Parents, Families, and Friends of Lesbians and Gays, Inc. et al v. Camdent...l School District et al Doc. 34

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

PARENTS, FAMILIES, AND FRIENDS OF LESBIANS AND GAYS, INC., et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Case No. 2:11-cv-04212**
	)	
CAMDENTON R-III SCHOOL DISTRICT, et al.,	)	
	)	
Defendants.	)	

DEFENDANTS' SUGGESTIONS IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT WITH PREJUDICE

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COME NOW Defendants Camdenton R-III School District ("District") and Timothy E. Hadfield, in his individual and official capacity, by and through their undersigned counsel, and pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6), hereby submit their Suggestions in Support of their Motion to Dismiss Plaintiffs' First Amended Complaint with Prejudice. In support of their Motion, Defendants state as follows:

Introduction

The Camdenton R-III School District complies with federal law requiring the protection of children from harmful material on the Internet. The District also respects the rights of its students to receive information and does not discriminate, nor tolerate discrimination, against its students.

For the reasons stated herein, Plaintiffs lack standing to assert their claims against the District, their claims have been rendered moot, and they face insuperable bars to recovery. Accordingly, this lawsuit must be dismissed with prejudice.

Standard of Review

Federal Rule of Civil Procedure 12(b)(1) permits the Court to dismiss a complaint for lack of subject matter jurisdiction. This case must be dismissed as no live case or controversy exists between the parties and thus, this Court does not have jurisdiction over this matter. "Federal courts only have jurisdiction to hear actual cases and controversies." *County of Mille Lacs v. Benjamin*, 361 F. 3d 460, 463 (8th Cir. 2004) (citing U.S. Const. art. III § 2 cl. 1). The requirement that a case involve an actual, ongoing controversy extends throughout the pendency of an action. *See Preiser v. Newkirk,* 422 U.S. 395, 401 (1975).

Federal Rule of Civil Procedure 12(b)(6) permits the Court to dismiss a complaint for failure to state a claim upon which relief can be granted. To survive a motion to dismiss, the complaint must contain enough allegations of fact "to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007). "Where the allegations show on the face of the complaint there is some insuperable bar to relief, dismissal under Rule 12(b)(6) is appropriate." *Benton v. Merrill Lynch & Co.,* 524 F.3d 866, 870 (8th Cir. 2008). "[D]ismissal under Rule 12(b)(6) serves to eliminate actions which are fatally flawed in the legal premises and designed to fail, thereby sparing litigants the burden of unnecessary pretrial and trial activity." *Young v. City of St. Charles,* 244 F. 3d 623, 627 (8th Cir. 2001) (citing *Neitzke v. Williams,* 490 U.S. 319, 326-27 (1989)).

Argument

The District is required under the Children's Internet Protection Act ("CIPA") to block online images that constitute obscenity, child pornography, and material that is "harmful to minors". 47 U.S.C. § 254 (h)(5)(B). In order to comply with CIPA, the District blocks certain categories of web material through the use of customized Internet filtering software. *See* Affidavit[1] of Defendant Timothy E. Hadfield ("Hadfield Aff.") at ¶ 5, attached hereto as **Exhibit A**, and incorporated herein by reference; *see also* Affidavit of Randal Cowen ("Cowen Aff.") at ¶ 6, attached hereto as **Exhibit B**, and incorporated herein by reference. One of the categories which the District blocks is web material that falls under the category of "sexuality". *See* Hadfield Aff. at ¶ 6; Cowen Aff. at ¶ 7. This category is intended to capture inappropriate material not captured by the District's filters which block pornography and adult material. *See*

[1] As Defendants are challenging the subject matter jurisdiction of this Court pursuant to FRCP 12b(1), the Court can consider matters raised outside of the pleadings. *See, e.g., Osborn v. U.S.,* 918 F.2d 724 (8th Cir. 1990).

Hadfield Aff. at ¶ 7; Cowen Aff. at ¶ 8. The District does not block the categories of "LGBT", "Gay or Lesbian or Bisexual Interest," "Alternative Lifestyles", or "Social Issues". *See* Hadfield Aff. at ¶ 8; Cowen Aff. at ¶ 9.

Due to the dynamic nature of the Internet, some websites which are appropriate for access by District students are blocked by the filtering software. Accordingly, the District has had a practice in place since 2004 which allows students to make an anonymous electronic request that a website which has been blocked by the filter be unblocked for access by District students. *See* Hadfield Aff. at ¶ 10; Cowen Aff. at ¶ 14. To further ensure an easy and discernable process is in place for students to request that particular websites be unblocked, the District's Board of Education revised its Board Policies to clarify its practices and to provide alternative avenues for District students and employees to make requests for access to particular websites. *See* Hadfield Aff. at ¶ 13, and action of the Board of Education attached thereto as Exhibit 1 and Board Policies EHB-AP and IIAC-R attached thereto as Exhibit 2.

The Plaintiffs in this lawsuit cannot demonstrate that a live case or controversy exists in this matter in order to challenge the District's practices and procedures regarding how it filters material on the Internet. Article III of the United States Constitution "requires that there be a live case or controversy at the time that a federal court decides the case." *Burke v. Barnes,* 479 U.S. 361, 363 (1987). The case or controversy limitation requires a plaintiff to have standing to bring an action in federal court and a dispute that is not moot. *Smith v. St. Louis Housing Authority,* 132 F. Supp. 2d 780 (E.D. Mo 2001). Plaintiffs cannot demonstrate that they have standing in this matter or that an actual, not conjectural, dispute exists between the parties. Further, Plaintiffs have failed to state a claim upon which relief can be granted, and thus, this matter must be dismissed with prejudice.

I. Plaintiffs Lack Standing to Bring this Lawsuit.

In order to meet Article III's standing requirement, a plaintiff must show: (1) that she suffered "injury-in-fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) causal connection between the injury and challenged action of defendant; and (3) it is likely, not merely speculative, that injury will be redressed by favorable decision. *Smith v. St. Louis Housing Authority,* 132 F. Supp. 2d 780 (E.D. Mo 2001); *see also Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61 (1992). As set forth herein, Plaintiffs do not meet the requisite elements of standing.

A. The Organizational Plaintiffs Lack Standing to Bring this Lawsuit Because They have No Constitutional Right to Access Public School Students.

Plaintiffs, Parents, Families, and Friends of Lesbians and Gays, Inc., Dignity, Inc., Matthew Shepard Foundation, and Campus Pride, Inc., are non-profit organizations, who maintain Internet websites (hereinafter "organizational Plaintiffs"). *See* First Amended Complaint p. 1-4. In the First Amended Complaint, Plaintiffs allege that the District "has interfered with those organizations' ability to communicate with Plaintiff Jane Doe and other students who want to receive their message," and "[t]he District's Internet filtering software violates Plaintiffs' free speech rights under the United States and Missouri Constitution." (Amended Complaint p. 31 ¶¶ 64, 72). However, the organizational Plaintiffs lack standing to assert these claims as there is no established constitutional right of website publishers to have access to public school students.

The United States Supreme Court has stated:

> **"[a] public library does not acquire Internet terminals in order to create a public forum for Web publishers to express themselves, any more than it collects books in order to provide a public forum for the authors of books to speak.** It provides Internet access, not to 'encourage a diversity of views from

> private speakers,' but for the same reasons it offers other library resources: to facilitate research, learning, and recreational pursuits by furnishing materials of requisite and appropriate quality. As Congress recognized, 'the Internet is simply another method for making information available in a school or library.' S. Rep. No. 106-141, p. 7 (1999). It is 'no more than a technological extension of the book stack.'"

United States, et al., v. American Library Association, Inc. et al., 539 U.S. 194, 207 (2003) (plurality) (internal case citations omitted). Indeed, the Constitutional right to challenge access to school library materials is a right that belongs to students. *See, e.g., Case v. Unified Sch. Dist. No. 233*, 908 F. Supp. 864, 874 (D. Kan. 1995) (finding that "the constitutional right to challenge the removal of a book from a school library appears to be held by the student who is denied access to the book" and dismissing individual claims of parents of children allegedly denied access to library books); *Counts v. Cedarville Sch. Dist.,* 295 F. Supp. 2d 996, 1000 (W.D. Ark. 2003) (dismissing individual First Amendment claim of parent due to lack of standing); *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico,* 457 U.S. 853, 853 (1982) (students bringing action for alleged violation of their First Amendment rights and court discussing First Amendment rights of students); *Sheck v. Baileyville Sch. Comm.,* 530 F. Supp. 679, 689 (D. Me. 1982) (discussing "the first amendment right of students" to school library books).

Accordingly, as public school Internet terminals are "no more than a technological extension of the book stack" it follows that only *students* have the constitutional right to challenge what materials are accessible to them in their pursuit of receiving information through the Internet at school. *American Library Association, Inc. et al.,* 539 U.S. at 207. To open the door to grant standing to every organization with a website that wants to communicate their ideas to public school students is not only at odds with federal law which dictates that public schools must deny access to certain websites, but is also a reckless action which will cause irreparable harm for every public school district in the nation who would undoubtedly face

unending litigation from website publishers and advertisers who want access to District students through the Internet. This must not be permitted.

As there is no constitutional right for any organization or website publisher to have access to District students through the Internet, the organizational Plaintiffs do not have standing to bring their claims and they must be dismissed with prejudice from this matter.

B. The Organizational Plaintiffs Lack Standing to Bring this Lawsuit Because They Have Suffered No "Injury In Fact."

The organizational Plaintiffs in this matter also lack standing to bring this lawsuit as they cannot demonstrate an "injury in fact". *Smith v. St. Louis Housing Authority,* 132 F. Supp. 2d 780 (E.D. Mo 2001). Indeed, Plaintiffs can demonstrate no injury at all.

In their Amended Complaint, Plaintiffs state that the "District's Internet filtering software blocks access to hundreds of educational LGBT websites and other Internet resources supporting LGBT youth that are not sexually explicit, including, but not limited to, the websites of Plaintiffs PFLAG, DignityUSA, Matthew Shepard Foundation, and Campus Pride." (Amended Complaint, p. 9 ¶ 33).[2] Plaintiffs further allege that the District "has interfered with Plaintiffs' ability to communicate with Plaintiff Jane Doe and other students who want to receive Plaintiffs' message." (Amended Complaint p. 31, ¶ 64). Notably, however, nowhere in Plaintiffs Complaint do they state that any District student, including Jane Doe, has *ever* actually made an attempt to access Plaintiffs' particular websites. *See generally* Amended Complaint. Likewise, Plaintiffs' do not allege anywhere in their Complaint, nor could they, that any District student has ever requested access to their websites through the District's anonymous request procedure and been denied access. Further, there is not even a minimal guarantee that any student will ever

[2] Campus Pride's website at www.campuspride.org, was never blocked by the District. *See* Hadfield Aff. at ¶ 14; Cowen Aff. at ¶ 18.

seek access of their websites if an injunction of this Court is granted. Accordingly, as Plaintiffs' request for relief is far too speculative and constitutes a mere "conjectural or hypothetical" injury, their claims must be dismissed. *Smith,* at 783-784; *see also City of Los Angeles v. Lyons,* 461 U.S. 95, 101-105 (1983) (noting that in cases where injunctive relief is sought, the injury-in-fact element requires that the plaintiff faces a real and immediate threat of harm).

C. Plaintiff Jane Doe Lacks Standing to Bring Claims as she has not Plead a Particularized "Injury-In-Fact".

Plaintiff, Jane Doe, an alleged student in the Camdenton R-III District, has not pled sufficient facts to demonstrate that she suffered an "injury-in-fact" that is (a) "concrete and particularized" and (b) "actual or imminent, not conjectural or hypothetical" in order to meet the essential elements of standing. *Smith,* at 783-784; *see also Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61 (1992). Plaintiffs allege that, "Plaintiff Jane Doe…has used, and plans in the future to use, computers in the school library to search for information on the Internet. She wants to access information on diverse ideas and issues, including information about lesbian, gay, bi-sexual, and transgender people, but she is prevented from doing so by the software blocking sites on the Internet. In particular, she would like to access information that is supportive of LGBT students." (Amended Complaint ¶ 5). These vague allegations do not demonstrate a concrete and particularized injury sufficient to confer standing to Jane Doe.

Specifically, Plaintiffs have not noted any particular websites that Jane Doe has wanted to access that have been blocked by the District or any websites that Jane Doe has specifically requested access to and been denied by the District. Since the 2004-2005 school year, the District has had an optionally anonymous and easy procedure in place in which students and employees can submit an electronic request that a particular website be unblocked. *See* Hadfield Aff. at ¶ 10; Cowen Aff. at ¶ 14. This system has been used on numerous occasions to unblock

websites which were "over-blocked" by the District's filter. *See* Hadfield Aff. at ¶ 11; Cowen Aff. at ¶ 15. Specifically, on November 12, 2008, this process was utilized and the District received a request that the following website be unblocked: www.rainbowdomesticviolence.itgo.com. After review, this website was immediately unblocked and has remained unblocked ever since. *See* Hadfield Aff. at ¶ 12; Cowen Aff. at ¶ 16. When the ACLU wrote a letter to the District noting that student access to the websites for: GSA Network, GLSEN, Day of Silence, and the Trevor Project were blocked, after review, the District unblocked these websites without delay in June 2011. *See* Hadfield Aff. at ¶ 15; Cowen Aff. at ¶ 17.

Further, contrary to the overbroad and inaccurate wording of the Amended Complaint, the Camdenton School District *does* allow access to websites which promote and provide information about LGBT rights. *See* Hadfield Aff. at ¶ 8; Cowan Aff. at ¶ 9. Indeed, Plaintiff Campus Pride's website has never been blocked by the District. *See* Hadfield Aff. at ¶ 14; Cowen Aff. at ¶ 18. Websites which support and provide information regarding LGBT rights such as http://gayrights.change.org, http://www.aclu.org/lgbt-rights, http://lgbtweekly.com, http://lgbt.wisc.edu, www.itgetsbetter.org, among many others are not blocked by the District. *See* Hadfield Aff. at ¶ 9; Cowen Aff. at ¶¶ 11-12 and Examples of Open District Websites attached thereto as Exhibit 1. Thus, in light of the numerous LGBT supportive websites which are currently available to District students, Plaintiff Jane Doe's sweeping statement that "she would like to access information that is supportive of LGBT students" is too speculative and insufficient to demonstrate that an actual live controversy exists in this matter.

Plaintiff Jane Doe has not set forth *any* facts which would put the District on notice that she has attempted to access particular websites at school and was denied, or that she utilized the

District's system to make an anonymous request and was denied access. *See Heinkel v. Sch. Bd. of Lee Cnty Fl.*, 194 Fed. Appx. 604 (11th Cir. 2006) (finding that where record contained no evidence that high school student actually sought permission to distribute literature at school and was denied such permission by the school district, student lacked standing to bring an as-applied challenge to school board policy regarding same). Accordingly, Plaintiff Jane Doe has not exhausted her remedies or demonstrated that she suffered and "injury in fact" that is "concrete and particularized" and thus she lacks standing to pursue her claims.

II. Plaintiffs' Claims are Moot.

If a claim has been rendered moot, a federal court has no constitutional authority to resolve the issue. *North Carolina v. Rice*, 404 U.S. 244, 246 (1971). In this matter, Plaintiffs' claims are moot as Plaintiffs do not have standing to pursue their claims. *See Besette v. AT &T Corp.,* 2006 WL 2927561 (W.D. Mo 2006) (not reported), *citing Rolscreen Co. v. Pella Products of St. Louis, Inc.,* 64 F.3d 1202, 1207 (8th Cir.1995) (even when legal claims survive, when "there is no longer any relationship between the parties, the complaint for a declaratory judgment [is] moot.")

Further, Plaintiffs have failed to state an actual and particularized harm and this Court may not issue an advisory opinion. *See Princeton University v. Schmid*, 455 U.S. 100, 103 (1982) (university's repeal of challenged campus speech regulations rendered appeal moot because the case had "lost its character as a present, live controversy of the kind that must exist if we are to avoid advisory opinions on abstract questions of law."). As discussed herein, nowhere in their Amended Complaint do Plaintiffs allege that Plaintiff Jane Doe, or any other District student, has requested access to a particular website through the District's procedures currently in place and subsequently been denied access to the requested website. Further, the District's Board of Education revised its Board Policies to clarify its practices and to provide alternative

avenues for District students and employees to make requests for access to particular websites. *See* Hadfield Aff. at ¶ 13, and action of the Board of Education attached thereto as Exhibit 1 and Board Policies EHB-AP and IIAC-R attached thereto as Exhibit 2. Accordingly, this matter is rendered moot as Plaintiff Jane Doe may request access to particular websites through District procedure and policy currently in place and thus, Plaintiffs are essentially asking this Court to issue an advisory opinion on an abstract question of law as to whether Plaintiff Jane Doe *may* be denied access to a particular website in the future.

III. Plaintiffs' Claims Asserted Under 42 U.S.C. Section 1983 Against Defendant Hadfield In His Official Capacity Must Be Dismissed As Redundant Against The District.

Plaintiffs lack standing to bring this lawsuit and thus, this case must be dismissed. However, even assuming *arguendo* that Plaintiffs had a live case and controversy, which they do not, Plaintiffs' Section 1983 claims asserted against Defendant Hadfield fail to state a claim upon which relief can be granted and therefore, must be dismissed.

In Count I of Plaintiffs' First Amended Complaint, Plaintiffs assert a claim under 42 U.S.C. § 1983 against Defendant Hadfield in his official capacity as the Superintendent of the District. As this claim is redundant to the 42 U.S.C. § 1983 claim asserted against the District in Count I, the claim against Defendant Hadfield should be dismissed.

It has long been held that claims against public employees in their official capacity are no more than claims against the employer. *See e.g. Will v. Michigan Dept. of State Police,* 491 U.S. 58, 71 (1989) (finding, "suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. As such, it is no different from a suit against the State itself."). Thus, Plaintiffs' Section 1983 claim against Defendant Hadfield in his official capacity as set forth in Count I of Plaintiffs' Amended Complaint is barred, as the

claim is "redundant to the claim against the School District." *Artis v. Francis Howell North Band Booster Association, Inc*., 161 F.3d 1178, 1182 (8th Cir. 1998) (affirming district court's grant of summary judgment which dismissed Section 1983 official capacity claims against a public employee in his official capacity as redundant to the claim against his employer).

IV. Count III, Asserting a 42 U.S.C. § 1983 Claim against Defendant Hadfield in his Personal Capacity Must Be Dismissed as Defendant Hadfield was Acting in Accordance with Federal Law.

In Count III of the Amended Complaint, Plaintiffs have failed to state a claim for which monetary relief can be granted. Plaintiffs' claim against Defendant Hadfield pursuant to 42 U.S.C. § 1983 in his individual capacity attempts to allege that Defendant Hadfield violated "clearly established constitutional rights of which a reasonable person would have known." (Complaint p. 35, ¶ 89). Plaintiffs face an insuperable bar to recovery on this claim as Defendant Hadfield is entitled to qualified immunity from Plaintiffs' claims. *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982).

In their Amended Complaint, Plaintiffs correctly acknowledge that "[t]he Children's Internet Protection Act ("CIPA") requires public schools receiving E-rate funds to use filtering software to block websites with visual depictions that are obscene or pornographic." (Amended Complaint p. 6 ¶ 11). Mr. Hadfield was utilizing Internet filtering software on the District's computer system to comply with CIPA. By use of this system, and specifically through the challenged, "sexuality filter," Mr. Hadfield blocked access to such websites inappropriate for student access such as, thepenis.com/gay, imasturbate.org, and givingwomenorgasms.com, among many others in order to comply with established federal law. *See* Document 9-6, attached to Plaintiffs' Suggestions in Support of Motion for Preliminary Injunction.

The United States Supreme Court has noted that, "a filter set to block pornography may sometimes block other sites that present neither obscene nor pornographic material, but that nevertheless trigger the filter." *United States v. American Library Association, Inc. et al.,* 539 U.S. 194, 201 (2003). The Court also noted, "[b]ecause of the vast quantity of material on the Internet and the rapid pace at which it changes, libraries cannot possibly segregate, item by item, all the Internet material that is appropriate for inclusion from all that is not." *Id.* at 208. Thus, it is clear that Plaintiffs cannot state a claim for relief against Defendant Hadfield in his personal capacity pursuant to Section 1983 as he employed filtering software to comply with clearly established federal law, and the fact that some appropriate websites may have been inadvertently blocked by the filter does not rise to the level of a constitutional violation. Accordingly, Defendant Hadfield is entitled to qualified immunity from Plaintiffs' claim as it is readily apparent that Defendant Hadfield's conduct did not rise to a constitutional violation and certainly any right of website publishers to speak to public school students, (which Defendants argue is nonexistent) is certainly not a right "clearly established at the time of the alleged misconduct." *See Saucier v. Katz*, 533 U.S. 194, 200-201 (2001), *over-ruled in part by Pearson v. Callahan*, 555 U.S. 223 (2009). Accordingly, this claim against Defendant Hadfield must be dismissed with prejudice.

V. Counts I and III, Asserting a 42 U.S.C. § 1983 Claim Against the District Must Be Dismissed as the District Does Not Have a Custom and Policy Which Violated the Rights of Plaintiffs.

In order to hold a governmental entity, such as a school district, accountable for the actions of its employees under 42 U.S.C. Section 1983, the deprivation of a constitutional right must result from either the implementation or execution of an unconstitutional policy or custom of the District. *See Artis v. Francis Howell North Band Booster Association, Inc.*, 161 F.3d 1178 (8th Cir. 1998). Plaintiffs have failed to allege facts in their Amended Complaint which support

the existence of an unconstitutional policy or custom of the District which allegedly caused Plaintiffs' injuries. "At a minimum, a complaint must allege facts which would support the existence of an unconstitutional policy or custom." *Doe ex rel. Doe v. Sch. Dist. City of Norfolk*, 340 F.3d 605, 614 (8th Cir. 2003) (citing *Meadowbriar Home for Children, Inc. v. Gunn,* 81 F.3d 521, 532-533 (5th Cir. 1996) (stating that a plaintiff must plead facts to support the existence of a policy or custom to properly state a claim for relief under Section 1983). Plaintiffs have failed to allege facts in their Amended Complaint which support the existence of an unconstitutional policy or custom of the District which allegedly caused Plaintiffs' injuries. To the contrary, the facts asserted demonstrate that the District has a practice, policy and custom of complying with federal law which mandates that the District block websites that are inappropriate for minors. Further, the District has procedures in place to allow ease for unblocking websites which are blocked by the filter yet are appropriate for access by District students and took action to clarify in their Board Policies the process for requesting access to web material blocked by the filters to establish an easy and anonymous process for its students.[3] Accordingly, Plaintiffs have failed to state a claim upon which relief can be granted, and their claims against the District pursuant to Section 1983 must be dismissed.

<u>Conclusion</u>

A live case or controversy does not exist between the parties to this litigation and thus, this Court does not have jurisdiction over this matter. Assuming *arguendo*, Plaintiffs had

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[3] Review of this information in considering Defendants' Motion to Dismiss pursuant to 12(b)(6) is appropriate as it is an action by a public body, and thus a public document, and this information is "necessarily embraced by the pleadings." *Porus Media Corp. v. Pall Corp.,* 186 F. 3d 1077, 1079 (8th Cir. 1999). This Court may take judicial notice of the acts of the School Board and related public records. *Crooks v. Lynch*, 557 F.3d 846, 848-49 (8th Cir. 2009); *see also Stutzka v. McCarville*, 420 F.3d 757, 761 (8th Cir. 2005) ("We may take judicial notice of judicial opinions and public records.").

standing to pursue their claims, which they do not, Plaintiffs cannot state a claim for relief against Defendant Hadfield and the District pursuant to 42 U.S.C. Section 1983. For the reasons stated herein, this case must be dismissed with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September, 2011, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of filing to the following:

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