

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KIRSTEN M. WALKER and
RODNEY L. WALKER,

Plaintiffs,

v.

BELL SPORTS, INC.

Defendant.

CIVIL ACTION FILE NO:

**RENEWAL COMPLAINT FOR DAMAGES
AND DEMAND FOR JURY TRIAL**

Pursuant to O.C.G.A. § 9-2-61(a) and other applicable law, Plaintiffs Kirsten and Rodney Walker hereby file this Renewal Complaint for Damages and Demand for Jury Trial, respectfully showing the Court as follows:

CERTIFICATION OF COMPLIANCE WITH O.C.G.A. § 9-2-61

1.

This action was originally filed in the State Court of Gwinnett County on May 15, 2014. On June 13, 2014, it was removed to this Court. Defendant Bell Sports, Inc. was a Defendant in the original action and was validly served with Summons and the Original Complaint on May 16, 2014.

2.

The original action was filed within the prescribed two-year statute of limitations as the incident giving rise to these claims occurred on May 20, 2012.

3.

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiffs filed a Stipulation of Voluntary Dismissal Without Prejudice on November 10, 2016. A copy of the voluntary dismissal is attached hereto as **Exhibit A**.

4.

Pursuant to the requirements of O.C.G.A. §§ 9-2-61(a) and 9-11-41(d), all Court costs have been paid in connection with the original action, as reflected in the Certificate of Payment of Costs executed by the United States District Court Clerk and attached as **Exhibit B**. Plaintiffs also show that all costs have been paid in connection with the filing of the original action in Gwinnett County.

5.

Given that the original action was properly filed and served within the prescribed statutory time limits, and service of process was promptly and properly effectuated on the Defendant; that the voluntary dismissal without prejudice was accepted by the Court; and that all court costs have been satisfied by the Plaintiffs,

the former action was a proper suit and may timely be renewed as a matter of right under O.C.G.A. § 9-2-61.¹

6.

In this, Plaintiffs' renewal action, Plaintiffs allege a substantially similar cause of action, against a named Defendant in the original action, and arising out of the same occurrence as Plaintiffs alleged in their original action.

7.

Since six months have not passed since Plaintiffs' voluntary dismissal without prejudice, the renewal of this action is timely and proper pursuant to O.C.G.A. § 9-2-61(a).

8.

Plaintiffs hereby renew their Complaint for Damages and Demand for Jury Trial against Defendant Bell Sports, Inc., showing the Court as follows:

¹ O.C.G.A. § 9-2-61(a) provides, "When any case has been commenced in *either a state or federal court* within the applicable statute of limitations and the plaintiff discontinues or dismisses the same, it may be recommenced in a *court of this state or in a federal court* either within the original applicable period of limitations or within six months after the discontinuance or dismissal, whichever is later." (emphasis added)

PARTIES, JURISDICTION, and VENUE

9.

Plaintiffs Kirsten and Rodney Walker are residents of the State of Georgia and avail themselves of the jurisdiction and venue of this Court.

10.

Defendant Bell Sports, Inc. (“Bell”) maintains a principal office and place of business located at 7855 Haskell Avenue, Suite 200, Van Nuys, Los Angeles County, California, and has as its registered agent for service, CSC-Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California 95833. At all times material to this action, Bell was transacting business in the State of Georgia and deriving substantial profits from its business activities in the State of Georgia such that personal jurisdiction is proper over it in this Court.

11.

This Court has subject matter jurisdiction over this case pursuant to diversity jurisdiction prescribed by 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and there is complete diversity between the parties. In addition, Defendant filed a Notice of Removal of the original action to invoke this Court’s jurisdiction over this case.

12.

Venue is proper in this District and in this Division because the cause of action arises from an incident which occurred in Gwinnett County, Georgia, which county is within the Atlanta Division of the Northern District of Georgia. *See* LR 3.1(B)(3), N.D. Ga. The subject incident occurred in the State of Georgia, involving injuries to Plaintiffs residing in Georgia, and accordingly this action is brought pursuant to the substantive state law of Georgia.

FACTS

13.

On May 20, 2012, Plaintiff Kirsten M. Walker was riding in the cycling portion of an amateur triathlon event in Buford, Gwinnett County, Georgia. At the time, she was properly wearing a bicycle helmet branded as a “Giro Skyla” helmet, believed to be model number 2010238 (“the subject helmet”), which was designed, manufactured, inspected, distributed, sold, and otherwise placed in the stream of commerce by Defendant Bell or agents of Defendant Bell acting in the course and scope of their agency.

14.

As Plaintiff Kirsten Walker rode her bicycle along a paved road that was part of the triathlon course and entered the vicinity of 5468 Little Mill Road NE,

Buford, Gwinnett County, Georgia, Plaintiff suddenly lost control of the bicycle and fell to the pavement, striking and severely injuring the left side of her body and the lower left occipital-parietal area on the back of her head, which was covered and supposed to be protected by the subject helmet.

15.

In that fall, the subject helmet failed to provide adequate and reasonable protection to Kirsten Walker's head and brain in a reasonably foreseeable impact occurrence.

16.

As a result of the helmet failing, Plaintiff Kirsten Walker suffered a severe closed head injury with pneumocephalus, intracerebral contusions and hemorrhages, subdural hematomas, subarachnoid hemorrhage, facial fractures involving nasal bones, sinus fractures, sphenoid sinus and mastoid fracture, blunt chest trauma with pulmonary contusion, left pneumothorax fracture, multiple rib fractures, left clavicle fracture and a complex stellate scalp laceration.

17.

More specifically as to the injuries to Kirsten Walker's skull and brain, she sustained multifocal areas of petechial hemorrhage, hemorrhagic contusions in the anterior temporal regions bilaterally, as well as a right anterior temporal subdural

hemorrhage, extra-axial hemorrhage right frontal vertex, hemorrhage along the left lateral margin of suprasellar cistern posterior to the optic canal, subarachnoid blood and hemorrhage within left medial temporal lobe, a left posterior parietal depressed skull fracture, subdural hemorrhage and right maxillary and sphenoid sinus fractures. The consequence of these injuries to Kirsten Walker has been profound cognitive deficits, including a period of near total memory loss, and ongoing sequelae and deficits which detrimentally affect her life, and her full capacity to enjoy life, in multiple ways.

18.

Kirsten Walker has undergone numerous medical procedures, including but not limited to, a right fronto-temporo-parietal craniotomy for evacuation of temporal lobe contusion, subdural hematoma and decompressive craniotomy. Plaintiffs have sustained more than \$705,000.00 in medical bills to date as a consequence of the necessary treatment rendered to Kirsten Walker for the injuries that she initially suffered on May 20, 2012. Plaintiffs continue to incur damages of both a personal and pecuniary nature in an amount to be determined by the enlightened conscience of the jury based upon the evidence at trial.

19.

Plaintiff Rodney Walker, the lawfully married husband of Kirsten Walker, has suffered loss of consortium, i.e., a loss of support, companionship, affection, society, and advice, as the proximate result of the injuries to his wife that were proximately caused by the failures of, and defects in, the subject helmet, which manifested in the subject incident.

20.

When the Walkers purchased the helmet as new, it lacked adequate warnings regarding the limitation and hazards associated with the helmet, as well as adequate information and/or instructions regarding proper use of the helmet. The subject helmet had not been substantially modified from its original condition prior to the subject incident and was being used in a manner consistent with the warnings, instructions, and information provided by Defendant Bell at the time of the subject incident.

COUNT ONE
NEGLIGENCE – DEFENDANT BELL

21.

Plaintiffs restate and re-allege paragraphs 1 through 20 as if fully stated herein.

22.

On and before May 20, 2012, Defendant Bell and its agents and employees engaged in the design, manufacture, inspection, distribution and sale of bicycle helmets, including the subject Gyro Skyla helmet worn by Kirsten Walker on May 20, 2012.

23.

As a product designer, manufacturer, distributor and seller of products placed into the stream of commerce, Defendant Bell and its agents and employees had duties to exercise reasonable care in designing, manufacturing, testing, inspecting, distributing and selling of its bicycle helmets, including the subject helmet, such that the product was reasonably safe for its intended and foreseeable use of head protection while riding or falling from a bicycle, and was free from warning defects.

24.

On and before May 20, 2012, Defendant Bell breached its duties of care by failing to provide Kirsten M. Walker with proper and necessary warnings or other information about the limitations and hazards of the subject helmet when put to its intended use so as to allow her to make a fully informed purchase decision and/or decision to continue to utilize the subject helmet while riding a bicycle.

25.

In addition, Defendant failed to provide Ms. Walker, and other purchasers of the Gyro Skyla helmet, with proper and necessary warnings, instructions, or other information that would adequately inform and warn users regarding proper use of the subject helmet.

26.

Any instruction, warning, or label provided by Defendant Bell was inadequate to apprise Ms. Walker of the proper use of the subject helmet, as well as dangers and limitations associated with the subject helmet.

27.

As a proximate consequence and cause of the Defendant Bell's failure to provide Kristen Walker with proper warnings, instructions, and/or other information, she suffered injuries and damages for which Defendant Bell is liable to Kirsten Walker, and Rodney Walker suffered loss of consortium for which Defendant Bell is liable, in amounts to be determined by the enlightened conscience of the jury based upon the evidence presented at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray:

- (a) That Defendant Answer this Renewal Complaint as provided by law;
- (b) That Plaintiffs recover from Defendant all damages, economic and non-economic, tangible and intangible, general and special, claimed in the paragraphs above and any other damages as allowed by Georgia law under the evidence adduced at trial;
- (c) That all costs be taxed against Defendant; and
- (d) For such other and further relief as this Court deems just and proper.

PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY.

Respectfully submitted, this 26th day of April, 2017.

CONLEY GRIGGS PARTIN LLP

/s/ Ranse M. Partin _____

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ATTORNEYS FOR PLAINTIFFS

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KIRSTEN M. WALKER and
RODNEY L. WALKER,

Plaintiffs,

v.

BELL SPORTS, INC.

Defendants.

CIVIL ACTION FILE

NO. 1:14-cv-01866-RWS

STIPULATION OF VOLUNTARY DISMISSAL

IT IS HEREBY STIPULATED AND AGREED by and between the remaining parties, Plaintiffs Kirsten M. Walker and Rodney L. Walker and Defendant Bell Sports, Inc., that the above-captioned civil action is dismissed, *without* prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

/s/ Cale Conley

CALE CONLEY

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WILL K. OWENS

Georgia Bar No. 777434

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/s/ Benjamine Reed

BENJAMINE REED

[Signed by Cale Conley with express permission]

GARY M. PAPPAS

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(Counsel for Plaintiffs)

CERTIFICATE OF SERVICE

I hereby certify that electronically filed the foregoing **STIPULATION OF VOLUNTARY DISMISSAL** with the Clerk of Court by using the CM/ECF system, which will automatically provide e-mail notification of such filing to counsel of record for all parties registered with the Court for electronic filing.

This 10th day of November, 2016.

CONLEY GRIGGS PARTIN LLP

/s/ Will K. Owens

William K. Owens

Georgia Bar No. 777434

EXHIBIT B

APR 14 2017

JAMES N. HATTEN, Clerk
By: *[Signature]* Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
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v.

BELL SPORTS, INC.,

Defendant.

Civil Action No.
1:14-cv-01866-RWS

CERTIFICATE OF PAYMENT OF COSTS

I, Barbara D. Boyle, by my signature below, do hereby certify,

swear and affirm that all costs in the above-styled action, Civil Action File No.

1:14-cv-01866, have been paid by the Plaintiff and there are no costs outstanding.

Nothing on docket showing any costs due.
This 21st day of April, 2017.

Barbara D. Boyle

Clerk, United States District Court
Northern District of Georgia, Atlanta
Division

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

Kirsten M. Walker and Rodney L. Walker

DEFENDANT(S)

Bell Sports, Inc.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Coweta (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Los Angeles (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

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II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF
2 U.S. GOVERNMENT DEFENDANT
3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

Table with columns for PLF and DEF, and rows for citizenship options: 1 CITIZEN OF THIS STATE, 2 CITIZEN OF ANOTHER STATE, 3 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY, 4 INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE, 5 INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE, 6 FOREIGN NATION.

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING
2 REMOVED FROM STATE COURT
3 REMANDED FROM APPELLATE COURT
4 REINSTATED OR REOPENED
5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
6 MULTIDISTRICT LITIGATION
7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

O.C.G.A. § 9-2-61

The original action was properly filed and served within the prescribed statutory time limits, and service of process was promptly and properly effectuated on the Defendant; that the voluntary dismissal without prejudice was accepted by the Court; and that all court costs have been satisfied by the Plaintiffs, the former action was a proper suit and may timely be renewed as a matter of right under O.C.G.A. § 9-2-61

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties.
2. Unusually large number of claims or defenses.
3. Factual issues are exceptionally complex
4. Greater than normal volume of evidence.
5. Extended discovery period is needed.
6. Problems locating or preserving evidence
7. Pending parallel investigations or actions by government.
8. Multiple use of experts.
9. Need for discovery outside United States boundaries.
10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # AMOUNT \$ APPLYING IFP MAG. JUDGE (IFP)
JUDGE MAG. JUDGE NATURE OF SUIT CAUSE OF ACTION

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
120 MARINE
130 MILLER ACT
140 NEGOTIABLE INSTRUMENT
151 MEDICARE ACT
160 STOCKHOLDERS' SUITS
190 OTHER CONTRACT
195 CONTRACT PRODUCT LIABILITY
196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
220 FORECLOSURE
230 RENT LEASE & EJECTMENT
240 TORTS TO LAND
245 TORT PRODUCT LIABILITY
290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
315 AIRPLANE PRODUCT LIABILITY
320 ASSAULT, LIBEL & SLANDER
330 FEDERAL EMPLOYERS' LIABILITY
340 MARINE
345 MARINE PRODUCT LIABILITY
350 MOTOR VEHICLE
355 MOTOR VEHICLE PRODUCT LIABILITY
360 OTHER PERSONAL INJURY
362 PERSONAL INJURY - MEDICAL MALPRACTICE
365 PERSONAL INJURY - PRODUCT LIABILITY
368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
371 TRUTH IN LENDING
380 OTHER PERSONAL PROPERTY DAMAGE
385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 441 VOTING
442 EMPLOYMENT
443 HOUSING/ ACCOMMODATIONS
444 WELFARE
440 OTHER CIVIL RIGHTS
445 AMERICANS with DISABILITIES - Employment
446 AMERICANS with DISABILITIES - Other

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
463 HABEAS CORPUS- Alien Detainee
465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 510 MOTIONS TO VACATE SENTENCE
530 HABEAS CORPUS
535 HABEAS CORPUS DEATH PENALTY
540 MANDAMUS & OTHER
550 CIVIL RIGHTS - Filed Pro se
555 PRISON CONDITION(S) - Filed Pro se

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 610 AGRICULTURE
620 FOOD & DRUG
625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
630 LIQUOR LAWS
640 R.R. & TRUCK
650 AIRLINE REGS.
660 OCCUPATIONAL SAFETY / HEALTH
690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
720 LABOR/MGMT. RELATIONS
730 LABOR/MGMT. REPORTING & DISCLOSURE ACT
740 RAILWAY LABOR ACT
790 OTHER LABOR LITIGATION
791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395ff)
862 BLACK LUNG (923)
863 DIWC (405(g))
863 DIWW (405(g))
864 SSID TITLE XVI
865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 400 STATE REAPPORTIONMENT
430 BANKS AND BANKING
450 COMMERCE/ICC RATES/ETC.
460 DEPORTATION
470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
480 CONSUMER CREDIT
490 CABLE/SATELLITE TV
810 SELECTIVE SERVICE
875 CUSTOMER CHALLENGE 12 USC 3410
891 AGRICULTURAL ACTS
892 ECONOMIC STABILIZATION ACT
893 ENVIRONMENTAL MATTERS
894 ENERGY ALLOCATION ACT
895 FREEDOM OF INFORMATION ACT
900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
950 CONSTITUTIONALITY OF STATE STATUTES
890 OTHER STATUTORY ACTIONS

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTITRUST
850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- ARBITRATION (Confirm / Vacate / Order / Modify)

(Note: Mark underlying Nature of Suit as well)

* PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE Story DOCKET NO. 1:14-cv-01866

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):
7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. 1:14-cv-01866-RW, WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

/s/ Ranse M. Partin
SIGNATURE OF ATTORNEY OF RECORD

April 26, 2017
DATE