysis in these decisions is not a collective oversight, but the fact that the Virginia Supreme Court did not characterize *Casey* as a departure from past Virginia precedent, but as an enforcement of Virginia's longstanding rule against equitable tolling and a construction of Virginia Code § 8.01-229(E)(1) consistent with its plain language. *Casey*, 722 S.E.2d at 845-46. All *Casey* did was state settled Virginia law. In practical terms, this confirmed the correctness of the Fourth Circuit's decision in *Wade* and the misperception in two federal district court decisions as to the reach of *Welding*. That is not "new law," in any sense of the term.

Four years ago, Plaintiffs convinced the Court that it should decline to apply the Fourth Circuit's decision in *Wade*, 182 F.3d at 288-89, on the grounds that *Welding*, a Virginia Supreme Court decision that did not involve class actions or unnamed plaintiffs, had somehow changed Virginia law on class action tolling for unnamed plaintiffs. Plaintiffs are now constrained to admit that Virginia law does not permit the tolling that they have sought. The Court should not compound the error in its original summary judgment ruling by declining to apply what is, beyond any doubt, a clearly-stated principle of Virginia law that unnamed putative class members are not entitled to statute of limitations tolling during the pendency of a putative class action.

B. Virginia's Statute of Limitations Applies to the Common-Law Tort Claims of Plaintiffs Rashid, Al Zuba'e, and Al-Ejaili

Realizing that their prior position regarding the content of Virginia law is no longer tenable, Plaintiffs now argue that perhaps *Ohio's* statute of limitations should apply to Plaintiffs who have no connection to Ohio and who never filed suit in Ohio. Plaintiffs argue that because some other plaintiff (Plaintiff Al Shimari) originally asserted *his* claims in Ohio, before the case was transferred to this Court with Mr. Al Shimari's consent, that Plaintiffs who asserted claims only in Virginia can avoid application of Virginia's statute of limitations for their common-law

claims. Pl. Opp. at 10-14. But CACI specifically raised this issue four years ago in its summary judgment papers (CACI S.J. Reply at 12-15 [Dkt. #45]) and explained why Plaintiffs who asserted claims only in Virginia are subject to Virginia's statute of limitations. This Court agreed, holding that "[a]s the *Wade* decision makes clear, the Court is required to apply Virginia's equitable tolling rules whether jurisdiction is based on federal question or diversity." S.J. Order at 4 [Dkt. #76]. While the Court's conclusion as to the *content* of Virginia law was erroneous, its conclusion that Virginia's statute of limitations applied was correct.

In considering Plaintiffs' newfound view that perhaps Ohio's statute of limitations should apply to their claims, a brief recitation of the procedural history of this case is appropriate. In May and June 2008, Plaintiffs' counsel filed four single-plaintiff suits against CACI in federal district courts in, respectively, California, Ohio, Washington state, and Maryland. O'Connor Decl. ¶ 7.[5] Of the four Plaintiffs in this action, only Plaintiff Al Shimari (who is not a subject of CACI's summary judgment motion) was a party to any of these single-plaintiff suits, with Mr. Al Shimari having filed the Ohio action. Beginning in June 2008, CACI began filing motions to transfer these single-plaintiff cases to this Court. The California action was transferred to this Court over the plaintiff's objection, and the plaintiffs in the Ohio and Washington cases ultimately consented to transfer.[6] The Ohio action reached this Court first and was assigned to Judge Lee. The Washington action was assigned to Judge Ellis shortly thereafter, and the California action was assigned to Judge O'Grady. O'Connor Decl. ¶¶ 10-12. Plaintiffs' counsel and CACI agreed that the cases should be consolidated, but Plaintiffs insisted that the parties

[5] References to the "O'Connor Decl." are to the Declaration of John F. O'Connor filed in support of CACI's summary judgment motion at Docket Entry 47.

[6] The plaintiff in the Maryland action dismissed his claims against CACI. O'Connor Decl. ¶ 9.

should purport to dictate to the Clerk's office that the cases be consolidated before Judge Lee. *Id.* ¶ 10. CACI thought it inappropriate for parties to select the judge and stated that judge selection should be left to the Court's internal processes. *Id.* Plaintiffs' counsel then engaged in 'self-help' in order to proceed before Judge Lee by promptly dismissing the Washington and California actions assigned to Judges Ellis and O'Grady, respectively, leaving Mr. Al Shimari as the sole Plaintiff proceeding against CACI. *Id.*

On September 15, 2008, Plaintiffs' counsel filed an Amended Complaint in this Court, and for the first time asserted claims against CACI on behalf of Plaintiffs Rashid, Al Zuba'e, and Al-Ejaili. *Id.* ¶ 13. Thus, the three Plaintiffs who are the subject of CACI's motion for partial summary judgment have only asserted claims against CACI in this Court and not in any other forum.

Although they never filed suit in Ohio, Plaintiffs Rashid, Al Zuba'e, and Al-Ejaili now contend, in the alternative, that they might be able to avoid application of Virginia's statute of limitations because Plaintiff Al Shimari (and only Plaintiff Al Shimari) asserted claims against CACI in federal court in Ohio. This is a pure question of law that can be decided on summary judgment. While a plaintiff whose claims have been transferred to another district under 28 U.S.C. § 1404(a) ordinarily does not have the law governing his common-law claims changed by virtue of such a transfer, provided that venue was appropriate in the transferor district,[7] that doctrine has no application here. Therefore, Virginia's choice of law rules apply and bar these Plaintiffs' claims.

[7] *See, e.g.*, *Ferens v. John Deere Co.*, 494 U.S. 516, 519 (1990); *Gibson v. Boy Scouts of Am.*, 360 F. Supp. 2d 776, 780 (E.D. Va. 2005); *Forlastro v. Collins*, No. 07-Civ-3288, 2007 WL 2325865, at *2 (S.D.N.Y. Aug. 14, 2007).

Most fundamentally, Plaintiffs Rashid, Al Zuba'e, and Al-Ejaili were never plaintiffs in Ohio. As the Supreme Court explained in *Ferens v. John Deere Company*, 494 U.S. 516, 523 (1990), there are three reasons why a plaintiff *who actually filed claims in the transferor court* ordinarily is entitled to invoke the transferor court's choice of law rules after a 28 U.S.C. § 1404(a) transfer:

> First, § 1404(a) should not deprive parties of state-law advantages that exist absent diversity jurisdiction. Second, § 1404(a) should not create or multiply opportunities for forum shopping. Third, the decision to transfer venue under § 1404(a) should turn on considerations of convenience and the interest of justice rather than on the possible prejudice resulting from a change of law.

Id. The rule applying the choice of law rules of the transferor court to a plaintiff whose claims have been transferred "allow[s] plaintiffs to retain whatever advantages ***may flow from the state laws of the forum they have initially selected.***" *Van Dusen v. Barrack*, 376 U.S. 612, 633 (1964) (emphasis added). Plaintiffs Rashid, Al Zuba'e, and Al-Ejaili "initially selected" to pursue their claims in this Court. Therefore, they have never been subject to a change in forum law, as the forum for their claims has at all times been the Eastern District of Virginia.

Indeed, in *Ferens*, the Supreme Court addressed the specific argument made by Plaintiffs here, whether plaintiffs are required to actually file a suit in a distant forum in order to take advantage of that distant forum's choice of law rules, as opposed to filing suit in a more convenient forum and simply selecting the choice of law rules applicable in a forum where they *could have filed suit*. 494 U.S. at 531-32. Put another way, the Court considered whether a plaintiff should be permitted to do exactly what Plaintiffs Rashid, Al Zuba'e, and Al-Ejaili are arguing that they can do here, assert their claims in Virginia but invoke Ohio's choice of law rules because they (like Plaintiff Al Shimari) theoretically *could have sued* in Ohio and then moved to transfer to Virginia. *Id.* The Court rejected this type of chicanery:

> [O]ne might ask why we require the Ferenses to file in the District Court in Mississippi [the transferor forum] at all. Efficiency might seem to dictate a rule allowing plaintiffs in the Ferenses' position not to file in an inconvenient forum and then to return to a convenient forum through a transfer of venue, but instead simply to file in the convenient forum and ask for the law of the inconvenient forum to apply. Although our rule may invoke certain formality, one must remember that § 1404(a) does not provide for an automatic transfer of venue. The section, instead, permits a transfer only when convenient and "in the interest of justice." ***Plaintiffs in the position of the Ferenses must go to the distant forum*** because they have no guarantee, until the court there examines the facts, that they may obtain a transfer. No one has contested the justice of transferring this particular case, but the option remains open to defendants in future cases.

Ferens, 494 U.S. at 531 (emphasis added). Thus, the Supreme Court in *Ferens* rejected the notion that a plaintiff could invoke the choice of law rules of another jurisdiction without having first actually filed his or her claims there and having them transferred under 28 U.S.C. § 1404(a).

Here, Plaintiffs Rashid, Al Zuba'e, and Al-Ejaili never asserted their claims in Ohio. Indeed, these three Plaintiffs not only specifically selected the Eastern District of Virginia in which to pursue their claims, but even selected the judge to preside over them. While Plaintiffs' counsel and the CACI Defendants' counsel were litigating forum disputes with respect to the cases Plaintiffs' counsel filed in California, Washington, Ohio, and Maryland, Plaintiffs Rashid, Al Zuba'e, and Al-Ejaili remained on the sidelines. These three Plaintiffs never subjected themselves to the random assignment of a judge in Ohio, the uncertainty of a transfer motion, or even the random assignment of a judge in this Court. Instead, they waited for the merry-go-round to stop, and for Plaintiffs' counsel to voluntarily dismiss the two cases transferred to this Court and assigned to other judges, and then joined this specific case, in this specific forum, before the specific judge they preferred. Having chosen their preferred forum, these Plaintiffs cannot avoid the application of this forum's statute of limitations rules.

The two district court cases cited by Plaintiffs as allowing them to use the choice of law rules of a state in which they never asserted claims do not aid Plaintiffs' cause. *Pappion v. Dow Chemical Company*, 627 F. Supp. 1576, 1581 (W.D. La. 1986), predates the Supreme Court's decision in *Ferens*, where the Court made clear that in order to obtain the benefit of the choice of law rules of a distant forum, a plaintiff actually "must go to the distant forum" and assert claims there because until they do that, there is no certainty that the plaintiffs will be entitled to a transfer. *Ferens*, 494 U.S. at 531. Moreover, as respects the proposed new plaintiffs in *Pappion*, choice of law was not the relevant issue because their claims were time-barred under the law of both the transferor forum *and* the transferee forum. *Pappion*, 627 F. Supp. at 1580. Rather, the issue was relation back under Federal Rule of Civil Procedure 15(c), and the court correctly held that new plaintiffs could not use the doctrine of relation back to render their claims timely. *Id.*

Riddle v. Shell Oil Co., 764 F. Supp. 418, 420 (W.D. Va. 1990), also relied on by Plaintiffs, is similarly inapposite. In *Riddle*, the plaintiff did exactly as the Supreme Court commanded in *Ferens* when a plaintiff desires to rely on the law of a distant forum – the plaintiff actually asserted his claims in the distant forum and the claims were actually transferred under 28 U.S.C. § 1404(a) – and the question in that case was whether the choice of law rules of the transferor court applied to a defendant added by amendment after transfer. The court held that the transferor court's choice of law rules applied because once a plaintiff has gone to the distant forum, asserted his claims and had the case transferred under § 1404(a), the plaintiff proceeds as if the case were continuing in the transferor court. *Id.* Here, by contrast, Plaintiffs Rashid, Al Zuba'e, and Al-Ejaili never did what *Ferens* requires, and have elected to proceed in only one forum – federal court in Virginia. Therefore, the command of *Ferens* is that these Plaintiffs cannot claim an entitlement to Ohio's choice of law rules because their claims were never

asserted in and transferred from Ohio. Moreover, although Plaintiffs do not note it, the decision in *Riddle* is something of an outlier, as several courts have held that a plaintiff whose case is transferred under § 1404(a) is *not* entitled to invoke the transferor court's choice of law rules against a defendant added only after transfer. *See, e.g.*, *Ormond v. Anthem, Inc.*, No. 1:05-cv-1908, 2009 WL 102539, at *5 (S.D. Ind. Jan. 12, 2009); *Z-Rock Commc'ns Corp. v. William A. Exline, Inc.*, No. C 03-02436, 2004 WL 1771569, at *6 (N.D. Cal. Aug. 6, 2004); *cf. Lombard v. Economic Dev. Admin. of Puerto Rico*, No. 94 CIV 1050, 1995 WL 447651, at *2 n.1 (S.D.N.Y. July 27, 1995). Regardless, even if *Riddle* were the prevailing view, it would not overturn the Supreme Court's command in *Ferens* that transferor court procedural rules apply only if the plaintiff has actually gone to the distant forum and asserted his claims there.

Finally, even if the rule for applying the transferor court's choice of law rules could apply to claims asserted by a plaintiff who never asserted claims in the transferor court, due process would not allow such a result. In rejecting on due process grounds the application of Kansas law, as a matter of convenience and efficiency, to claims by class members having no connection to that state, the Court held that "Kansas must have a 'significant contact or significant aggregation of contacts' to the claims asserted by each member of the plaintiff class, contacts 'creating state interests' in order to ensure that the choice of Kansas law is not arbitrary or unfair." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821-22 (1985) (quoting *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-13 (1981)). Plaintiffs Rashid, Al Zuba'e, and Al-Ejaili and their claims have no connection with Ohio whatsoever. None of these Plaintiffs, and neither of the CACI Defendants, resides in Ohio. None of the alleged conduct occurred there. These Plaintiffs did not even assert their claims in that jurisdiction. Therefore, under *Shutts*, it would violate due process for these three Plaintiffs to be permitted to voluntarily file their claims in Virginia and

then obtain the use of *Ohio's* choice of law rules. Indeed, *Shutts* makes clear that choice-of-law is specific to each plaintiff and must be determined based on each plaintiff's individual contacts.

III. CONCLUSION

For the foregoing reasons, the Court should reconsider its summary judgment Order [Dkt. #76], conform its Order to Virginia law, and enter summary judgment in CACI's favor on the common-law claims (Counts X through XX) asserted by Plaintiffs Rashid, Al Zuba'e, and Al-Ejaili.

Respectfully submitted,

/s/ J. William Koegel, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of November, 2012, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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