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.	)	

MEMORANDUM 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

CACI's motion seeks reconsideration of this Court's November 2008 Memorandum Order denying CACI's motion for partial summary judgment on statute of limitations grounds with respect to the common law tort claims of Plaintiffs Rashid, Al-Zuba'e and Al-Ejaili. The Court denied that motion based upon its conclusion that Virginia law recognizes tolling for common-law tort claims of putative members of a class action where class certification is later denied. More specifically, the Court ruled that *Welding, Inc. v. Blade County Service Authority,* 541 S.E. 2d 909 (Va. 2001), permitted tolling for suits filed in another jurisdiction, and then concluded that this rule would toll the statute of limitations for the common-law tort claims of the three Plaintiffs even though they had not been named plaintiffs in another lawsuit.

This Court's decision was wrong. In *Casey v. Merck & Co.*, 722 S.E.2d 842 (Va. 2012), the Virginia Supreme Court emphatically and unanimously rejected the interpretation of Virginia law expressed in this Court's Order denying CACI's motion for partial summary judgment. In *Casey*, the Virginia Supreme Court held that the pendency of a putative class action does not toll the statute of limitations for putative class members under Virginia law. *Id.* at 845-46. In fact, the Virginia Supreme Court held that "there is ***no authority in Virginia jurisprudence*** for the equitable tolling of a statute of limitations based upon the pendency of a putative class action in another jurisdiction." *Id.* at 845 (emphasis added). *Casey* establishes conclusively that this Court's holding to the contrary was error.

This Court has effectively acknowledged, but not corrected, the error of its summary judgment Order here. In *Sanchez v. Lasership, Inc.*, No. 1:12-cv-246(GBL/TRJ), 2012 WL 3730636, at *2 (E.D. Va. Aug. 27, 2012), this Court, relying on *Casey*, held that "Virginia does not recognize equitable tolling of a statute of limitations for unnamed, putative class plaintiffs."

Since Virginia's statute of limitations, which is **not subject to equitable tolling**, clearly bars the common-law tort claims asserted by Plaintiffs Rashid, Al Zuba'e, and Al-Ejaili, the Court should reconsider its prior summary judgment ruling, conform that ruling to Virginia law, and enter summary judgment in CACI's favor on these Plaintiffs' common-law tort claims.

II. ANALYSIS

A. The Court Has Plenary Power to Reconsider Its Summary Judgment Order

This Court's denial of CACI's motion for partial summary judgment is not a final order because it does not resolve all claims by all Plaintiffs. Fed. R. Civ. P. 54(b); *see also Am. Canoe Ass'n v. Murphy Farms*, 326 F.3d 505, 514-15 (4th Cir. 2003) ("[A] district court retains the power to reconsider and modify its interlocutory judgments, including partial summary judgments, at any time prior to final judgment when such is warranted."). Indeed, because the Court *denied* summary judgment, its order does not resolve any claims by any of the Plaintiffs. "[A]ny order . . . that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . may be revised at any time before the entry of judgment adjudicating all the claims and all the parties' rights and liabilities." Fed. R. Civ. P. 54(b). As Plaintiffs themselves acknowledged in seeking reinstatement of their ATS claims, based solely on non-binding precedent, "the Court is permitted to conduct a *de novo* review of any of its prior rulings . . . when it is convinced [that] a prior ruling was incorrect.'"[1] Indeed, as Plaintiffs further acknowledged, "[i]t is appropriate for courts to grant motions for reconsideration when a party

[1] Plaintiffs' Memorandum of Law in Support of their Motion Seeking Reinstatement of the Alien Tort Statute Claims at 5 [Dkt. #145] (quoting *Palmetto Pharm. LLC v. AstraZeneca Pharm. LP*, No. 2:11-cv-807, 2012 U.S. Dist. LEXIS 90253, at *10 (D.S.C. June 29, 2012)).

raises relevant case law not available at the time of the court's original order."[2] CACI agreed in the context of Plaintiffs' motion for reconsideration, acknowledging that the issuance of binding case law is a quintessential situation where reconsideration is appropriate.[3]

Here, the Court construed Virginia law as recognizing tolling of statutes of limitations during the pendency of a putative class action, holding that Fourth Circuit precedent to the contrary was no longer binding on this Court. The Virginia Supreme Court, however, has issued a binding, unanimous decision holding that the view of Virginia law embodied in this Court's summary judgment ruling is wrong. *Casey v. Merck & Co.*, 722 S.E.2d at 845-46. Thus, reconsideration in order to conform this Court's Order to binding Virginia law is both appropriate and necessary.

B. The Court's Summary Judgment Order Was Based on the Court's View that Virginia Law Permitted a Pending Putative Class Action to Toll the Statute of Limitations for Putative Class Members

As CACI set forth in its summary judgment memorandum [Dkt. #45 at 2-7], there are no disputed facts with respect to CACI's motion for partial summary judgment. The Virginia statute of limitations for tort claims is **two years**, Va. Code Ann. § 8.01-243, and begins to run from the date of injury, Va. Code § 8.01-230. The Plaintiffs allege that they suffered their injuries while in United States custody, but Plaintiffs Rashid, Al Zuba'e, and Al-Ejaili all first filed their claims against CACI in this Court on September 15, 2008, well more than two years after being released from United States custody. Am. Compl. ¶¶ 26, 44 (Rashid); ¶¶ 45, 53 (Al

[2] Plaintiffs' Reply in Support of their Motion Seeking Reinstatement of the Alien Tort Statute Claims at 4 [Dkt. #157] (citing *United States v. Smithfield Foods, Inc.*, 969 F. Supp. 975, 977 (E.D. Va. 1997) (listing a "significant change in the law" as a basis for granting a motion for reconsideration).

[3] Defendants' Opposition to Plaintiffs' Motion Seeking Reinstatement of the Alien Tort Statute Claims at 5 [Dkt. #154].

Zuba'e); ¶¶ 54, 63 (Al-Ejaili). The following chart, which was included in CACI's summary judgment memorandum, shows the lapse of time between these Plaintiffs' release from United States custody and their first filing of a claim against CACI:

Plaintiff	**Date Released from U.S. Custody (per Amended Complaint)**	**Date Plaintiff First Asserted Claim Against CACI**	**Time from Plaintiff's Release from U.S. Custody to Assertion of Claims**
Rashid	5/6/05	9/15/08	3 years, 4 months, and 9 days
Al Zuba'e	10/24/04	9/15/08	3 years, 10 months, and 22 days
Al-Ejaili	2/1/04	9/15/08	4 years, 7 months, and 14 days

Indeed, Plaintiffs affirmatively alleged these dates of release from United States custody not only in their Amended Complaint, but also in their opposition to CACI's partial summary judgment motion. Pl. S.J. Opp. at 2 [Dkt. #59]. Accordingly, the Court properly treated it as undisputed that these Plaintiffs had been released from United States custody well more than two years before asserting claims against CACI. S.J. Order at 1-2 [Dkt. #76].

As CACI explained in seeking partial summary judgment, a federal district court sitting in diversity must apply the choice of law rules of the state in which it sits. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941). "Virginia courts apply their own law 'in matters that relate to procedure.'" *RMS Tech., Inc. v. TDY Indus., Inc.*, 64 F. App'x 853, 857 (4th Cir. 2003) (quoting *Hooper v. Musolino*, 364 S.E.2d 207, 211 (Va. 1988)). "Statutes of limitations are considered matters of procedure in Virginia courts, unless they are so bound up with the substantive law of a claim that the limitations period is itself substantive." *Id.* (citing *Jones v. R.S. Jones & Assocs., Inc.*, 431 S.E.2d 33, 35 (Va. 1993)). Common-law claims, such as the common-law tort claims asserted by Plaintiffs here, are subject to "pure" statutes of limitation of

general applicability, and therefore are procedural for choice of law purposes. *See Commonwealth of Va. v. Owens-Corning Fiberglas Corp.*, 385 S.E.2d 865, 867 (Va. 1989); *Smith v. Gen. Motors Corp.*, 376 F. Supp. 2d 664, 674 (W.D. Va. 2005). Indeed, as the Fourth Circuit has observed, "[s]tatutes of limitation that apply to traditional rights of action in contract and tort are almost always procedural." *RMS Tech.*, 64 F. App'x at 857 (citing *Jones*, 431 S.E.2d at 35); *see also Corinthian Mortg. Corp. v. ChoicePoint Precision Mktg., LLC*, No. 1:07-CV-832-JCC, 2008 WL 2776991, at *2 (E.D. Va. July 14, 2008). There is no special statute of limitations for Plaintiffs' common-law claims; therefore, the statute of limitations is a procedural matter that is governed by Virginia law. Thus, as a matter of binding precedent, this Court was required to apply Virginia's two-year statute of limitations to Plaintiffs' common-law tort claims (Counts X through XX in the Amended Complaint).

Neither Plaintiffs nor the Court took issue with the notion that statutes of limitations are procedural as a matter of Virginia law and that, therefore, Virginia law supplied the applicable statute of limitations for these Plaintiffs' common-law tort claims. Plaintiffs did, however, assert that either Virginia law would toll the running of its statute of limitations or that, alternatively, the Court should apply federal tolling rules to Plaintiffs' non-federal claims. Pl. S.J. Opp. at 4-7 [Dkt. #59]. In particular, Plaintiffs argued that the Virginia Supreme Court's decision in *Welding, Inc. v. Blade County Service Authority*, 541 S.E.2d 909 (Va. 2001), recognized equitable tolling of statutes of limitations for these Plaintiffs based on the pendency of a putative class action (the *Saleh* action) in which these Plaintiffs were not even named plaintiffs. Pl. S.J. Opp. at 4-5 [Dkt. #59]. In reply, CACI argued that *Welding* had nothing to do with class actions, and nothing to do with equitable tolling, but merely acknowledged *statutory* tolling of a statute

of limitations during the pendency of a prior suit in which the claimant was an actual named plaintiff. CACI S.J. Reply at 2-6 [Dkt. #62].

The Court correctly rejected Plaintiffs' argument that the Court could apply federal tolling rules to Plaintiffs' common-law claims, noting that in *Wade v. Danek Medical, Inc.*, 182 F.3d 281 (4th Cir. 1999), the Fourth Circuit squarely held that "in any case in which a state statute of limitations applies – whether because it is 'borrowed' in a federal question action or because it applies under *Erie* in a diversity action – the state's accompanying rule regarding equitable tolling should also apply." S.J. Order at 3 [Dkt. #76] (quoting *Wade*, 182 F.3d at 289); *see also Bd. of Regents of Univ. of State of N.Y. v. Tomanio*, 446 U.S. 478, 483 (1980) (holding that state tolling rules applied in federal question action where state's statute of limitations applied to federal claim). Accordingly, the Court concluded that binding precedent precluded it from applying the federal tolling rule: "As 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].

The Court, however, then adopted Plaintiffs' reading of *Welding* and held that "*Welding* expressly recognized cross-jurisdictional tolling in Virginia" and that, therefore, the Court was not bound by the Fourth Circuit's holding in *Wade* that a pending class action did not toll Virginia's statute of limitations for putative class members. S.J. Order at 4 [Dkt. #76]. The decision in *Casey* establishes that this Court's view of Virginia law was incorrect.

C. Reconsideration is Required Because the Virginia Supreme Court Has Rejected the View of Virginia Law Adopted in this Court's Summary Judgment Order

The Virginia Supreme Court's decision in *Casey* came about through certified questions from the Second Circuit. In *Casey v. Merck & Co.*, 653 F.3d 95, 102-03 (2d Cir. 2011), the

plaintiffs had asserted tort claims relating to injuries allegedly suffered from ingestion of the defendant's pharmaceutical product. *Id.* at 96. The defendant moved for summary judgment based on Virginia's statute of limitations. *Id.* at 97. The plaintiffs acknowledged that they had filed their suit more than two years after they were first injured, but argued that a federal putative class action, in which they were putative class members but not named plaintiffs, tolled the running of Virginia's statute of limitations. *Id.* at 97-98. The federal district court granted summary judgment, holding that Virginia law did not toll the statute of limitations based on the pendency of a putative class action. *Id.* at 97.

On appeal, the Second Circuit noted that the Fourth Circuit had held that Virginia law prohibited equitable tolling of statutes of limitations based on the pendency of a putative class action. *Id.* at 102 (citing *Wade*, 182 F.3d at 288). Nevertheless, the Second Circuit also noted that two district court decisions (including this Court's summary judgment decision here), had repudiated *Wade* as no longer good law on this point and held that a pending putative class action tolled the Virginia statute of limitations for all putative class members. *Id.* at 102-03. To resolve this discrepancy, the Second Circuit certified the following questions to the Virginia Supreme Court:

> (1) Does Virginia law permit equitable tolling of a state statute of limitations due to the pendency of a putative class action in another jurisdiction?
>
> (2) Does Va. Code Ann. § 8.01-229(E)(1) permit tolling of a state statute of limitations due to the pendency of a putative class action in another jurisdiction?

Casey v. Merck & Co., 722 S.E.2d 842, 843 (Va. 2012).

The Virginia Supreme Court was unambiguous in its response to the certified questions. With respect to equitable tolling, which this Court had concluded would apply to these Plaintiffs' claims, the Supreme Court was emphatic and unanimous:

> [T]here is no authority in Virginia jurisprudence for the equitable tolling of a statute of limitations based upon the pendency of a putative class action in another jurisdiction. Certified Question (1) is answered in the negative.

Id. at 845.

The Virginia Supreme Court then turned to the second certified question, whether Va. Code Ann. § 8.01-229(E)(1) provided for *statutory* tolling of the statute of limitations for a putative class member's claims. Again, the Virginia Supreme Court unanimously held that there is no statutory tolling in such circumstances. Indeed, the Virginia Supreme Court adopted CACI's reading of *Welding*, and rejected the reading of *Welding* offered by Plaintiffs and adopted by this Court:

> *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. They were merely members of a putative class . . . .
>
> . . . .
>
> A putative class action is a representative action in which a representative plaintiff attempts to represent the interests of not only named plaintiffs, but also those of unnamed class members. Virginia jurisprudence does not recognize class actions. Under Virginia law, a class representative who files a putative class action is not recognized as having standing to sue in a representative capacity on behalf of unnamed members of the putative class. Thus, under Virginia law, there is no identity of parties between the named plaintiff in a putative class action and the named plaintiff in a subsequent action filed by a putative class member individually. ***Consequently, a putative class action***

> ***cannot toll the running of the statutory period for unnamed putative class members who are not recognized under Virginia law as plaintiffs or represented plaintiffs in the original action.***

Casey, 722 S.E.2d at 846 (emphasis added) (internal citations omitted). Based on the Virginia Supreme Court's unequivocal rejection of the notion that the pendency of a putative class action equitably or statutorily tolls Virginia's statute of limitations for putative class members, the Second Circuit affirmed the grant of summary judgment against the *Casey* plaintiffs. *Casey v. Merck & Co., Inc.*, 678 F.3d 134, 138 (2d Cir. 2012).

Two months ago, this Court acknowledged that, contrary to its summary judgment decision here, Virginia law does not toll the statute of limitations based on a prior lawsuit for anyone other than the named plaintiffs in that prior suit. *Sanchez*, 2012 WL 3730636, at *14-15. Quoting generously from the Virginia Supreme Court's decision in *Casey*, the Court held that the named plaintiffs who were also named plaintiffs in a prior action were entitled to tolling of the statute of limitations, but that putative class members were not entitled to tolling because they were not named plaintiffs in the prior action. *Id.* As this Court explained:

> The Court denies Plaintiffs' motion [for equitable tolling of the statute of limitations] as to the unnamed putative class plaintiffs because Virginia does not recognize equitable tolling of a statute of limitations for unnamed, putative class members. Plaintiffs argue that the federal statute of limitations tolling doctrine . . . is applicable here and provides that the statute of limitations should be tolled for putative class members as well as the named plaintiffs. . . . The Fourth Circuit has held that a federal court sitting in diversity applies the law of the forum state with respect to statutes of limitations and equitable tolling issues. For this reason, this Court looks to Virginia law in deciding whether tolling applies to the unnamed, putative class plaintiffs in this case, and, in light [of] the Virginia Supreme Court's holding in *Casey v. Merck & Co., Inc.*, 283 Va. 411, 722 S.E.2d 842 (Va. 2012), the Court answers this question in the negative. Thus, the Court grants Plaintiffs' Motion for Equitable Tolling as to the named plaintiffs but denies the motion as to the putative class members.

Sanchez, 2012 WL 3730636, at *15 (internal citation omitted).

Judge Moon of the Western District of Virginia reached the same conclusion as to the state of Virginia law:

> As Defendants argue in their Reply Brief, Plaintiff is apparently asking the Court to rule against authoritative precedent. In *Wade v. Danek Medical, Inc.*, 182 F.3d 281, 289 (4th Cir. 1999), the United States Court of Appeals for the Fourth Circuit held that a federal court sitting in diversity, as here, must apply the forum state's laws regarding whether *American Pipe* tolling applies. 182 F.3d at 289. And in *Casey v. Merck & Co.*, 722 S.E.2d 842, 845 (Va. 2012), the Supreme Court of Virginia stated that "there is no authority in Virginia jurisprudence for the equitable tolling of a statute of limitations based upon the pendency of a putative class action allegation in another jurisdiction."
>
> In filings with this Court and at the May 25th hearing, counsel for Plaintiff acknowledged Defendants' assertion that the relevant authority has resolved this question against Plaintiff's position, but submitted that the "better rule" is the one applied in *American Pipe*, such that this Court should conclude that the limitations period was tolled even in spite of that authority. I agree with Defendants that Plaintiff "offers no reason or authority why the Court should ignore controlling precedent in favor of another court's rule that the Fourth Circuit has rejected," and I will reject Plaintiff's argument on this point.

Flick v. Wyeth LLC, No. 3:12-cv-0012, 2012 WL 4458181, at *6 (W.D. Va. June 6, 2012)

Similar to the plaintiffs in *Flick*, the Plaintiffs here refuse to accept that *Casey* compels reconsideration and reversal of the Court summary judgment Order. In their Status Conference Memorandum, Plaintiffs limit their discussion of the statute of limitations issue to one footnote, in which they assert that "[s]hould CACI file [a motion for reconsideration], Plaintiffs will respond as it is clear that this Court's 2008 decision should not be revisited or overturned because of a subsequent *change in the law* which occurred nearly four years later." Pl. Status Conf. Mem. at 1 n.1 [Dkt. #156] (emphasis in original). Plaintiffs' position is no better than frivolous. There has been no change in the law. The Virginia Supreme Court did not overrule or modify preexisting authority regarding equitable tolling. Nor did it break any new ground. It

held simply that there *was no authority* for the proposition that Virginia law allowed equitable tolling. *Casey*, 722 S.E.2d at 845 ("[T]here is no authority in Virginia jurisprudence for the equitable tolling of a statute of limitations . . . ."). With respect to statutory tolling, the *Casey* court did not overrule its decision in *Welding*. It merely held that it was a misreading of *Welding* to hold that the case supported tolling other than when a party is a named plaintiff in both the prior lawsuit and current lawsuit. *Casey*, 722 S.E.2d at 845-46.

A decision of the Virginia Supreme Court as to the content of Virginia law is authoritative and binding on federal courts. *See Erie R. Co. v. Tompkins*, 304 U.S. 64, 77 (1938); *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 73 (1911) (construction of state law by a state's highest court "must be accepted by the courts of the United States"); *Gay v. Am. Motorists Ins. Co.*, 714 F.2d 13, 15 (4th Cir. 1983) (district court was "bound to apply Virginia law"). This Court should apply *Casey* in this action exactly as it did in *Sanchez.*

The Fourth Circuit has made clear that federal courts are required to conform their rulings to binding authority issued during the pendency of a case. Even finality-based doctrines such as law of the case cannot insulate a prior interlocutory ruling from reconsideration and correction when "controlling authority has since made a contrary decision of law applicable to the issue." *Sejman v. Warner-Lambert Co., Inc.*, 845 F.2d 66, 69 (4th Cir. 1988); *see also Am. Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d at 515; *Touchcom, Inc. v. Bereskin & Parr*, 790 F. Supp. 2d 435, 463 (E.D. Va. 2011) ("The discovery of substantially different evidence, a subsequent change in the controlling applicable law, or the clearly erroneous nature of an earlier ruling would all justify reconsideration."); *RegScan, Inc. v. Bureau of Nat'l Affairs, Inc.*, No. 1:11-cv-1129, 2012 WL 2994075, at *2 (E.D. Va. July 19, 2012) (same); *Humanscale Corp. v. Compx, Int'l Inc.*, No. 3:09-cv-86, 2010 WL 3222411, at *13 (E.D. Va. Aug. 16, 2010).

As the Fourth Circuit has explained, in reinforcing a district court's duty to conform its rulings to subsequent binding precedent, "[t]he ultimate responsibility of the federal courts, at all levels, is to reach the correct judgment under law." *Am. Canoe Ass'n*, 326 F.3d at 515; *see also Gen. Assurance of Am., Inc. v. Overby-Seawell Co.*, ___ F. Supp. 2d ___, 2012 WL 4105117, at *5 (E.D. Va. Sept. 14, 2012) ("[T]he task here [on reconsideration] is to reach the correct judgment under law." (internal quotations omitted)); *Netscape Commc'ns Corp. v. ValueClick, Inc.*, 704 F. Supp. 2d 544, 547 (E.D. Va. 2010). With all due respect to the Court, the Virginia Supreme Court's decision in *Casey* makes clear that the Court's partial summary judgment decision was error. The Fourth Circuit precedent is equally clear that district courts, in such instances, must correct that error. For the Plaintiffs to argue that the Court may simply ignore *Casey* and decline to apply it here is not a good faith position.

Indeed, Plaintiffs' position is defeated by *Casey* itself, by this Court's decision in *Sanchez*, and by Judge Moon's decision in *Flick*. If Plaintiffs were correct (which they are not) that *Casey* changed Virginia law, and that tolling therefore applied up to the date of the decision in *Casey* but not thereafter, the court would have allowed the plaintiffs in *Casey* to continue to pursue their claims since they had filed their second suit prior to the Virginia Supreme Court's decision in *Casey*. To the contrary, however, the Second Circuit applied *Casey* and affirmed the grant of summary judgment against those plaintiffs. *Casey*, 678 F.3d at 138. Similarly, Plaintiffs' position would have required this Court to allow equitable tolling for the putative class members in *Sanchez*, as the *Sanchez* suit was filed before the Virginia Supreme Court decided *Casey*. Instead, this Court correctly applied *Casey* and refused to permit tolling for putative class members. *Sanchez*, 2012 WL at WL 3730636, at *15. Plaintiffs' argument, if correct, also would have required Judge Moon to deny summary judgment in *Flick* because *Casey* post-dated

the filing of the lawsuit in *Flick*. Once again, however, the court granted summary judgment on statute of limitations grounds because Virginia law clearly does not permit tolling based on a prior putative class action. *Flick*, 2012 WL 4458181, at *6. Plaintiffs simply beseech the Court to ignore the rule of law and allow them to maintain claims that CACI correctly asserted in 2008 were barred by Virginia law, a position vindicated by a unanimous Virginia Supreme Court. The Plaintiffs' position falls of its own accord.

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 9th 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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