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.	

DEFENDANTS' COURT-ORDERED MEMORANDUM REGARDING CHOICE OF LAW FOR THE STATUTE OF LIMITATIONS APPLICABLE TO PLAINTIFFS' COMMON-LAW TORT CLAIMS

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I. INTRODUCTION

Plaintiffs' argument that Iraqis filing suit in this Court against a Virginia company are entitled to apply *Ohio's* statute of limitations is reminiscent of the parties' litigation of the statute of limitations issue more than four years ago. In 2008, Plaintiffs advocated to this Court that Virginia tolled the statute of limitations for putative class members even though there was not a single Virginia case endorsing Plaintiffs' proposed rule of law, and even though the Fourth Circuit had held directly to the contrary. *Wade v. Danek Med., Inc.*, 182 F.3d 281, 288-89 (4th Cir. 1999). This Court accepted Plaintiffs' argument and thus became the first court in the history of American jurisprudence to hold that Virginia law tolls the statute of a limitations for a plaintiff during the time that a plaintiff was a member of a putative class action pending elsewhere. S.J. Order [Dkt. # 76]. In 2012, the Virginia Supreme Court emphatically and unanimously rejected the conception of Virginia law successfully advocated by Plaintiffs to this Court. *Casey v. Merck & Co.*, 722 S.E.2d 842, 845-46 (Va. 2012).

Having had its initial argument resoundingly rejected by the Virginia Supreme Court, Plaintiffs are trying the same gambit again by once again asking this Court to be the first court in the history of American jurisprudence to adopt a rule of law, this time in contravention of a decision by the United States Supreme Court. Twenty-three years ago, the United States Supreme Court clarified the rule concerning the choice of law applicable when a plaintiff's claims are transferred under 28 U.S.C. § 1404. *Ferens v. John Deere Company*, 494 U.S. 516, 523 (1990). In the course of clarifying this area of the law, the Supreme Court squarely held that a plaintiff must *actually* file his claims in the distant forum in order to take advantage of the choice of law jurisprudence of the distant forum. *Id.* Nevertheless, Plaintiffs, their Virginia law argument having been defeated, now ask this Court to be the first court to reject the teaching of

Ferens and hold that Plaintiffs who asserted claims only in this court, live in Iraq, were allegedly injured in Iraq, are suing a Virginia company, and have no connection whatsoever to Ohio, are entitled to avail themselves of *Ohio's* choice of law rules simply because some other plaintiff originally filed *his* claims in Ohio.

So cognizant are Plaintiffs of the bankruptcy of their argument for Ohio law that they did not contend Ohio law applied in 2008, even though the CACI Defendants flagged the issue in their 2008 summary judgment memorandum. Indeed, on reconsideration, with Plaintiffs' view of Virginia law having been rejected by the Virginia Supreme Court, Plaintiffs made their primary argument a frivolous contention that Virginia law would not apply *Casey* retroactively, as their argument for Ohio law is not even colorable. The Court should not compound its earlier error as to the substance of Virginia law by adopting a fanciful and erroneous conception of federal law as to what state's statute of limitations applies to common-law claims asserted only in this Court by Plaintiffs Rashid, Al-Ejaili, and Al Zuba'e, claims that have no connection whatsoever to Ohio.

II. ANALYSIS

A. Supreme Court Precedent Requires that Virginia's Statute of Limitations, and Not Ohio's Statute of Limitations, Be Applied to the Common-Law Tort Claims of Plaintiffs Rashid, Al Zuba'e, and Al-Ejaili

In 2008, the CACI Defendants sought summary judgment and devoted an entire section of their memorandum to explaining why Ohio law did not apply to the common-law claims asserted by Plaintiffs who had never filed suit in Ohio. CACI Def. S.J. Mem. at 12-15 [Dkt. #45]. Plaintiffs agreed, and argued not that Ohio law applied but that Virginia law would toll their statutes of limitations. Pl. S.J. Opp. at 4 [Dkt. #59]. The Court squarely addressed this precise issue, 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]. In opposing reconsideration, Plaintiffs do not point to pertinent case law decided after 2008 that changed the jurisprudential landscape that existed when the Court ruled in 2008. The only change since 2008 is that Plaintiffs can no longer argue, and the Court could no longer conclude, that Virginia law would hold Plaintiffs' common-law claims timely. This Court should resist Plaintiffs plea to change the Court's prior analysis for no reason other than that Plaintiffs lose under Virginia law (which this Court already squarely held applies). At some point, the rule of law must prevail.

The Supreme Court addressed the Court's question regarding application of Ohio law twenty-three years ago: Does a plaintiff have to file suit in a distant jurisdiction in order to take advantage of the distant state's choice of law rules, or can the plaintiff simply assert claims in a different forum and then use the choice of law rules of a state where he *could have filed his claims*? The Supreme Court's answer to that question was unequivocal:

> [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).

Most fundamentally, Plaintiffs Rashid, Al Zuba'e, and Al-Ejaili were never plaintiffs in Ohio. As the Supreme Court explained in *Ferens*, 494 U.S. at 523, 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.

Ferens, 494 U.S. at 523. 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 did not "initially select" to pursue their claims in Ohio, and never had their claims transferred. Far from it. These Plaintiffs sat on the sidelines while their counsel filed single-plaintiff suits in California, Ohio, Washington, Michigan, and Maryland. When three of the cases had been transferred to this Court, these three Plaintiffs joined the case pending in front of the judge before whom they desired to proceed.[1]

When the purpose of the *Van Dusen*/*Ferens* rule is taken into account – that a transfer of a plaintiff's claims should not disadvantage him from a choice of law standpoint – it becomes clear that Ohio law simply cannot apply to plaintiffs who never went through the process of having claims they asserted in Ohio transferred to this Court. That is why the Supreme Court held in *Ferens* that a plaintiff must go to the distant forum and take his or her chances on transfer in order to enjoy the benefit of the distant forum's choice of law rules. *Ferens*, 494 U.S. at 531. These three Plaintiffs never availed themselves of an Ohio court, and therefore never *had* an

[1] The facts concerning the process by which Plaintiffs Rashid, Al-Ejaili, and Al Zuba'e chose this forum is detailed in Paragraphs 7-13 of the Declaration of John F. O'Connor filed in support of the CACI Defendsants' summary judgment motion at Docket Entry 47.

entitlement to Ohio's choice of law rules that, absent the *Van Dusen*/*Ferens* rule, could have been imperiled through transfer to another district. Having chosen their preferred forum, and having asserted claims in no other district, these Plaintiffs cannot avoid the application of this forum's statute of limitations rules.

Indeed, the CACI Defendants' research has not located, and Plaintiffs have not identified, a single decision in the twenty-three years following the Supreme Court's decision in *Ferens* in which a court has held that a plaintiff can take advantage of a distant forum's choice of law rules because *some other plaintiff* had previously filed suit in that distant forum. Plaintiffs have cited two cases supposedly standing for the proposition that they can use the choice of law rules of a forum with which they have no connection, but these cases are readily distinguishable. *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 his 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 did not note it in their opposition to CACI's reconsideration motion, the decision in *Riddle* is 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).

Thus, the prevailing view is that a plaintiff cannot avail himself of the distant forum's choice of law rules against defendants added after transfer, *even if* the plaintiff had filed suits against others in the transferor district. That question was not directly addressed by the Supreme Court in *Ferens*. As to the question actually addressed in *Ferens*, whether a *plaintiff* must go to the distant forum to take advantage of its choice of law rules, *Ferens* unequivocally answers that question in the affirmative and the CACI Defendants cannot find a single decision, issued by any

court, suggesting that a plaintiff asserting claims only in the transferee court is entitled to use the choice of law rules of a forum in which they never asserted their claims.

B. Even if *Ferens* Did Not Defeat Plaintiffs' Position, Applying Ohio Choice of Law Rules, When Plaintiffs Have No Connection to Ohio and Never Asserted Their Claims in Ohio, Would Violate Due Process

The problem with Plaintiffs' newly-discovered fondness for Ohio choice of law rules is not limited to the choice of law framework adopted in *Ferens*, where the Court sensibly held that federal choice of law rules required a plaintiff to actually file his claims in a distant forum to take advantage of the distant forum's choice of law rules. *Ferens*, 494 U.S. at 531. An additional, fundamental problem with Plaintiffs' plea for application of Ohio's choice of law rules is that litigants are entitled to due process. The application of Ohio's choice of law rules to claims by Plaintiffs who never appeared in Ohio, based on claims having no connection to Ohio, would be arbitrary and unfair, and thus violative of due process.

It is beyond dispute that Plaintiffs' claims have no connection to Ohio. When Plaintiff Al Shimari filed his single-plaintiff complaint in the Southern District of Ohio, the *only* connection between Ohio and Al Shimari's claims was that Al Shimari named as a defendant one individual (Timothy Dugan) who lived in Ohio. Compl. ¶ 5 [Dkt. #2] (filed June 30, 2008). On September 10, 2008, after transfer to this Court and while this action was still a single-plaintiff action, Plaintiff Al Shimari voluntarily dismissed Mr. Dugan, thus ending any connection whatsoever between this action and the State of Ohio. Notice of Voluntary Dismissal [Dkt. #26] (filed Sept. 10, 2008). Five days later, after transfer and after dismissal of the lone Ohio defendant, Plaintiffs Rashid, Al-Ejaili, and Al Zuba'e joined the case through the filing of an Amended Complaint that named only CACI Premier Technology, Inc., and CACI International Inc as parties. Am. Compl. [Dkt. #28] (filed Sept. 15, 2008). Thus, Plaintiffs Rashid, Al-Ejaili, and Al Zuba'e never

filed claims in Ohio and never asserted claims against any Ohio citizen. Rather, these Plaintiffs asserted claims only in Virginia and only against corporations located in Virginia, and only after the lone connection between this action and Ohio had been eliminated. Not surprisingly, the Amended Complaint filed in 2008 and the Second Amended Complaint filed in December 2012 allege no connection between Plaintiffs' claims and Ohio, nor could they.

It is well established that the constitutional requirement of due process applies to choice of law determinations, and that application of a jurisdiction's laws is unconstitutional if such an application is "arbitrary or unfair." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821-22 (1985); *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 307 (1981) (plurality opinion[2]) (due process prohibits application of state law that is "arbitrary [or] fundamentally unfair") (citing *Alaska Packers Ass'n v. Indus. Accident Comm'n*, 294 U.S. 532, 542 (1935) (choice of law determination that is "arbitrary or unreasonable . . . amount[s] to a denial of due process")); *see also Thornton v. Cessna Aircraft Co.*, 886 F.2d 85, 87 (4th Cir. 1989) (choice of law determination must satisfy due process "under the facts of the particular case").

For application of a state's laws to be neither arbitrary nor unfair, and thus comport with due process, the state "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.'" *Shutts*, 472 U.S. at 821-22 (quoting *Hague*, 449 U.S. at 312-13). As explained in *Hague*, "if a State has only an insignificant contact with the parties and the occurrence or transaction, application of its law is unconstitutional." *Hague*, 449 U.S. at 310-11. For this reason, as noted

[2] Justice Stevens's concurrence in *Hague* also noted that a choice of law determination violates due process if it "were totally arbitrary or if it were fundamentally unfair to either litigant." *Hague*, 449 U.S. at 326 (Stevens, J., concurring in the judgment). Thus, a majority of the Court in *Hague* adopted the "arbitrary or unfair" due process test for choice of law determinations.

in *Shutts* and *Hague*, the Supreme Court has regularly invalidated lower court choice of law determinations, on constitutional due process grounds, when the lower court applied the law of a state with which the parties and their claims had only a "nonsignificant" contact. *Hague*, 472 U.S. at 309 (citing *Home Ins. Co. v. Dick*, 281 U.S. 397, 408 (1930), and *John Hancock Mut. Life Ins. Co. v. Yates*, 299 U.S. 178, 182 (1936)); *see also Shutts*, 472 U.S. at 820 (endorsing the Court's holdings in *Dick* and *Yates*); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827, 2011 WL 1100133, at *4 (N.D. Cal. Mar. 24, 2011) ("Due Process requires a 'significant contact or significant aggregation of contacts' between the plaintiff's claims and the state at issue").

Moreover, as the Supreme Court made clear in *Shutts*, the due process inquiry must be made on a plaintiff-by-plaintiff, claim-by-claim basis, and one plaintiff may not rely on another plaintiff's contacts with a state to take advantage of that state's laws. *Shutts*, 472 U.S. at 821-22 ("Kansas must have a 'significant contact or significant aggregation of contacts' to the claims asserted by each member of the plaintiff class."); *see also Byers v. Lincoln Elec. Co.*, 607 F. Supp. 2d 840, 845-46 (N.D. Ohio 2009) ("In the present case, even if choice-of-law principles suggest that the law of (say) Ohio should apply to Byers' claims against a majority of defendants, this Court cannot apply Ohio law to a particular defendant if there is no significant relationship at all between that defendant and Ohio."); *Schwartz v. Upper Deck Co.*, 183 F.R.D. 672, 678 (S.D. Cal. 1999) ("*Shutts* would dictate application of all the laws of the states in which any class plaintiff resided."); *In re TFT-LCD*, 2011 WL 1100133, at *4 ("To decide whether the application of a particular State's law comports with the Due Process clause, the Court must examine 'the contacts of the State, whose law [is to be] applied, with the parties and with the occurrence or transaction giving rise to the litigation.'" (quoting *Hague*, 449 U.S. at 308)).

Here, Plaintiffs Rashid, Al-Ejaili, and Al Zuba'e have no contacts whatsoever with Ohio, and neither do their claims. These Plaintiffs are Iraqi citizens, residing in Iraq or Qatar. Second Amended Complaint ("SAC") ¶¶ 1, 5-7. These Plaintiffs allege that they were mistreated while in United States custody in Iraq. SAC ¶ 1. They have asserted their claims only in federal court in Virginia, and asserted their claims only against two Defendants that are incorporated in Delaware with their principal places of business in Virginia. SAC ¶¶ 8-9. There is no indication that any of these three Plaintiffs has ever been to Ohio, ever met anyone from Ohio, or ever heard of Ohio. The only basis on which Plaintiffs now claim an entitlement to Ohio's choice of law rules (after earlier claiming an entitlement to Virginia's choice of law rules) is that some other Plaintiff (Plaintiff Al Shimari) for a short period of time asserted *his* claims against Defendants in Ohio. But as is clear from *Shutts* and the Supreme Court's other constitutional choice-of-law decisions, one plaintiff's contacts with a state do not provide constitutional justification for applying that state's laws in connection with claims asserted by *other plaintiffs*. *Shutts*, 472 U.S. at 821-22.

At oral argument on the CACI Defendants' motion for reconsideration, Plaintiffs' counsel, citing to *Sun Oil Co. v. Wortman*, 486 U.S. 717 (1988), argued that *Shutts* did not apply to "procedural" questions such as choice of law for statutes of limitations. In making this argument, Plaintiffs are attempting what they succeeded in accomplishing in 2008 – urging a flawed reading of case law on the Court in hopes of avoiding application of clear Virginia law. *Sun Oil* does not remotely support the proposition of law urged by Plaintiffs.

As we have demonstrated above, due process requires that a choice of law determination be neither arbitrary nor unfair. *See, e.g., Shutts*, 472 U.S. at 821-22. The law is also clear that application of a state's law is arbitrary and unfair if the state lacks a significant connection to a

plaintiff and his claims, and that this determination must be made on a plaintiff-by-plaintiff basis. *Id.*; *see also Hague*, 472 U.S. at 309-11. *Sun Oil* does not change these principles. Indeed, *Sun Oil* makes clear that the due process requirement that choice of law determinations be neither arbitrary nor unfair applies with full force to application of statutes of limitations. *Sun Oil*, 486 U.S. at 730 (upholding application of forum's statute of limitations because it was not "arbitrary or unfair"); *see also Collins v. R.J. Reynolds Tobacco Co.*, 901 F. Supp. 1038, 1045 (D.S.C. 1005) (choice of law determinations regarding applicable statute of limitations must comport with due process); *Grewe v. Southwestern Co.*, No. 04-3818, 2005 WL 159048, at *2 (D. Minn. July 5, 2005) (same).

Rather, *Sun Oil* stands for the unremarkable proposition that a ***forum state*** has sufficiently significant contacts with a plaintiff and his claims to apply ***its own statute of limitations*** consistent with the requirements of due process when the plaintiff files suit in that forum. *Sun Oil*, 486 U.S. at 722 ("the Constitution does not bar application of the forum State's statute of limitations"), 726 (statutes of limitations historically viewed as "procedural restrictions fashioned by each jurisdiction for its own courts"), 727 (Kansas may apply "its own statute of limitations" in a case filed in Kansas). Nothing in *Sun Oil* offers even a hint of a suggestion that a court complies with the requirements of due process by applying the statute of limitations from some *other jurisdiction*, one that has no connection whatsoever to a plaintiff or his claims, simply because some other plaintiff at one time asserted a claim in the other jurisdiction.

That *Sun Oil* simply holds that a forum constitutionally may apply its own statute of limitations to claims pending in the forum, but is not free to randomly and arbitrarily apply the statute of limitations of some other jurisdiction, is plain from the reasoning of *Sun Oil* itself. As noted above, the *Sun Oil* Court specifically applied the "arbitrary and unfair" due process test to

the issue of the applicable statute of limitations, just as the Court had applied that test to substantive choice of law questions in *Shutts*. *See Sun Oil*, 486 U.S. at 730. As the *Sun Oil* Court held, it is not arbitrary or unfair for the forum to apply the forum's statute of limitations because there was a long historical pedigree for "forum-state application of its own statute of limitations," a practice that had been endorsed by the Supreme Court at the time of the Fourteenth Amendment's adoption. *Id.* Thus, to the extent Plaintiffs argue that there is no due process requirement governing determinations of the applicable statute of limitations, such a contention is defeated by *Sun Oil* itself. In addition, the *Sun Oil* Court noted that significant contacts with a plaintiff and his claim, a due process requirement for a state's law to apply, exist for a forum state's application of its own statute of limitations because "[a] State's interest in regulating the work load of its courts and determining when a claim is too stale to be adjudicated certainly suffices to give it legislative jurisdiction to control the remedies available in its courts by imposing statutes of limitations." *Id.*

In the present case, however, Ohio has never had a connection or interest in the adjudication of the claims of Plaintiffs Rashid, Al-Ejaili, and Al Zuba'e that were filed solely in a court in Virginia. These Plaintiffs never filed suit in Ohio, and therefore were never a burden on Ohio's state or federal court dockets. These Plaintiffs' claims, having been asserted only in Virginia, were never going to require the service of Ohioans as jurors, and involve no conduct allegedly occurring in Ohio. Thus, *Sun Oil* stands for the proposition that it would have been constitutional for an Ohio court to apply Ohio's statute of limitations to the common-law claims asserted by Plaintiff Al Shimari, who filed suit in Ohio and against whom this motion is not directed (assuming, of course, that venue was proper in Ohio). *Sun Oil* also stands for the proposition that it would have been constitutional for an Ohio court to apply its own statute of

limitations to common-law claims asserted by Plaintiffs Rashid, Al-Ejaili, and Al Zuba'e *if they had asserted claims in Ohio* (and assuming that venue in Ohio was proper) because the assertion of these Plaintiffs' claims in Ohio would have given the State of Ohio a cognizable interest in application of its statute of limitations to these claims. What *Sun Oil* cannot do for Plaintiffs, however, is eliminate the requirement that application of a state's statute of limitations comport with due process, or allow this Court to apply Ohio's statute of limitations to Plaintiffs who never filed suit in Ohio, with respect to claims with which Ohio has no connection.

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,

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of January, 2013, 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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