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

SUHAIL NAJIM ABDULLAH AL SHIMARI, et al., Plaintiffs, v. CACI PREMIER TECHNOLOGY, INC., Defendant.	Case No. 1:08-CV-00827-GBL-JFA **PUBLIC VERSION**

MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR SANCTIONS AGAINST
PLAINTIFFS AL SHIMARI, RASHID, and AL ZUBA'E

I. INTRODUCTION

It is axiomatic that discovery plays a critical role in our system of justice: full development of the facts surrounding a matter furthers the purpose discovery is intended to serve—advancing the quest for truth. Plaintiffs Al Shimari, Rashid, and Al Zuba'e (the "Absentee Plaintiffs"), however, have frustrated that effort. They have failed to comply with two Court Orders compelling their appearances for depositions and expert examinations. Their failure to appear is a result of their own dilatory conduct in attempting to gain entry into the United States, [redacted]

[redacted] Their self-inflicted inability to participate in the very lawsuit that they initiated now requires dismissal of their claims.[1]

The Absentee Plaintiffs' inability to participate in the most basic discovery defies the Federal Rules of Civil Procedure and this Court's Local Rules, and raises significant due process concerns. Defendant CACI Premier Technology, Inc. ("CACI PT") cannot adequately prepare a defense to claims made by Plaintiffs *in absentia.* CACI PT cannot be expected to meet the Absentee Plaintiffs' allegations without the opportunity to test their claims and pursue further discovery based on their deposition testimony. This is particularly so because, for the very first time in this case, in the Third Amended Complaint filed on March 28, 2013, the Absentee Plaintiffs alleged that they were directly abused by CACI PT personnel (though with no details whatsoever). That is, almost 10 years after they claim they were abused at Abu Ghraib, and five years after they filed this action, the Absentee Plaintiffs for the first time have claimed that CACI PT personnel abused them. TAC ¶¶ 4-7. Prior to the Third Amended Complaint, Plaintiffs had alleged, including in sworn interrogatory answers, that they could not even identify any CACI PT employees with whom they came into contact, let alone state that a CACI PT employee abused them. Koegel Decl., Exs. 24-26 ("Because CACI employees did not identify themselves as such and did not wear uniforms or other corporate insignia revealing their status as CACI employees, Plaintiff . . . cannot currently identify CACI employees with whom he had contact."). Plaintiffs' self-serving about-face places a whole new veneer on this case, and heightens the need for depositions at which Plaintiffs will be required to explain their change in story.

It is a rudimentary proposition that plaintiffs who bring suit in a United States District Court must be capable of meeting the attendant obligations. At the most basic level, they need to

[1] On April 4, 2013, counsel for CACI PT conferred with Plaintiffs' counsel via telephone regarding this motion. Plaintiffs do not consent to the relief sought.

show up and answer questions under oath. That is particularly true in this District. *See* Local Rule 30(A). This Court has repeatedly reminded Plaintiffs of this obligation and the consequences should they continue to fail to meet it. [Dkt. No. 210, pg. 6 ("[Plaintiffs] are going to have to come here to the courthouse in Alexandria to pursue the case that they brought in federal court."); *id.*at 12 ("[Y]our plaintiffs are not going to go forward with the case unless they show up.")].

The need for the Absentee Plaintiffs' depositions is neither new nor novel. The Absentee Plaintiffs filed this case in *2008*. Defense counsel raised the subject of the Plaintiffs' ability to appear for depositions in this country with Plaintiffs' counsel in *July 2012*. CACI PT noticed the depositions of the Absentee Plaintiffs in *December 2012*. The Court issued an Order, in *February 2013*, compelling the Plaintiffs to appear for depositions within 30 days. The Court then extended that deadline. Twice. By any standard, the Court has given the Absentee Plaintiffs generous opportunities to appear for their depositions. Their failure to do so now warrants dismissal of their claims as a sanction for their noncompliance with the Court's Orders.

II. BACKGROUND

Plaintiffs are Iraqi nationals who allege they were mistreated while in United States custody at Abu Ghraib prison. Plaintiffs seek to hold CACI PT liable for any injuries they suffered on a co-conspirator theory.[2] Three of the Plaintiffs, Al Shimari, Rashid, and Al Zuba'e, live in Iraq. [redacted] CACI PT's counsel raised the issue of Plaintiffs' depositions at a

[2] On March 8, 2013, the Court dismissed Plaintiffs conspiracy claims without prejudice. [Dkt. No. 215]. On March 19, 2013, the Court *sua sponte* granted Plaintiffs leave to file a Third Amended Complaint, by March 29, 2013, to attempt to cure the deficiencies in their conspiracy claims. [Dkt. No. 227]. On March 28, 2013, Plaintiffs filed the Third Amended Complaint. [Dkt. No. 251].

meeting concerning discovery and case management issues held on July 18, 2012. At that time, Plaintiffs' counsel assured defense counsel that her clients would appear for depositions in this District and that she was already taking the steps necessary to secure approval for their travel to the United States. Koegel Decl. ¶ 2.

On December 17, 2012, defense counsel asked Plaintiffs' counsel for dates in January 2013 to take the Plaintiffs' depositions in this District. *Id.*, Ex. 1. Plaintiffs' counsel responded that they were "working on" obtaining visas for the Plaintiffs, but that Plaintiffs would not be able to travel to the United States "before March, and possibly later." *Id.*, Ex. 2. Since that was flagrantly inconsistent with Plaintiffs' counsel's prior representation in July 2012 that the steps were already in motion to secure authorization for Plaintiffs' travel to the United States, CACI PT's counsel asked what efforts Plaintiffs had made to appear in the United States for deposition. *Id.*, Ex. 3. Plaintiffs' counsel refused to provide this information. *Id.*

Dissatisfied with Plaintiffs' position, on December 28, 2012, CACI PT served deposition notices for Plaintiffs calling for depositions on January 29, 30, 31, and February 1, 2013. *Id.*, Exs. 4-7. That was, of course, far more notice than the Local Rules require. No good deed, however, goes unpunished. Plaintiffs' counsel responded by stating that Plaintiffs would not appear and that:

> As of this date, all Plaintiffs are scheduled to complete interviews by U.S. officials at their respective U.S. Embassy by January 24, 2013 – a date too close to the proposed depositions to ensure their availability. *We will inform you as soon as we know whether their visas have been granted, and will work to schedule depositions in the Eastern District of Virginia in a time frame reasonably thereafter*.

Id. 8 (emphasis added).[3] Plaintiffs did not live up to their promise.

[3] With respect to Plaintiff Al Ejaili, the representation was false. At a meet and confer session on February 8, 2013, CACI PT's counsel learned that Plaintiff Al Ejaili had actually had

When Plaintiffs failed to appear for properly-noticed depositions, CACI PT moved to compel their depositions. [Dkt. No. 205]. In its motion, CACI PT noted that it had been assured by Plaintiffs' counsel in July 2012 that steps had been taken to ensure that Plaintiffs could travel to the United States for depositions once discovery commenced. [Dkt. No. 199 at ¶ 2]. In response to CACI PT's motion, Plaintiffs claimed, for the first time, that some of them had applied for visas in 2008 but that those applications—well, there is no indication as to what happened with those applications. That is, Plaintiffs have never provided documentation or information to the Court regarding the visas they claim they applied for in 2008 or the disposition of those applications. Worse yet, despite the assurances in July 2012, it is manifest that Plaintiffs and their counsel made no effort to follow up on any 2008 visa applications until December 2012. [Dkt. No. 203].

On February 14, 2013, the Court issued an Order compelling Plaintiffs to appear within 30 days in the Eastern District of Virginia for depositions and medical exams. [Dkt. No. 205]. On February 26, 2013, Plaintiffs' counsel informed defense counsel that the Plaintiffs had received visas and that Plaintiffs were making arrangements to travel to the United States. Koegel Decl., ¶ 4. Due to scheduling issues, the parties made an oral motion on March 8, 2013, and the Court extended the time for Plaintiffs to appear for depositions until the week of March 18, 2013. [Dkt. No. 214, pg. 3]. Depositions and medical examinations were scheduled for each of the Absentee Plaintiffs for that week. Koegel Decl., Ex. 9.

The Friday before their depositions were to occur, Plaintiffs' counsel informed CACI PT's counsel that the Absentee Plaintiffs were not allowed to board a flight to the United States.

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his interview with the United States Embassy in Qatar on or about January 13, 2013, *and that his visa was approved just a day or two after that.* Koegel Decl. ¶ 3. Thus, Plaintiff Al Ejaili had been fully cleared for travel to the United States more than two weeks before the date of his noticed deposition (Koegel Decl., Ex. 6) and he simply chose not to appear.

Id. at ¶ 5. While Plaintiffs' counsel represented that they were "making progress on resolving the bureaucratic issue" that prevented the Absentee Plaintiffs from flying, *id.*, Ex. 10, that was not accurate. [redacted] and Plaintiffs have provided no tangible evidence to the Court of the "progress" claimed by their counsel.

Unsurprisingly, CACI PT then sought information regarding the Absentee Plaintiffs' efforts to obtain entry to the United States. On February 25, 2013, CACI PT served a document request on Plaintiffs seeking their 2008 and 2012 visa applications and related documents. *Id.*, Ex. 27. Plaintiffs refused to produce those documents. *Id.*, Ex. 28. The only reasonable inference from that refusal is that the documents, if they exist, would not verify Plaintiffs' representations or reflect favorably on their efforts to appear for depositions.

After failing to comply with the Court's Order to appear for depositions by the extended deadline, the Absentee Plaintiffs moved on March 22, 2013 to enlarge the time to complete their depositions until April 5, 2013. [Dkt. No. 232]. Most of the information in their memorandum was a surprise to CACI PT, as Plaintiffs' counsel has consistently refused to disclose details concerning their efforts to travel. For example, CACI PT did not learn until Plaintiffs filed their motion that an anonymous Government agency had asserted that a new order from the Court was required to process the Absentee Plaintiffs' application to travel. Nor was CACI PT aware that the Absentee Plaintiffs had to re-apply for visas in March.

On March 27, 2013, the Court granted the Absentee Plaintiffs' motion to enlarge the time to complete their depositions. [Dkt. Nos. 231, 244]. The Order required the Absentee Plaintiffs to make themselves available for depositions and medical examinations within the Eastern District of Virginia no later than April 5, 2013, the date selected by the Absentee Plaintiffs as "a

reasonable deadline." [Dkt. No. 244]. Pursuant to the Court's Order, CACI PT noticed depositions for the Absentee Plaintiffs for April 2, 3, and 4. Koegel Decl., Exs. 11-13. The next day, on March 29, 2013, Plaintiffs' counsel informed the Court that they were not optimistic that the Absentee Plaintiffs would appear by April 5. Immediately after the hearing, Plaintiffs' counsel—feeling less equivocal—informed defense counsel that the Absentee Plaintiffs would not appear for depositions by April 5. *Id.*, Exs. 14-16. That was correct: none of the Absentee Plaintiffs appeared for depositions as ordered by the Court.

III. ANALYSIS

A. The Absentee Plaintiffs Failed to Comply With Court Orders to Appear for Depositions

It is indisputable that the Absentee Plaintiffs have failed to comply with the several Court Orders to appear for their depositions and medical examinations. No sooner did the Absentee Plaintiffs gain their visas from the State Department than another as-yet-unnamed Government agency interceded to block their passage. The probable reasons motivating this administrative rope-a-dope are hardly a mystery. [redacted]

The Absentee Plaintiffs' have argued that they were unable to appear for their depositions and medical examinations because they were denied permission to travel to this country "through no fault of the Plaintiffs or counsel." [Dkt. No. 232, pg. 2]. That is not correct. Plaintiffs' predicament is self-inflicted. First, Plaintiffs were dilatory in their efforts to gain entry to the United States. CACI PT raised the issue of Plaintiffs' depositions in this District with Plaintiffs' counsel in July 2012. Plaintiffs' counsel assured that the wheels were already in motion and that

the Plaintiffs would appear in this District for depositions. There is no evidence in this record that the Absentee Plaintiffs had made any efforts whatsoever to gain entry into the United States. Indeed, the Absentee Plaintiffs have refused to produce any documents relating to their purported 2008 visa applications.

It is equally clear that, once this case returned to this Court, Plaintiffs did absolutely nothing to secure authorization for travel to the United States until December 31, 2012 when they submitted visa applications. And given that the State Department had—in *four years*—not approved the 2008 visa applications Plaintiffs claim to have submitted, the Plaintiffs could not have reasonably believed that their December 2012 visa applications would fare any better—or that they would be granted in expedited fashion. Worse yet, the Plaintiffs never sought a Court Order to facilitate the issuance of visas. [redacted] That is, at best, gross negligence on the part of the Absentee Plaintiffs. [redacted]

[4] [redacted]

[redacted]

[5] [redacted]

[redacted]

B. The Court Should Dismiss the Absentee Plaintiffs' Claims as a Sanction for Failure to Comply with this Court's Discovery Orders

District courts have the authority to dismiss cases under Federal Rule of Civil Procedure 37(b)(2)(A) when a party fails to comply with a discovery order, as well as under Rule 41(b) as part of the courts' "comprehensive arsenal of Federal Rules and statutes to protect themselves from abuse." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 62 (1991). Rule 37(b) provides that the court may "dismiss[] the action or proceeding in whole or in part" if a party "fails to obey an order to provide or permit discovery." Fed. R. Civ. P. 37(b)(2)(A)(v). Likewise, Rule 41(b) provides that the court may dismiss an action "[i]f the plaintiff fails to prosecute or to comply with . . . a court order." A plaintiff's failure to appear for a deposition can warrant dismissal or default. *See, e.g.*, *Rowley v. City of North Myrtle Beach*, 356 F. App'x (4th Cir. 2009); *United States v. Wright*, 1999 U.S. App. LEXIS 16769 (4th Cir. July 19, 1999); *Robinson v. Morgan*, 160 F.R.D. 665, 666 (E.D.N.C. 1995); *Robinson v. Yellow Freight Sys.*, 132 F.R.D. 424, 429 (W.D.N.C. 1990).

In the Fourth Circuit, courts consider and balance four factors in determining what sanctions to impose under Federal Rule of Civil Procedure 37: "(1) whether the non-complying party acted in bad faith, (2) the amount of prejudice that noncompliance caused the adversary, (3) the need for deterrence of the particular sort of non-compliance, and (4) whether less drastic sanctions would have been effective." *Belk v. Charlotte-Mecklenburg Bd. of Educ.*, 269 F.3d

305, 348 (4th Cir. 2001).[6] All four factors point toward the imposition of sanctions, and indeed dismissal with prejudice as an appropriate sanction for Plaintiffs' noncompliance with the Court's Orders that they participate in discovery.

First, the Absentee Plaintiffs' failure to comply with the Court's Orders reflects bad faith as that term is understood in this Circuit.[7] Their effort to enable themselves to appear for depositions—or more correctly their lack of effort—reflects a recklessness and indifference to their obligations in discovery. Clearly, the Absentee Plaintiffs were at best dilatory. Despite knowing that coordinating travel to the United States would be challenging at best and assuring defense counsel that they were taking the necessary steps to ensure they received authorization to enter the country, there is no evidence in the record that Plaintiffs took *any* steps prior to December 2012 to arrange for entry to the United States.

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[6] The standards for dismissal under Rule 37(b)(2) and Rule 41(b) are "virtually the same." *Carter v. Univ. of W. Va. Sys.*, 23 F.3d 400, 1994 WL 192031, at *2 (4th Cir. May 16, 1994) (*per curiam*) (unpublished table decision).

[7] "In this Circuit, bad faith includes willful conduct, where the party 'clearly should have understood his duty to the court' but nonetheless 'deliberately disregarded' it." *Stewart v. VCU Health Sys. Auth.*, 2011 U.S. Dist. LEXIS 153154, at *21 (E.D. Va. Nov. 22, 2011) (quoting *Axiom Res. Mgmt. v. Alfotech Solns., LLC*, 2011 U.S. Dist. LEXIS 69450, at *18-19 (E.D. Va. June 3, 2011) (quoting *Rabb v. Amatex Corp.*, 769 F.2d 996, 999 (4th Cir. 1985))). Noncompliance, or even "haphazard compliance," with court orders represents bad faith. *See, e.g.*, *Mut. Fed. Sav. & Loan Ass'n v. Richards & Assocs.*, 872 F.2d 88, 93 (4th Cir. 1989) (defendants "acted in bad faith by both their noncompliance and their haphazard compliance of three very specific discovery orders"); *Zornes v. Specialty Indus.*, 1998 U.S. App. LEXIS 31686, at *19 (4th Cir. Dec. 21, 1998) (finding bad faith when party sought numerous "eleventh hour extensions" and disregarded discovery deadlines, discovery rules, and the district court's orders). *See also White v. Shoppers Food Warehouse Corp.*, 2013 U.S. Dist. LEXIS 20896 (D. Md. Feb. 14, 2013) (citing *McCloud v. SuperValu, Inc.*, 2013 U.S. Dist. LEXIS 2509 at *8 (D. Md. Jan. 7, 2013) and *Green v. John Chatillon & Sons*, 188 F.R.D. 422, 424 (M.D.N.C. 1998) (commenting that in both *McCloud* and *Green* "the plaintiffs demonstrated bad faith by failing to comply with a single discovery order"). *Cf. Global Hub Logistics v. Tamerlane Global Servs.*, 2013 U.S. Dist. LEXIS 46410, at *17 (E.D. Va. Mar. 29, 2013) (either subjective or objective bad faith is sufficient for sanctions under 28 U.S.C. § 1927) (Lee, J.).

In February, this Court recognized Plaintiffs' failings in this regard, stating, "And I am underwhelmed with the quality of the efforts made here, particularly since this case has been pending so long and discovery opened up in November. And everybody knew you would have to bring them over here, and it takes time to do that." [Dkt. No. 210, pg. 11; *id.* at 14 ("I am underwhelmed with the plaintiffs' efforts to secure visas for the plaintiffs. This case has been pending for almost eight years. Discovery was reopened again in November 2012. And so, these efforts must be expedited.")].

Plaintiffs claim that they applied for visas in 2008. Even if this is true, there is no indication that the Plaintiffs ever took any action to follow up on those applications. This is not a matter of mere paperwork; [redacted] By July 2012, if not much sooner, it should have been clear to Plaintiffs that their efforts over four years had borne no fruit and that they needed further or different action. Instead, they did nothing.

[redacted] That is sufficiently obvious that the Court should take judicial notice of it. Yet Plaintiffs did nothing, absolutely nothing, to address that issue in a timely manner. [redacted]

Moreover, Plaintiffs have been less than candid about their efforts to enter the United States. Despite representing in July 2012 that the process of obtaining visas was well underway, Plaintiffs did not actually apply for visas until December 2012. [Dkt. No. 210 pg. 10-11]. Then, when CACI PT noticed depositions for late January, Plaintiffs' counsel responded that Plaintiffs would not appear on those dates because of the timing of the embassy interview process. *Id.*, Ex. 8. They promised, however, that they would inform defense counsel as soon as they knew if the visas had been granted. *Id.* They didn't. Defense counsel later learned that Plaintiff Al Ejaili had obtained his visa in plenty of time to appear for his duly-noticed deposition, but simply chose not to attend. *Id.* at ¶ 4. When the Court questioned Plaintiffs' counsel about this choice, he demurred that Al Ejaili "was otherwise unavailable for, you know, a long-standing precommitment." [Dkt. No. 210, pg. 10]. Of course, this "long-standing precommitment" was never communicated to CACI PT's counsel, with Plaintiffs opting instead to perpetuate the false impression that Plaintiff Al Ejaili was still awaiting approval of his visa application. Plaintiffs' counsel also never explained why he had failed to communicate this information to defense counsel and, instead, simply proceeded as he pleased with no regard for the Rules.

On this record, there is a compelling basis to conclude that the Absentee Plaintiffs have, over a sustained period, recklessly and deliberately disregarded their obligations to undertake adequate efforts to appear for depositions in discovery.

Second, the prejudice to CACI PT in not being able to depose the Absentee Plaintiffs is manifest and indisputable. The Plaintiffs have made graphic allegations of the most heinous conduct against CACI PT. Their counsel have repeatedly sought to try the case in the media, publicizing the allegations at every opportunity. *See, e.g., Current Cases: Al Shimari v. CACI et al.*, CENTER FOR CONSTITUTIONAL RIGHTS, https://ccrjustice.org/ourcases/current-cases/al-

shimari-v-caci-et-al (last visited April 5, 2013).[8] The case is one of significance, as reflected in the Fourth Circuit determining to rehear the appeal *en banc*. It is a profound statement of the obvious to say that if ever there were a case where plaintiffs need to present themselves for depositions, this is it.

In fact, the depositions of the Absentee Plaintiffs are all the more critical because of the epiphany they experienced in preparing the Third Amended Complaint ("TAC"), filed on March 28, 2013. From the start of this case, CACI PT has emphasized that none of the Plaintiffs alleged that they had any contact with anyone employed by CACI PT. The Court referenced this in dismissing Plaintiffs' conspiracy claims. Now, ten years after they were detained at Abu Ghraib and five years after they filed this action, Plaintiffs allege for the first time in the TAC that they were abused by personnel employed by CACI PT. Putting aside that in their sworn interrogatory answers the Absentee Plaintiffs stated that they could not identify their abusers, CACI PT very much needs to question the Absentee Plaintiffs about their newly minted allegations. The Absentee Plaintiffs' depositions would also inform CACI PT's decisions regarding all manner of discovery in this case. For example, these depositions will impact CACI PT's use of experts, deposition strategy, and the discovery requests from the government.

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[8] *See also Court Rules Abu Ghraib Torture Victims Can Sue Contractor CACI, According to Legal Team for Former Detainees*, BLOOMBERG (Mar. 19, 2009), http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aWwzS.jhxGhg; Kevin Osbourne, *'Sorry' Men abused at Abu Ghraib seek justice with help of Cincinnati lawyer*, CITY BEAT (July 2, 2008), http://www.citybeat.com/cincinnati/article-4443-news_sorry.html; David Dishneau, *Abu Ghraib Inmates Sue Contractors, Claim Torture*, THE ASSOCIATED PRESS (July 1, 2008), *available at* http://usatoday30.usatoday.com/news/nation/2008-06-30-3312317998_x.htm; *Update: First Abu Ghraib Torture Trial Against Private Military Contractor CACI to Proceed*, CENTER FOR CONSTITUTIONAL RIGHTS, http://ccrjustice.org/update%3A-first-abu-ghraib-torture-trial-against-private-military-contractor-caci-proceed (last visited April 5, 2013). *Press Release: CCR Files Four New Abu Ghraib Torture Lawsuits Targeting Military Contractors in US Courts*, CENTER FOR CONSTITUTIONAL RIGHTS (June 30, 2008), *available at* http://www.commondreams.org/cgi-bin/print.cgi?file=/news2008/0630-06.htm.

This Court recognized as much in the February 14, 2013 hearing, stating, "I understand your position about staging discovery and wanting to depose the plaintiffs first, that seems like a prudent course to me, before you decide what experts you are going to retain and what other investigation you are going to do." [Dkt. No. 210, pg. 7]. The Court also clarified that "we're not going to have the plaintiffs deposed at the end of the discovery period." [Dkt. No. 210, pg. 11 (further stating, "This is their lawsuit, they chose to bring it here in federal court, and they have to be made available."). Consistent with the federal and local rules protecting CACI PT's due process rights, this Court has already made clear that such an outcome would be fatal to the Absentee Plaintiffs' claims. [Dkt. No. 210, pg. 12 ("[Y]our plaintiffs are not going to go forward with the case unless they show up.")].[9]

Third, grossly inadequate efforts to participate in discovery, non-compliance with the Court's Orders, and a lack of candor with respect to a party's ability to participate in the discovery process certainly need to be deterred. *See Belk*, 269 F.3d at 348. The Absentee Plaintiffs have shown utter disregard for the Court's scheduling order. Plaintiffs originally suggested—and, of course, now it has come to pass—that they would not appear for depositions until the end of March or even April, despite the fact that the last day to send out written discovery was March 25th and discovery is set to close on April 26th. [Dkt. No. 210, pg. 14]. The Court was particularly troubled by Plaintiffs' assumption that they could simply seek to

[9] The Court's conclusion that Plaintiffs must appear within the Eastern District of Virginia to prosecute their claims is now law of the case. *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 815-16 (1988) (The doctrine of the law of the case "posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.") (citing *Arizona v. California*, 460 U.S. 605, 618 (1983) (dictum)). As such, Plaintiffs are prevented from re-litigating the issue. 1B J. Moore, J. Lucas, & T. Currier, Moore's Federal Practice P0.404[1], p.118 (1984) (This rule of practice promotes the finality and efficiency of the judicial process by "protecting against the agitation of settled issues.").

extend discovery to accommodate for their lack of participation, and admonished that they "should not assume that [they] are going to get an extension." [*Id.*].

This admonition went in one ear and out the other. In their most recent request for an extension, the Absentee Plaintiffs sought an order to enlarge the time by which they needed to appear for depositions to April 5, but anticipated that they would not be able to comply with this order and so peremptorily informed the Court that they would likely seek yet another, subsequent enlargement. [Dkt. No. 232, pg. 6]. To be clear, after flouting the scheduling order and failing to comply with the Court's first Order compelling their appearance, Plaintiffs have requested and obtained a second Order compelling their appearance with which they *knew* they could not comply. This audacious disregard for discovery rules and this Court's Orders (including the Scheduling Order, the February 14, 2013 Order as modified, the March 27, 2013 Order) is unacceptable conduct that the Court should not countenance.

Finally, there is no less drastic sanction for this situation. CACI PT cannot defend itself against the allegations of phantom plaintiffs, plaintiffs who refuse to appear for depositions and seek to excuse that failure because [redacted] The Absentee Plaintiffs' allegations, their credibility, and their evidence—all vital to CACI PT's preparing a defense—cannot be tested and explored without their depositions.

The message should be clear: [redacted] who choose to bring suit in a federal court of the United States are not immune from the rules of discovery or court orders compelling discovery merely because [redacted]

Absentee Plaintiffs nonetheless chose to file suit within the United States. With that prerogative came obligations to participate fully in the discovery process. It would be perverse indeed to allow foreign plaintiffs to avail themselves of the United States judicial system without requiring that they comply with the rules and Court orders of that system.

IV. CONCLUSION

For the foregoing reasons, the Court should grant CACI PT's motion for sanctions and dismiss the Absentee Plaintiffs' claims with prejudice. The Court also should order the Absentee Plaintiffs to reimburse CACI PT for the costs of the expert examinations scheduled at the Absentee Plaintiffs' request and cancelled due to their failure to appear, as well as the cost of the translators hired for the Absentee Plaintiffs' examinations and depositions. Finally, the Court should award CACI PT attorneys' fees and costs associated with this motion.

Respectfully submitted,

/s/ J. William Koegel, Jr.

J. William Koegel, Jr.
Virginia Bar No. 38243
John F. O'Connor (admitted *pro hac vice*)
Linda C. Bailey (admitted *pro hac vice*)
Counsel for Defendants CACI Premier Technology, Inc.
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000 – telephone
(202) 429-3902 – facsimile
wkoegel@steptoe.com
joconnor@steptoe.com
lbailey@steptoe.com

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of April, 2013, I will serve the non-public version of the foregoing by electronic mail on the below-listed counsel. Also on April 5, 2013, I will electronically file the public version of 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:

George Brent Mickum IV
Law Firm of George Brent Mickum IV
5800 Wiltshire Drive
Bethesda, Maryland 20816
gbmickum@gmail.com

Susan L. Burke
Attorneys for Plaintiff
Burke PLLC
1000 Potomac Street, N.W.
Washington, D.C. 20007
(215) 487-6596 – telephone
sburke@burkeoneil.com

/s/ J. William Koegel, Jr.

J. William Koegel, Jr.
Virginia Bar No. 38243
Attorney for Defendant CACI Premier Technology, Inc.
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000 – telephone
(202) 429-3902 – facsimile
wkoegel@steptoe.com