

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

SHANE M. GATES

VERSUS

JUDGE RICHARD SWARTZ,
WALTER P. REED, ADA NICHOLAS
F. NORIEA, JR., CLERK OF COURT-
ST TAMMANY, MARIE-ELISE
PRIETO, STPSO SHERIFF RODNEY
"JACK" STRAIN, CAPTAIN
SHERWOOD, KATHRYN LANDRY,
THE OFFICE OF THE CLERK OF
COURT OF ST. TAMMANY,
LOUISIANA ATTORNEY GENERAL
JAMES D. "BUDDY" CALDWELL,
THE OFFICE OF THE LOUISIANA
ATTORNEY GENERAL, THE
OFFICE OF WALTER P. REED
DISTRICT ATTORNEY FOR THE
PARISH OF ST TAMMANY, ADA
RONNIE GRACIANETTE, JOHN
AND JANE DOES OF THE PARISH
AND STATE OFFICES NAMED, AND
TRAVELERS-ST PAUL INSURANCE
COMPANIES

CIVIL RIGHTS: 42 U.S.C. § 1983
ACTION AS TO TREASON

CASE NO:
3:13-cv-00505

JUDGE:
HONORABLE JAMES J. BRADY

MAG. JUDGE:
STEPHEN C. RIEDLINGER

JURY TRIAL

**MEMORANDUM IN SUPPORT OF MOTION FOR CHANGE OF VENUE PURSUANT
TO 28 U.S.C. § 1404 AND ALTERNATIVELY, MOTION TO DISMISS FOR
INSUFFICIENT SERVICE OF PROCESS PURSUANT TO FRCP 12(b)(5)**

MAY IT PLEASE THE COURT:

Shane Gates was to proceed to trial on charges of driving while under the influence of alcohol (DUI) and resisting arrest on August 12, 2013 before the Honorable Richard Swartz, Judge of the 22nd Judicial District Court in St. Tammany Parish. In a blatantly obvious attempt to derail this criminal trial, which has already been the subject of numerous delays and

continuances prompted almost exclusively by Mr. Gates' counsel, Mr. Gates filed a forty (40) page Complaint pursuant to 42 U.S.C. § 1983 in this Court on August 5, 2013, one week before the criminal trial date. There is pending and presently stayed, a civil action brought pursuant to 42 U.S.C. § 1983 in the United States District Court for the Eastern District of Louisiana, before the Honorable Stanwood Duval, having as a factual basis the arrest of November 16, 2006, which likewise provides the basis for the aforementioned prosecution for DUI and resisting arrest. Judge Duval has stayed the pending action in his court for the sole purpose of awaiting the outcome of the aforementioned criminal proceeding in St. Tammany Parish. (See attached docket sheet from the Eastern District of Louisiana attached as Exhibit "A"). Pursuant to 28 U.S.C. § 1404, this Court should order this matter be transferred to the United States District Court for the Eastern District of Louisiana where it can be consolidated with the already pending 42 U.S.C. § 1983 action arising out of the same operative facts.

FACTUAL BACKGROUND

On November 16, 2006, Shane Gates was involved in a high-speed chase on Interstate 12 in St. Tammany Parish with deputies of the St. Tammany Parish Sheriff's Office. Gates' arrest, that is the subject of the pending litigation in the Eastern District of Louisiana, led to Mr. Gates being charged with a felony bill of information on January 24, 2007, and included the offense of La. R.S. 14:108.1, aggravated flight from an officer, as well as a misdemeanor bill of information on one count of the offense of La. R.S. 14:98, operating a vehicle while intoxicated (DUI).

Thereafter, criminal defense counsel approached the District Attorney's office with regards to dismissal or diversion of the felony charge pursuant to La. R.S. 14:108.1 and a guilty plea to the misdemeanor violation in order to maintain the Defendants possible entry into law

school. The policy of the District Attorney's office is to consider the position of victims with such requests. As a result, the District Attorney's Office informed criminal defense counsel to speak with the Sheriff's office. Thereafter, the District Attorney's Office was informed that the officers at issue wanted to pursue charges against the Defendant, including a charge of resisting an officer in violation of La. R.S. 14:108.1; a charge that Mr. Gates received a summons for on the night of arrest. As a result, pursuant to its powers, duties, and immunity under La. C. Cr. P. art. 61, the District Attorney's office reviewed the report and position of the officers and included a charge of resisting an officer pursuant to La. R.S. 14:108.

On October 17, 2007, Shane Gates filed a "Complaint for Damages under 42 U.S.C. § 1983, *et seq.*, under 45 C.F.R. 164.513 ("HIPAA"), pendent state law claims, and a claim for injunctive relief to prevent bad-faith prosecution" in the United States District Court for the Eastern District of Louisiana which Complaint is attached hereto as Exhibit "B". The events of November 16, 2006 that prompted the above-referenced lawsuit are the same events that form the basis of the Complaint filed in this Honorable Court on August 5, 2013. Many of the Defendants in the Original 42 U.S.C. § 1983 proceeding in the Eastern District are also named in the recently filed proceeding before this Court including:

1. St. Tammany Parish District Attorney, Walter Reed;
2. St. Tammany Parish Sheriff, Rodney "Jack" Strain;
3. The St. Tammany Parish District Attorney's Office; and
4. St. Paul – Traveler's Insurance Company.

Because the ongoing state court criminal proceedings necessarily had implications for the 42 U.S.C. § 1983 matter, Defendants filed a Joint Motion to Stay proceedings, as a conviction in the state court criminal proceeding could render moot Plaintiff's 42 U.S.C. § 1983 lawsuit as

*Heck v. Humphrey*¹ would potentially bar Plaintiff's claims against the Defendants. On April 17, 2008 after full briefing and oral argument before the Court, Judge Duval stayed the 42 U.S.C. § 1983 proceeding "pending resolution of the criminal charges in the Twenty-Second Judicial District Court against Plaintiff, Shane M. Gates or until such time as the Court, on motion of a party, lifts this stay." (See attached Order as Exhibit "C").

Despite this clear Order from the Court five years ago, Gates has several times attempted to have the civil stay lifted prior to the completion of all criminal charges in the 22nd Judicial District Court and fought "tooth and nail" to prevent the criminal proceeding from being fully adjudicated in state court. The efforts to which Gates has gone to prevent the full adjudication of his criminal charges is reflected in the minute entries attached hereto as Exhibit "D" *in globo*. These minute entries reflect fifteen continuances of various motions and trial settings and at least three continuances due to Gates and his counsel not being present in court. Gates attempted an En Banc Recusal of the Judges of the 22nd Judicial District Court, which was ultimately denied by Ad Hoc Judge Robert Burns. The minutes reflect numerous recusals of various Judges of the 22nd Judicial District Court, and inclusive of the aforementioned Ad Hoc judge assignment, this matter has been before at least six (6) different Judges of the 22nd Judicial District Court. With the recent recusal of Judge Swartz prompted by the Complaint pending before this Court, this prosecution will be allotted to the seventh (7th) separate Judge to preside over this criminal proceeding. Gates counsel has sought recusal of the District Attorney's Office (which was denied), has moved to continue the trial on multiple occasions and filed dozens of discovery and other defense motions. The minute entry dated August 12, 2013 and the transcript of proceedings of the state case attached hereto as Exhibit "E", reflect that Judge Swartz recused himself because of the Complaint filed with this Court, but made clear the Complaint was

¹ 512 U.S. 477, 114 S. Ct. 2364 (1994).

without merit, and that he intended to sanction Gates counsel. The Complaint before this Court is yet another hurdle Gates has attempted to use to frustrate the normal judicial process.

On March 17, 2011, Gates filed a Motion to Re-Open the 42 U.S.C. § 1983 action which after oral argument was denied by Judge Duval on July 11, 2011. (See attached Order as Exhibit “F”).

On August 4, 2012, Gates yet again attempted to have the stay order lifted, alleging that a twelve (12) person St. Tammany Parish Jury found Gates not guilty of the underlying criminal allegations. However, what was not made clear to the Court was that the DUI and resisting arrest charges in fact were not adjudicated in state court. The court lifted the stay order based on Gates’ representations that all criminal proceedings had been completed and before the Defendants could file oppositions to this premature effort to lift the stay. The Defendants filed a Joint Motion for Re-Hearing pursuant to F.R.C.P. 60. On October 10, 2012, the Court vacated its order reopening the case when made aware that the criminal proceedings against Mr. Gates were far from complete. The Court specifically noted:

Neither the motion to reopen nor the Plaintiff’s memorandum in support of that motion indicated that criminal charges remained pending against Mr. Gates. Had the Court known that the misdemeanor criminal charges against Mr. Gates were still pending, it would have denied the motion to reopen. Therefore, the Court grants Defendants’ joint motion for rehearing with respect to its order reopening this matter.

(See attached Order and Opinion p. 3 as Exhibit “G”).

The Court concluded its order by stating: “Upon dismissal of the pending criminal charges for resisting an officer or Mr. Gates’ acquittal on the charges, Plaintiff may file a motion to reopen this matter.”

Rather than proceed with trial on August 12, 2013 on the resisting arrest charge, Mr. Gates used the Complaint filed with this Court as a tool to derail the legitimate proceedings in

state court that Judge Duval has made clear must go forward before Gates pursues his 42 U.S.C. § 1983 action in the Eastern District of Louisiana.² On the morning of the criminal trial, Judge Swartz stated on the record that he felt that he had no choice but to recuse himself.

The depth and scope of Gates' efforts to forestall the trial of his DUI and resisting arrest charges is reflected in the numerous motions, writ applications and pleadings filed in state court. It becomes obvious that having exhausted his options in the criminal proceeding, and arriving at the eve of trial for his remaining criminal charges and rather than go back to Judge Duval who no less than three times has stayed the 42 U.S.C. § 1983 action, Gates chose to file the scorched earth, highly personal attack before this Court otherwise captioned "Original Complaint".

All of the evidence, actions and proceedings complained of in the underlying 42 U.S.C. § 1983 action pending in the United States District Court for the Eastern District of Louisiana pertain to St. Tammany Parish. All the potential witnesses are in St. Tammany Parish or at least within the Eastern District of Louisiana, other than possibly one or two individuals from the Attorney General's office and attorney Kathryn Landry. Judge Duval of the Eastern District has presided over the 42 U.S.C. § 1983 case for five (5) years and is intimately familiar with the facts and legal issues. Every named Defendant in the matter filed in this Court is located in the Eastern District of Louisiana save Kathryn Landry and Attorney General James D. "Buddy" Caldwell and his office, who obviously are sued to establish venue in the Middle District. The conclusory allegations against the Attorney General and his office are found on pages 3 and 15-16 of the Complaint. A heading in the Complaint on page 27 is titled: "Judge Swartz Involvement and Complicity in Actions of District Attorney and the Louisiana Attorney General's Office", yet there are no facts plead whatsoever pertaining to the Attorney General's

² It is also worth noting that in the Civil Cover Sheet filed with this Court, Gates did not disclose the 42 U.S.C. § 1983 matter pending before Judge Duval in the Eastern District of Louisiana. (See Rec. Doc. 2)

Office in this section. Throughout the Complaint, Gates makes clear that the underlying facts/actions have taken place in St. Tammany Parish. Gates states that “these constitutional violations of the rights of Gates and numerous others in the parish of St. Tammany and the State of Louisiana are crimes.” (*See* p. 7 of Complaint).

Similar conclusory allegations as against attorney Kathryn Landry are set out in paragraphs 66-78 of the Complaint. Gates sets out allegations that Ms. Landry has her facts wrong, and has made allegations that the arguments made by Ms. Landry were premised on altered state court criminal records. Gates sets forth no specific facts that Ms. Landry had any involvement or knowledge of this alleged alteration of court records. Rather, Gates makes such allegations based on pure conjecture and speculation stating that “change was made right at the time Landry’s brief went the (sic) the First Circuit and then to the Supreme Court.” The Complaint lacks any specific facts of Ms. Landry doing anything which would justify venue in the Middle District via the actions of Ms. Landry.

The summary of events and prosecutions on pages 8-10 and 17-29 pertain to events in St. Tammany Parish and the Eastern District of Louisiana. Although in Gates venue statement it is alleged in a conclusory fashion that “[v]iolations and actions took place within the parish of East Baton Rouge and St. Tammany, Louisiana ...,” the Complaint is devoid of any facts that anything took place in East Baton Rouge Parish or that Kathryn Landry or the Attorney General did anything that would justify being made defendants to this proceeding.

LAW AND ARGUMENT

Change of venue within the Federal District Courts is governed by 28 U.S.C. § 1404, which states:

§ 1404 Change of venue

- (a) For the convenience of parties and witness, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.

The United States Fifth Circuit Court of Appeals recently addressed venue transfer in *In Re RedMax, Ltd.*, 13-40462 (5th Cir. 6/18/13) 720 F.3d 285. The court recited the eight-factor test used in such an analysis, referring back to an earlier decision of the Fifth Circuit in *In Re Volkswagen of Am., Inc.* (“*Volkswagen II*”), 545 F.3d 304, 315 (5th Cir. 2008) (*en banc*), in which the test was set out as follows:

A motion to transfer venue pursuant to § 1404(a) should be granted if “the movant demonstrates that the transferee venue is clearly more convenient,” taking into consideration (1) “the relative ease of access to sources of proof”; (2) “the availability of compulsory process to secure the attendance of witnesses”; (3) “the cost of attendance for willing witnesses”; (4) “all other practical problems that make trial of a case easy, expeditious and inexpensive”; (5) “the administrative difficulties flowing from court congestion”; (6) “the local interest in having localized interest decided at home”; (7) “the familiarity with the law that will govern the case”; (8) “the avoidance of unnecessary problems of conflicts of laws [or in] the application of foreign law.”

Volkswagen II, 545 F.3d at 315.

Although these factors are appropriate for most transfer cases, they are not necessarily exhaustive or exclusive. Moreover, the Fifth Circuit has noted that “none . . . can be said to be of dispositive weight.” *Volkswagen II*, 545 F.3d at 315 (citing *Action Indus., Inc. v. U.S. Fid. and Guar. Corp.*, 358 F.3d 337, 340 (5th Cir. 2004)). Thus, while a Plaintiff has the privilege of filing his claims in any judicial division appropriate under the general venue statute, § 1404(a) tempers the effects of the exercise of this privilege. *Volkswagen II*, 545 F.3d at 313. Section 1404(a) requires only that the transfer be “[f]or the convenience of the parties, in the interest of justice.” *In Re Volkswagen II*, 545 F.3d at 314, (citing *Veba-Chermie A.G. v M/V Getafix*, 711 F.2d 1243, 1247 (5th Cir. 1983)).

This motion to transfer has been filed promptly. In fact, it has been filed prior to service of a Summons and before any other responsive pleadings have been filed.³ Applying the factors set out by the Fifth Circuit in *Volkswagen II*, transfer of this matter to the Eastern District is warranted. When the movant demonstrates that the transferee venue is clearly more convenient, it has shown good cause and the District Court should therefore grant the transfer. *Volkswagen II*, 545 F.3d at 315.

Defendants now turn to the eight factors:

(1) The Relative Ease of Access to Sources of Proof

All of the documents maintained by the St. Tammany Parish District Attorney, the St. Tammany Parish Sheriff, Judge Swartz and the St. Tammany Parish Clerk of Court are located in the Eastern District of Louisiana. Any medical records pertaining to Mr. Gates are likewise found in the Eastern District of Louisiana and most certainly not in the Middle District of Louisiana. Involvement of the Attorney General's Office has been limited and is otherwise non-existent at the present. The Louisiana Attorney General has appeared in the 42 U.S.C. § 1983 proceeding in the Eastern District to quash subpoenas issued to judges of the 22nd Judicial District Court for the Parish of St. Tammany. The Attorney General's Office is not involved in the current prosecution of Mr. Gates pending in the 22nd JDC. To the extent the Attorney General has any documents pertaining to Shane Gates, same are not physical evidence or significant sources of proof such as that in the possession of the St. Tammany-based defendants, the extensive criminal court record in St. Tammany Parish as well as the civil record in the

³ It is noted that only the Attorney General, Kathryn Landry and Travelers-St. Paul Insurance Company are Defendants that establish venue within the Middle District of Louisiana. The Attorney General and Travelers-St. Paul Insurance Company are movers herein. Kathryn Landry and the St. Tammany Parish District Attorney have made clear that they have no objection to this motion to transfer venue to the Eastern District of Louisiana (See attached correspondence of September 11, 2013 from Kathryn Landry as Exhibit "H"). Thus, all Defendants which would establish venue in this Court have requested or have no objection to that matter being transferred to the Eastern District of Louisiana.

Eastern District of Louisiana. The physical evidence pertaining to Gates' arrest, the court transcripts and records, many of the medical records and virtually all other sources of proof are in St. Tammany Parish. This factor weighs significantly in favor of transfer.

(2) Availability of Compulsory Process to Secure the Attendance of Witnesses

All Defendants and witnesses likely reside within 100 miles of the Middle District. That said, most of the individually named Defendants and witnesses likely reside closer to the Eastern District in New Orleans. As such, this factor is neutral at best for the Plaintiff.

(3) The Cost of Attendance for Willing Witnesses

Travel to the Middle District for the majority of the named Defendants and witnesses is further than travel to the Eastern District of Louisiana. The inconvenience to witnesses is increased because of the additional distance to travel. The Fifth Circuit has likewise made clear that even for an inter-district transfer within 100 miles, that costs for witnesses should still be factored into the venue transfer analysis. *In Re RedMax, Ltd.*, 720 F.3d at 289. The distance from Covington to the Eastern District is approximately 40 miles. The distance from Covington to the Middle District is approximately 70 miles. This results in additional costs for witnesses and increases the time in which these witnesses must be away from their regular employment and/or their homes.

In addition to the individuals named as Defendants, several employees of the clerk of court, including docket clerks for the Louisiana 22nd Judicial District Court where Mr. Gates is prosecuted, could potentially be witnesses. As well, staff from the St. Tammany Parish District Attorney and Sheriff's offices, including the deputies involved in the arrest, (Nathan Miller, Robert Gottardi and Brian Williams), as well as attorney, Chuck Hughes, whose office is in Mandeville, Louisiana and a representative of Louisiana Heart Health Hospital in LaCombe and

nurse Phillip Duiett, could all be witnesses. The only witnesses in the Middle District might be one (1) to two (2) individuals with the Attorney General's Office and Defendant Kathryn Landry who has her office in East Baton Rouge Parish and has represented the District Attorney's Office in the 42 U.S.C. § 1983 proceeding in the Eastern District of Louisiana as well as in the context of the state court criminal proceeding. This factor weighs in favor of transfer.

(4) All Other Practical Problems that Make Trial of the Case Easy, Expeditious and Inexpensive

As previously stated, since 2007, a 42 U.S.C. § 1983 action against substantially the same Defendants has been pending before Judge Duval in the Eastern District of Louisiana. Despite the fact that this matter is stayed pending the outcome of the criminal proceeding in state court, there have been 197 docket entries, numerous pleadings filed and several hearings in the matter before Judge Duval. (See attached Exhibit "A") Judge Duval is very familiar with the factual background forming the basis of not only the § 1983 matter before him, but by extension, the allegations set out in this Complaint. The Complaint before this Court is chock full of scorched earth, highly personal attacks on the Defendants and was successful in providing yet another recusal of a Judge and yet another continuance of trial. There can be little doubt that when comparing the § 1983 Complaint filed in the Eastern District with the present matter, that to a great extent it all arises out of the same operative facts. In the original § 1983 action, Mr. Gates alleged unlawful arrest and charges, asserts that the Sheriff and District Attorney engaged in malicious prosecution and abuse of process and that the Defendants conspired in their actions. In the present § 1983 Complaint, Mr. Gates alleges that the District Attorney in St. Tammany Parish, the St. Tammany Parish Clerk of Court and the bench in St. Tammany Parish have conspired against him, committing a "fraud upon the court." Gates essentially alleges that the named Defendants have committed crimes against him in the pursuit of the criminal prosecution.

In both lawsuits, Gates seeks “injunctive relief to prevent bad faith prosecution.”⁴ In both complaints, Gates asserts that evidence has been destroyed, altered or fabricated. The duplication in the lawsuits is evident in the enumerated § 1983 violations, including:

1. Concerted unlawful and malicious subsequent arrests and charges;
2. Sheriff, clerk of court and district attorneys malicious prosecution;
3. A § 1983 conspiracy cause of action;
4. A § 1983 count alleging liability of the district attorney and his office. (In the most recent Complaint, Gates joins the clerk of court in this count); and
5. Both Complaints set out due process and equal protection violations.

Although new facts are alleged in the recently filed Complaint before this Court due to a significant passage of time since the first filing in 2007 in the Eastern District, the factual predicate for both Complaints is essentially the same. It would serve judicial economy, would avoid the possibility of inconsistent decisions on the same matters of fact and law and certainly will be less expensive to have both these matters pending before Judge Duval in the Eastern District of Louisiana. As a practical matter, Judge Duval is already familiar with the underlying facts of this matter and to allow two substantially similar lawsuits to proceed in separate courts generates significant risks of conflicting decisions and outcomes, which could in turn cause significant confusion for the respective parties to this proceeding.

It is also noteworthy that the case is in its very earliest stages. No trial date has been set in the matter before this Court and discovery has not commenced. The matter in the Eastern District is likewise in its early stages, having been stayed awaiting the outcome of the criminal proceeding in St. Tammany Parish. Thus, there is no impediment to the expeditious and

⁴It should be noted that Judge Duval in the Original Complaint has declined to stay the state court criminal proceedings.

inexpensive transfer of this matter to the Eastern District of Louisiana. This factor strongly weighs in favor of transfer.

(5) The Administrative Difficulties Flowing from Court Congestion

Pending in the Middle District are about 1,100 active civil cases, with three sitting District Judges and two (2) Magistrate Judges. Sitting in the Eastern District are sixteen (16) District Judges and five (5) Magistrate Judges with approximately 7,500 active civil cases pending. This factor would appear to be neutral, particularly considering that a related case is pending in the Eastern District of Louisiana.

(6) The Local Interest in Having Localized Interests Decided at Home

There is a local interest in the Eastern District in having this matter addressed within the Eastern District. The underlying incident and subsequent prosecution all took place in the Eastern District of Louisiana. Most of the Defendants named in the lawsuit and virtually all of the anticipated witnesses are found in the Eastern District of Louisiana as has been previously set forth in this memorandum in support. The Plaintiff resides in the Eastern District. The Attorney General has no current active role in the criminal prosecution. In short, there is no relevant factual connection to the Middle District and this factor weighs in favor of a transfer.

(7) The Familiarity of the Forum with the Law that Will Govern the Case

Both districts are equally capable of applying the relevant law and, as such, it is respectfully submitted that this factor is neutral.

(8) The Avoidance of Unnecessary Problems of Conflicts of Laws or in the Application of Foreign Law

This factor has no bearing on the transfer analysis and as such, this factor is neutral.

In sum, there are at least four (4) factors that favor transfer, three (3) that are neutral and one (1) that is of no bearing in the analysis. It is respectfully submitted that the Defendants have

met their burden under 28 U.S.C. § 1404(a) of showing that for the convenience of the parties and the witnesses and in the interests of justice, transfer of this matter to the Eastern District of Louisiana is warranted. The convenience to the parties and the witnesses, and the interest of justice, would be better served by having all the federal claims with their genesis in the arrest of Shane Gates on November 16, 2006, being litigated in the Eastern District of Louisiana.

**Alternatively, Gates' Complaint should be dismissed for
Insufficient Service of Process Pursuant to FRCP 12(b)(5)**

Gates filed his Complaint on August 5, 2013, but to date has not requested that any summons be issued, let alone accomplished service of process pursuant to FRCP 4. It becomes apparent that the purpose of this Complaint was to force Judge Swartz of the Louisiana 22nd Judicial District Court to recuse himself, force yet another trial continuance of the criminal proceedings and otherwise prevent the prosecution of Mr. Gates in state court. The failure to request any service whatsoever speaks volumes. Not wanting to waive the defense of insufficient service of process pursuant to FRCP 12(h), Defendants, hereby respectfully suggest to the Court that as an alternative argument, there has been insufficient service of process upon these Defendants and that the matter should be dismissed.

CONCLUSION

Considering the above and foregoing, it is respectfully requested that this Court transfer this matter pursuant to 28 U.S.C. § 1404 to the Eastern District of Louisiana. Alternatively, Defendants respectfully request that an order of dismissal should be entered for insufficient service of process pursuant to FRCP 12(b)(5).

Respectfully submitted,

/s/ Mark E. Hanna

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served on all counsel of record via the Court's CM/ECF system, this 13th day of September, 2013.

/s/ Mark E. Hanna