IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

CIVIL ACTION NUMBER 1:07-CV-00953

RYAN McFADYEN, et al.,	)	EXPEDITED REVIEW REQUESTED
	)	
Plaintiffs,	)	**JOINT BRIEF IN SUPPORT OF**
	)	**MOTION TO STRIKE**
v.	)	**PLAINTIFFS' UNTIMELY AND**
	)	**UNAUTHORIZED**
DUKE UNIVERSITY, et al.,	)	**"CORRECTED" RESPONSE**
	)	**BRIEF**
Defendants.	)	

Defendants Tara Levicy ("Nurse Levicy"), Gary Smith ("Officer Smith"), Duke University ("Duke"), and Duke University Health System, Inc. ("DUHS"), (collectively, "Defendants") respectfully submit this brief in support of their motion to strike Plaintiffs' untimely and unauthorized "corrected" response brief pursuant to Local Rules 7.3(k) and 83.4(a)(2).

INTRODUCTION

In their response to Defendants' motion for judgment on the pleadings, Plaintiffs conceded that Count 1 of their Second Amended Complaint should be dismissed unless the Supreme Court granted Plaintiffs' petition for a writ of certiorari to review *Evans v. Chalmers*, 703 F.3d 636 (4th Cir. 2012). Plaintiffs agreed with Defendants that *Evans* foreclosed Count 1 by holding that Plaintiffs failed to allege a constitutional violation under Count 1. When the Supreme Court

denied Plaintiffs' petition, they did not try to withdraw their concession. Nor did Plaintiffs advise this Court during the 14 March 2014 status conference, held for the express purpose of discussing pending claims, that they wanted to withdraw their concession that *Evans* foreclosed Count 1.

Instead, several hours after the status conference, more than one year after Defendants moved for judgment on the pleadings, and nine months after Plaintiffs filed their response, Plaintiffs tried to resurrect Count 1 by filing a redline "corrected" response brief that was not authorized by the Court or the Local Rules. In the "corrected" response, Plaintiffs stated that the Fourth Circuit "did not reach the constitutional question" in dismissing Count 1. Plaintiffs asserted that Count 1 was still viable as to Nurse Levicy because the Fourth Circuit had rejected Count 1 on qualified immunity grounds, and declared that Nurse Levicy should not be entitled to qualified immunity. Plaintiffs offered no justification for the untimely filing, and in contravention of Local Rule 7.3(k), made no argument as to why they should be excused from their waiver of any opposition to Defendants' motion for judgment on the pleadings on Count 1. Neither did Plaintiffs include any argument in the "corrected" brief, as required by Local Rule 7.2(a), to support their new position that *Evans* does not require dismissal of Count 1 against Nurse Levicy.

Defendants respectfully request that the Court strike Plaintiffs' "corrected" brief. In the alternative, Defendants respectfully seek leave to file a supplemental reply brief in support of their motion for judgment on the pleadings.

NATURE OF THE CASE AND STATEMENT OF THE FACTS

This case arises out of the investigation of members of the 2005-2006 Duke men's lacrosse team based on rape allegations made by Crystal Mangum, a stripper one of the team members hired to perform at a party. Plaintiffs were not arrested, charged, or tried for any offense as a result of those allegations. Nevertheless, Plaintiffs sued a host of municipal, institutional, and individual defendants for purported violations of their legal rights in connection with the investigation.

Plaintiffs Accuse Nurse Levicy of Constitutional Violations.

Although Nurse Levicy was a sexual assault nurse examiner ("SANE") trainee at DUHS, a private hospital, Plaintiffs have sought to hold her liable for constitutional violations, alleging that she "was retained by the City of Durham[] to provide forensic medical evidence collection and analysis services" for the police investigation of Ms. Mangum's allegations, "and in that capacity, acted under color of state law." (Second Am. Compl. ¶ 38 [DE 34]). In Count 1 of the Second Amended Complaint, Plaintiffs asserted a claim against Nurse Levicy and

others under 42 U.S.C. § 1983 based on alleged violations of the Fourth and Fourteenth Amendments in connection with the issuance of the non-testimonial order ("NTO"). (*Id.* ¶¶ 904-17).

Nurse Levicy Moves for Judgment on the Pleadings.

On 31 March 2011, this Court issued an order dismissing twenty-seven counts of the Second Amended Complaint. [DE 187 at 2]. The Court denied Nurse Levicy's motion to dismiss Count 1, holding that Plaintiffs had pleaded a plausible Fourth Amendment violation and that Plaintiffs' allegation that Nurse Levicy acted under color of state law was sufficient to maintain a constitutional claim against her. *McFadyen v. Duke Univ.*, 786 F. Supp. 2d 887, 929 (M.D.N.C. 2011). On 17 December 2012, the Fourth Circuit issued its opinion in *Evans*, holding, inter alia, that Plaintiffs failed to allege a constitutional violation associated with the issuance of the NTO. *Evans*, 703 F.3d at 652, 654 & n.12. Based on *Evans*, on 27 February 2013, Defendants filed a motion for judgment on the pleadings seeking judgment on Counts 1, 2, and 18 as to Nurse Levicy, Count 2 as to Officer Smith, and Count 32 as to Duke and DUHS. [DE 335, 336].

On 25 March 2013, Plaintiffs responded to the motion for judgment on the pleadings by requesting a stay on the ground that Plaintiffs intended to file a certiorari petition seeking review of the *Evans* decision. [DE 337 at 2]. Plaintiffs

noted in their motion that "even if the Fourth Circuit's decision were to stand," they would "explain why the Court should deny the Joint Motion *as to Counts 18 and 32*." [*Id.* at 2 n.1 (emphasis added)]. Plaintiffs did not express any intention to attempt to refute Defendants' arguments on Count 1. [*See id. passim*]. In the alternative, Plaintiffs sought a sixty-day extension "so that the proceedings on the Joint Motion may, at least, take into account the issues raised in Plaintiffs' petition for a writ of certiorari." [*Id.* at 2]. The Court extended Plaintiffs' response deadline to match the date on which their certiorari petition was due. [DE 340].

Plaintiffs Concede That *Evans* Forecloses Count 1.

On 30 May 2013, having had ninety days to consider the arguments raised in Defendants' motion for judgment on the pleadings, Plaintiffs filed their response in opposition to the motion. [DE 341]. In the response, Plaintiffs twice conceded that "if Plaintiffs' petition [for certiorari] is not granted or the Fourth Circuit's decision otherwise remains unmodified, Counts 1 and 2 must be dismissed because this Court is bound by the Fourth Circuit's conclusion that those counts do not allege a constitutional violation." [*Id.* at 2, 18]. Plaintiffs opposed the motion only as to Counts 18 and 32. [*See id*. at 9-17]. Defendants timely filed a reply brief, rendering the motion for judgment on the pleadings fully briefed as of 17 June 2013. [DE 343]. Noting Plaintiffs' concessions on Counts 1

and 2, Defendants limited the substantive arguments in their reply brief to Counts 18 and 32. [*See id.* at 2-10]; *see also* LR 7.3(h) (limiting reply briefs "to discussion of matters newly raised in the response").

The premise of Plaintiffs' petition for certiorari was that the Fourth Circuit erred in *Evans* by holding that Plaintiffs failed to allege a constitutional violation associated with the issuance of the NTO. [DE 344-1]. Plaintiffs noted in their petition that Nurse Levicy had moved for judgment on the pleadings as to Count 1 based on the Fourth Circuit's decision. [*Id.* at 28 n.5]. On 12 November 2013, the Supreme Court denied Plaintiffs' petition for a writ of certiorari. *McFadyen v. City of Durham*, 134 S. Ct. 617 (2013).

Plaintiffs Attempt to Resurrect Count 1.

During the 14 March 2014 status conference regarding the remaining claims, Plaintiffs' counsel did not advise the Court that Plaintiffs were seeking to withdraw their concession that Count 1 could not survive the decision in *Evans*. On the evening of 14 March 2014, however, Plaintiffs filed two documents purporting to resurrect Count 1.

First, Plaintiffs filed a Status Report of Remaining Claims and Defendants. [DE 350]. Contrary to Plaintiffs' counsel's representations to the Court and Plaintiffs' previous filings, Plaintiffs represent in the status report that Count 1

should remain pending against Nurse Levicy. [*Id.*]. In that status report Plaintiffs for the first time stated their intention to file "an amended response to the pending motion for judgment on the pleadings to correct Plaintiffs' references to Counts 1, 2, and 5, and to clarify Plaintiffs' position viz. the Fourth Circuit's decision as to those claims." [*Id.* at 2].

Second, Plaintiffs filed a redline document, styled as a "corrected" opposition to Defendants' motion for judgment on the pleadings. [DE 351]. Plaintiffs' "corrected" brief purports to respond "to the motion for judgment on the pleadings as to Counts 1, 2, 5, 18, and 32." [*Id*. at 1]. In this "corrected" brief, Plaintiffs added four lines of text in the introductory "Background" section, repeated in the "Conclusion," to change their position on the effect of the Fourth Circuit's decision on Count 1. The addition states in full:

> [N]or does [*Evans*] require dismissal of Count 1 against Levicy because [the Fourth Circuit] did not reach the constitutional question, holding that the police defendants were entitled to qualified immunity, which Levicy does not share, [703 F.3d at] 650 n.6.

[*Id*. at 2, 18]. The "corrected" brief contains no argument in support of this assertion.

Plaintiffs' "corrected" redline brief does not reflect all of the changes from the original filing. In their original brief, Plaintiffs admitted that "Counts 1 and 2

must be dismissed because this Court is bound by the Fourth Circuit's conclusion that those counts do not allege a constitutional violation." [DE 341 at 2, 18]. Plaintiffs' "corrected" brief states that "Counts 2 and ~~1~~ 5 must be dismissed because this Court is bound by the Fourth Circuit's conclusion that those counts do not allege a constitutional violation." [DE 351 at 2, 18]. The redline "corrected" brief does not reflect that Plaintiffs deleted the word "and" and the number "1" before the number "2"; nor does it reflect that Plaintiffs added the word "and" after the number "2."[1] Plaintiffs' redline "corrected" brief does reflect the addition of references to Count 5, which was not the subject of Defendants' motion for judgment on the pleadings. [*See* DE 335, 336].

Based on these facts, Defendants have moved the Court to strike Plaintiffs' "corrected" brief. [DE 360].

QUESTIONS PRESENTED

I. Whether Plaintiffs' "corrected" response brief is properly stricken as untimely and unauthorized?

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[1] Plaintiffs' redline "corrected" brief does not reflect these additional changes:

- Page 9, final line: Plaintiffs changed "this claim" to "all claims."
- Page 10, sixth line: Plaintiffs changed "Tara Levicy" to "Levicy."

An accurate redline comparison of Plaintiffs' two filings is attached as Exhibit A.

II. Whether Plaintiffs waived the right to assert that Count 1 remains pending against Nurse Levicy?

III. Whether, in the alternative, Defendants should be allowed to file a supplemental reply brief to refute Plaintiffs' new position that Nurse Levicy remains potentially liable under Count 1?

ARGUMENT

Plaintiffs' "corrected" response brief advances a new contention to resurrect Count 1—notwithstanding their earlier, express acknowledgment that it must be dismissed—under the guise of a correction and clarification of the response they filed nine months ago. Plaintiffs did not attempt to justify their untimely filing because they cannot do so. Plaintiffs' untimely and unauthorized "corrected" brief is properly stricken on that ground. Moreover, pursuant to the Local Rules, Plaintiffs have waived any contention that Count 1 survived *Evans*. Plaintiffs knowingly conceded before this Court that Count 1 cannot survive after *Evans* because the Fourth Circuit ruled that Count 1 does not allege a constitutional violation, subject only to the possibility (at the time) that the Supreme Court could reverse that ruling. Then, in their certiorari petition, Plaintiffs argued that the Fourth Circuit erred in holding that they had not alleged a constitutional violation in Count 1. Although Plaintiffs now say the Fourth Circuit "did not reach the

constitutional question" in dismissing Count 1, they have never presented any argument, including in the "corrected" brief, to show that they can maintain a constitutional claim against Nurse Levicy in spite of *Evans*. Instead, Plaintiffs manipulated the text of their response brief, giving the false impression that they were only correcting a typographical error.

If Plaintiffs are permitted to advance this new contention, Defendants respectfully seek leave to file a supplemental reply limited to addressing the new contention. In short, Defendants' supplemental reply would show the Court that Plaintiffs were correct in conceding that *Evans* forecloses any claim against Nurse Levicy for alleged constitutional violations.

I. PLAINTIFFS' UNTIMELY AND UNAUTHORIZED "CORRECTED" RESPONSE BRIEF IS PROPERLY STRICKEN FOR VIOLATION OF THE LOCAL RULES.

Because this Court granted Plaintiffs' motion to extend the time to respond to Defendants' motion for judgment on the pleadings, Plaintiffs were allowed three months to respond to that motion. [DE 340]. Plaintiffs filed their response on 30 May 2013. [DE 341]. Pursuant to Local Rule 7.3(h), Defendants timely filed their reply on 17 June 2013. [DE 343]. Nine months later, without seeking leave of court, Plaintiffs filed their "corrected" response brief. [DE 351].

The Local Rules do not provide for the filing of "corrected" briefs in which

a party fundamentally changes its position at any point, much less nine months after briefing closes on a motion. When a party or its attorney fails to comply with the Local Rules, the Court has discretion to "make such orders as are just under the circumstances of the case, including . . . an order refusing to allow the failing party to support or oppose designated claims or defenses." LR 83.4(a), (a)(2). When parties have filed papers in violation of the Local Rules, this Court has exercised its discretion to strike those unauthorized filings. *See, e.g.*, *Richmond v. Indalex, Inc.*, 308 F. Supp. 2d 648, 654 (M.D.N.C. 2004) (Beaty, J.) (striking response to suggestion of subsequently decided authority as unauthorized by Local Rules); *Volumetrics Med. Imaging, Inc. v. ATL Ultrasound, Inc.*, 243 F. Supp. 2d 386, 398 (M.D.N.C. 2003) (Beaty, J.) (striking filing styled "specific statement of facts" accompanying response to motion for summary judgment for violation of Local Rules); *Brown v. Sears Auto. Ctr.*, 222 F. Supp. 2d 757, 761 (M.D.N.C. 2002) (Beaty, J.) (striking response to motion for summary judgment where plaintiff had already filed response three months earlier); *Miller v. Martin*, CIV. A. No. C-87-226-G, 1987 WL 46753, at *6 (M.D.N.C. July 20, 1987) (striking unauthorized "reply to a reply" brief where party did not move for leave to file).

Striking Plaintiffs' unauthorized "corrected" brief is warranted here. The clerk's notice that the motion for judgment on the pleadings was referred to the

Court for decision after Defendants filed their reply brief did not prompt Plaintiffs to try to "correct" their response brief; nor did the Supreme Court's denial of their petition for writ of certiorari prompt the filing of a "corrected" brief. Only when the Court announced at the March 14 status conference that it would decide the motion for judgment on the pleadings within sixty days did Plaintiffs submit a "corrected" brief.

Rather than seek leave to file a new brief, Plaintiffs styled their filing a "corrected" brief, giving the false impression they were only correcting an innocent mistake. But there was no mistake. Plaintiffs' redline shows the addition of references to Count 5, although Defendants did not move for judgment on the pleadings on Count 5. [DE 351 at 1, 2; *see* DE 335, 336]. Plaintiffs apparently added references to Count 5 because Plaintiffs' brief served as their response to Defendants' motion for judgment on the pleadings on Counts 1, 2, 18 and 32, and to Linwood Wilson's motions to dismiss Counts 5 and 18. [*See* DE 324, 346; DE 351 at 2 ("[T]he Fourth Circuit's decision does not require dismissal of Plaintiffs' obstruction of justice claim against Levicy or Wilson.")]. However, Plaintiffs' redline does not show that Plaintiffs deleted and added words in the sentence where they made their earlier explicit concession on Count 1. Plaintiffs' original response conceded that *Evans* would foreclose "Counts 1 and 2"; the "corrected"

response states that *Evans* would foreclose "Counts 2 and ~~1~~ 5." [*Compare* DE 341 at 2, 18 *with* DE 351 at 2, 18 (redlining as it appears in "corrected" brief)]. That is, without using the redline function, Plaintiffs deleted "1 and" before "2" and then added "and 1" after "2," making it appear that in the original response they had conceded "Counts 2 and 1." Plaintiffs then used to the redline function to revise "1" to "5."

Plaintiffs' actions warrant the exercise of the Court's discretion to strike the "corrected" response brief, and Defendants thus respectfully request that the Court strike Plaintiffs' "corrected" response brief from the docket.

II. PLAINTIFFS WAIVED THE RIGHT TO ADVANCE A NEW AND CONTRADICTORY POSITION UPON REMAND.

When Defendants sought judgment on the pleadings on Count 1 as to Nurse Levicy following *Evans*, Plaintiffs had a right to respond, and even obtained a sixty-day extension to evaluate their claims. [DE 340]. After taking that time, Plaintiffs conceded on two fronts that the Fourth Circuit's decision in *Evans* foreclosed Count 1 as to Nurse Levicy:

- Before this Court, Plaintiffs admitted in response to the motion for judgment on the pleadings that, unless the Supreme Court granted their certiorari petition, "Counts 1 and 2 must be dismissed because this Court is bound by the Fourth Circuit's conclusion that those counts do not allege a constitutional violation." [DE 341 at 2, 18].

- In their certiorari petition, Plaintiffs argued that the Fourth Circuit erroneously held that Plaintiffs failed to allege a constitutional violation associated with the collection of evidence pursuant to the NTO. [*See* DE 344-1 at 12-13, 39]. In their reply in support of that petition, Plaintiffs explained that summary reversal of *Evans* would "*restore* [Plaintiffs'] Section 1983 claim against "the private parties who conspired with [police officers] to violate [Plaintiffs'] Fourth Amendment rights by, for example, fabricating medical evidence and altering medical records to corroborate the false rape allegation and mislead a judicial official into issuing the NTO." Reply Br. Supp. Pet. Writ Cert. at 11 (emphasis added) (attached as Exhibit B).

There was nothing to "correct" in Plaintiffs' response to the motion for judgment on the pleadings as to Count 1, and no basis to "clarify" Plaintiffs' position on the effect of the Fourth Circuit's ruling. Plaintiffs did not need to "correct" their statement that the Fourth Circuit concluded Count 1 does not allege a constitutional violation—that is what the *Evans* court said. *See* 703 F.3d at 654 ("Because we hold that all plaintiffs failed to state predicate § 1983 claims against the individual officers . . . ."); *id.* n.12 ("Given that we hold that plaintiffs failed to state Fourth Amendment claims . . . ."). Plaintiffs cannot claim that their concession before this Court that *Evans* foreclosed the Fourth Amendment claim in Count 1 was a mistake when they asked the Supreme Court in their certiorari petition to reverse *Evans* because it held that there was no constitutional violation. [*See* DE 344-1 *passim*]; Reply Br. Supp. Pet. Writ Cert. at 11. Only the Supreme Court's reversal of *Evans* could "restore" the § 1983 claim against Nurse Levicy,

one of the "private parties" Plaintiffs alleged had conspired with the police to violate Plaintiffs' Fourth Amendment rights. Reply Br. Supp. Pet Writ Cert. at 11.

When Plaintiffs chose not to challenge Defendants' argument that *Evans* foreclosed Count 1, holding out only the prospect (at the time) that the Supreme Court might overturn that decision, Plaintiffs lost the right to oppose Defendants' argument. *See Moser v. MCC Outdoor, L.L.C.*, 256 F. App'x 634, 643 (4th Cir. 2007) (unpublished) (per curiam) (affirming district court's ruling that plaintiff abandoned claim by failing to address it in response to defendant's summary judgment motion); *see also Brand v. N.C. Dep't of Crime Control & Pub. Safety*, 352 F. Supp. 2d 606, 618 (M.D.N.C. 2004) (holding plaintiff conceded one of his claims by failing to address it in response to motion for summary judgment). Even now, Plaintiffs' "corrected" response brief still includes no argument to show that they stated a constitutional claim against Nurse Levicy in Count 1, and thus violates Local Rule 7.2(a). [*See* DE 351 *passim*]. Plaintiffs cite the footnote in *Evans* where the Fourth Circuit said it was not addressing an alternative argument: that North Carolina's NTO statute itself is unconstitutional. [*Id.* at 2, 18 (citing *Evans*, 703 F.3d at 650 n.6)].[2] The only argument in the "corrected" response, like the original response, addresses Defendants' argument that Count 18 (as to Nurse

[2] The correct citation is *Evans*, 703 F.3d at 649 n.6.

Levicy) and Count 32 (as to Duke and DUHS) are properly dismissed based on *Evans*. [*See id.* at 9-18]. Indeed, the response in opposition to Plaintiffs' certiorari petition pointed out that Plaintiffs have never argued that the NTO statute itself is unconstitutional. Resp. in Opp'n to Pet. Writ Cert. at 7-11 (attached as Exhibit C).

This Court's Local Rules also make clear that "[t]he failure to file a brief or response within the time specified in [Local Rule 7.3] shall constitute a waiver of the right thereafter to file such brief or response, except upon a showing of excusable neglect." LR 7.3(k). Here, nine months after their response was due, Plaintiffs filed their "corrected" response without offering any justification for the untimely and unauthorized filing, let alone the required showing of excusable neglect. *See id.*; *Shoaf v. Kimberly-Clark Corp.*, 294 F. Supp. 2d 746, 749 (M.D.N.C. 2003) (striking, based on Local Rule 7.3(k), "untimely and non-conforming" response where counsel sought extension after time expired without asserting excusable neglect); *see also Morris-Belcher v. Hous. Auth. of Winston-Salem*, No. 1:04CV255, 2005 WL 1423592, at *5 (M.D.N.C. June 17, 2005) (Beaty, J.) (rejecting assertion of excusable neglect where plaintiffs cited attorney's case load as reason for filing response to motion for summary judgment five weeks late). By failing to file the "corrected" response brief within the three-

month period allotted for Plaintiffs' response, Plaintiffs waived any right to file it. *See Salami v. Monroe*, No. 1:07CV621, 2010 WL 817483, at *1 (M.D.N.C. Mar. 4, 2010) (Beaty, J.) (refusing to consider response brief filed out of time even after plaintiff was granted an extension).

III. IN THE ALTERNATIVE, DEFENDANTS SEEK LEAVE TO REFUTE PLAINTIFFS' NEW CONTENTION IN A SUPPLEMENTAL REPLY BRIEF.

Under the Local Rules of this Court, after a party responds to a motion, the party who originally filed the motion is allowed to file a reply brief addressing any "matters newly raised in the response." LR 7.3(h). Had Plaintiffs filed their "corrected" response instead of the response brief that they filed on 30 May 2013, Defendants would have addressed Plaintiffs' assertions that the Fourth Circuit did not reach the constitutional attack on the NTO statute in *Evans* and that Nurse Levicy is not entitled to qualified immunity. If the Court should deny this motion and consider the "corrected" response in ruling on Defendants' motion for judgment on the pleadings, Defendants respectfully request leave to file a supplemental reply brief as allowed by Local Rule 7.3(h) to address the contention raised for the first time in that "corrected" response brief.

Through their "corrected" response brief, Plaintiffs attempt to hold Nurse Levicy liable for an alleged constitutional violation because she complied with the

North Carolina NTO statute. *See Evans*, 703 F.3d at 652. Defendants would argue in such a reply brief that Plaintiffs correctly conceded that *Evans* held that Plaintiffs failed to allege a constitutional violation under Count 1. Further, Defendants would argue that to the extent Nurse Levicy can be considered a state actor for purposes of § 1983, she is entitled to the protection of qualified immunity because she could not have "violate[d] clearly established statutory or constitutional rights" in connection with the issuance of the NTO. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Evans*, 703 F.3d at 649 n.6. In 2012, the United States Supreme Court extended qualified immunity to private individuals who perform public duties, including law enforcement functions. *See Filarsky v. Delia*, 132 S. Ct. 1657, 1664-67 (2012). As a SANE trainee, Nurse Levicy was trained to "conduct examinations *for the purpose of collecting evidence*" from victims of sex crimes. N.C. Gen. Stat. § 90-171.38(b) (emphasis added). Defendants are prepared to show that Nurse Levicy is thus entitled to the same protection as public employees. *See Filarsky*, 132 S. Ct. at 1666.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court strike Plaintiffs' "corrected" response brief. If the Court should deny the motion

to strike, Defendants respectfully request leave to file a supplemental reply brief to address matters newly raised in the "corrected" response brief.

This the 24th day of March, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on 24 March 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record and to Mr. Linwood Wilson, who is also registered to use the CM/ECF system.

This the 24th day of March, 2014.

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