Your claim can be filed electronically on KCC's website at https://epoc.kccllc.net/Tehum.

ID: 25839976 PIN: FBYVEZfe

Fill in this information to identify the case:

Debtor Tehum Care Services, Inc.

United States Bankruptcy Court for the Southern District of Texas

Case number 23-90086

Official Form 410
Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed.

Part 1: Identify the Claim

NameID: 15133388

1. **Who is the current creditor?**
   Anant Kumar Tripati #102081
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☒ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   Anant Kumar Tripati #102081
   ASPC - San Luis - Yuma
   PO Box 8909
   San Luis, AZ 85349
   Address
   Contact phone
   Contact email

   Where should payments to the creditor be sent? (if different)
   Anant Kumar Tripati
   Name
   19963 Observation Dr.
   Number Street
   Topanga Canyon CA
   City State ZIP Code
   USA 90290
   Country
   Contact phone —
   Contact email —

   RECEIVED
   MAY 15 2023
   KURTZMAN CARSON CONSULTANTS

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☒ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☒ No
   ☐ Yes. Who made the earlier filing?

23900862305040642420000096

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - [x] No
   - [ ] Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?**
   $ 30,000.00/100. **Does this amount include interest or other charges?**
   - [x] No
   - [ ] Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   SEE ATTACHED

9. **Is all or part of the claim secured?**
   - [x] No
   - [ ] Yes. The claim is secured by a lien on property.

   Nature of property:
   - [ ] Real estate: If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - [ ] Motor vehicle
   - [ ] Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - [ ] Fixed
   - [ ] Variable

10. **Is this claim based on a lease?**
    - [x] No
    - [ ] Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - [x] No
    - [ ] Yes. Identify the property: _____

23900862305040642420000096

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

		Amount entitled to priority
☐	No	
☒	Yes. *Check all that apply:* See attached PROOF	
☐	Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐	Up to $3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐	Wages, salaries, or commissions (up to $15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐	Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐	Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐	Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 05 08 2023
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name: Anant Kumar Mishra
First name Middle name Last name

Title: Self

Company: _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: _____
Number Street

_____
City State ZIP Code Country

Contact phone _____ Email _____

23900862305040642420000096

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE ~~NORTHERN~~ SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

In Re:	
Tehum Care Services, Inc.,	No: 23-90086 CML
Debtor.	Chapter 11

PROOF OF CLAIM. AFFIDAVIT

I, ANANT KUMAR TRIPATI SWEAR UNDER THE PENALTY OF PERJURY THAT THESE FACTS ARE TRUE AND CORRECT AND I AM CAPABLE OF SO TESTIFYING:JURISDICTION

ARE INEXTRICABLY ENTWINED

1. The conduct of Defendants in the Adversary are inextricably entwined with the conduct of the Debtor Fire Eagle LLC v Bischoff, 710 F.3d 299

PROOF OF CLAIMS

(5th Cir. 2003) These claims affect distribution of the Debtor's assets. Howell Hydrocarbons v Adams, 897 F2d 183 (5th Cir. 1990)

THE POLICY OF THE DEBTOR AND DEFENDANTS INEXTRICABLY ENTWINED

2. The Debtor with the Defendants named in the Adversary in advance of litigation, as a matter of their practice and policy, engineered the scheme to deploy prefabricated defenses in prisoner litigation.
3. They used permissible procedural devises in bad faith, rigging the game from inception. They ensured truthful untainted evidence is not disclosed if inculpatory and favorable to inmates. They created alternative evidence/facts, not mischaracterizing them.
4. They assembled template stock pleadings, making false sworn/unsworn statements, providing false incorrect expert/consultant reports, creating false exonerating evidence. They intentionally destroyed, withheld the foregoing material evidence duty bound to disclose, that prisoners like me cannot obtain from alternative sources.
5. These are reports, emails, investigations, faxes, employee misconduct reports, policies, directives, failure to follow policies, and the evidence discussed.

PROOF OF CLAIMS

6. Defendants1 made material misrepresentations as to past and current facts/policies/directives, with knowledge or belief of their falsity, with an intention that courts and inmates shall rely on.
7. Both the courts and I relied, and on which there was reasonable reliance by courts and inmates.
8. Defendants lied and concealed the evidence violating fraudulent concealment, fraud, deceit. Their conduct constitutes common law fraud, deceit, fraudulent concealment, constructive fraud, constructive taking, unjust enrichment, breach of fiduciary duty, deceptive business practices, fraud upon the court, and conspiracy to engage in these torts. Their conduct also is a violation of my right of access to courts, as they, by filing this bankruptcy, [prevented the United States Supreme Court, Third, Ninth and Arizona federal courts from reviewing my claims on spoliation. I would have prevailed had they not filed this bankruptcy, and allowed the courts, to review my claims.
9. Defendants had a legal obligation to disclose the evidence in connection with existing or pending litigation. They did not disclose material evidence, intentionally withholding, altering, destroying the evidence to

[1] Defendants when used in this proof refers to the Debtor and those named in the adversary.

disrupt frustrate prisoner litigation. As consequence the evidential record did not contain the relevant evidence.

10. The Supreme Court has held when documents have been destroyed, the Plaintiff has been deemed to have established personal jurisdiction. Ins. Corp. v. Compagnie des Bauxites, 456 U.S. 694 (1982) (affirming order that imposed sanction of deeming personal jurisdiction established

11. I did not choose this forum. By filing protection under Chapter 11, Defendants, waived jurisdiction of this court to grant me relief on my claims as they are alter egos of each other, have acted in concert with each other, have abused their corporate form, used the corporate structure as a mere instrumentality for fraud and wrongs against me, as set forth in this complaint, in Arizona, in this court and other venues.

12. The corporate structure of Defendants is a mere instrumentality by Defendants at all times, to perpetrate fraud and engage in racketeering. The mere instrumentality is evidenced by Correctional Health maintaining a common, same and or similar business structure, policy, using a joint defense in all cases involving prisoners, restructuring in Texas for the purpose of defrauding prisoners and

precluding federal courts from reviewing claims of violation of federal rights.

ACCRUAL AND THE INJURY I SUSTAINED FROM THE CRIMINAL ENTERPRISE OPERATED BY THE DEBTOR AND DEFENDANTS ENTWINED AS SET FORTH BELOW

13. After Corizon notified the Third Circuit of this Bankruptcy, that court in Case 22-1861 on April 13, 2023 abstained as to all Defendants, because the claims in that case, were about spoliation by all Defendants, and the Third Circuit, District Court, Defendants, failed to address the spoliation.

14. In the District of Arizona, after Defendants filed a notice of this bankruptcy, the District Court, as mandated by law, abstained from ruling on the spoliation as to all Defendants for the reasons in 12 above. CIV 18-0066RM.

15. After Defendants notified the Ninth Circuit in 21-15902 of these Bankruptcy proceedings, the Ninth Circuit has not ruled on the matter, it appears, the court has abstained.

16. After I became apprised of this Bankruptcy, I notified the District Court in Arizona in CV 22-0243 JJT JFM of these proceedings, and am

amending my complaint, to remove all claims, as to spoliation by here Defendants, for the reasons above.

17. As such, these spoliation claims, accrued when Defendants notified the courts, and prevented them from deciding the claims, as mandated by law. The Supreme Court Has Held When Documents Have Been Destroyed, The Plaintiff Has Been Deemed To Have Established Personal Jurisdiction. Ins. Corp. V. Compagnie Des Bauxites, 456 U.S. 694 (1982) (Affirming Order That Imposed Sanction Of Deeming Personal Jurisdiction Established)

TRANSFER TO THIS COURT BY DEBTOR AND DEFENDANTS

18. These Defendants have by operation of the federal bankruptcy laws, in effect, transferred the spoliation claims, to this court, against all Defendants. Defendants, and each of them, acting in bad faith, adopted outside the adversarial process the policy to conceal and falsify evidence in prisoner cases, as set forth in this complaint. They concealed and also provided false information as to the electronic evidence that they had in their possession. Defendants failed to perform their duty to disclose the evidence that they had in their possession. They failed to exercise reasonable care to prevent harm to

me during litigation against them. They knew or had reason to know that their misconduct would defeat my claims.

WHAT HAPPENED DUE TO THE BANKRUPTCY

19. As a consequence of the bankruptcy I was unable to have the Third Circuit, Ninth Circuit, District of Arizona, Arizona State courts, review my spoliation claims against Defendants, their agents, employees and subordinates. The attorney and the law firm Defendants devised and implemented a scheme and or policy outside the adversarial process, to engage in spoliation of evidence in prisoner cases, which could not be reviewed, because of the bankruptcy filing. As I was a witness in my cases, due to the retaliation against a witness, I was prevented from presenting that evidence, in official proceedings under federal law, in state and federal courts. The liability insurers by making policy exceptions in prisoner cases, allowed Defendants to engage in the misconduct.

20. Defendants deprived me and others of a benefit, defined as anything of value or advantage, present or prospective, under ARS 13-105.5 the tangible evidence or intangible rights to have the court decide my claims on spoliation based on all the evidence, is property within

the meaning of ARS 13-105.37, which Defendants deprived me of. All this was accomplished through the system of emails, through computer networks, and the use of the United States Mail.

21. By obstructing justice, acting in a manner to obstruct justice, to influence the due administration of justice, interfering in the administration of justice, with specific intent to corruptly influence, impede or obstruct the administration of justice by implementing the policy of making others lie, as set forth in this complaint, Defendants injured me. They foresaw the evidence was for use in official proceedings for violation of federal rights, satisfying the federal nexus set forth in United States v Causey, 183 F3d 407(5th Cir. 1999)Their corruption included the concealment of evidence, submission of false statements under penalty of perjury, and making false statements in this bankruptcy and judges deciding federal claims.

EQUITABLE ESTOPPEL

22. As I have previously stated, I did not choose this venue but the Debtor did. As such, equitable estoppel bars the Debtor and the Defendants whose claims are intertwined with that of the Debtor, from

contesting the jurisdiction and venue. This venue has been chosen by Defendants and not me .Petrella v Metro-Goldwn-Mayer, Inc., 572 US 663, 684 (2014)

WHAT IS THE SPECIFIC ARGUMENT I WAS MAKING AND MADE TO THE WESTREN DISTRICT OF PENNSLYVANIA AND THIRD CRCUIT, AND WAS TO MAKE TO THE UNITED STATES SUPREME COURT, WHICH THIS BANKRUPTCY PREVENTED ME ROM MAKING

23. The argument that I made to the Third Circuit and which the Third Circuit declined to consider because of this bankruptcy is as follows:

THE QUESTION THAT I PRESENTED AND WHICH WAS NOT ADDRESSED IS

i. After listening to privileged communications between Anant Kumar Tripati (Petitioner) and my counsel, Respondents, who are prison officials, prison healthcare providers and their attorneys, became aware that Petitioner had evidence against them, for concealing and falsifying evidence, in prisoner litigation. They sent Betty Ullibarri, a paralegal, to seize the

evidence. The question presented is the same as that unresolved by this court in *The Pizarro*, 15 U.S. (2 Wheat.) 227 (1817).

ii. Must the District Court sitting in diversity, address pre-filing spoliation of evidence, before addressing the defenses advanced by the guilty party? Can the guilty party engage in pre-filing spoliation to prevent Plaintiff from presenting his claims in compliance with Rules 8 and 9?

iii. When substantial rights have been violated resulting in injustice, due to the appellate panel's failure to consider pre-trial spoliation of evidence, which, if considered, would have resulted in a different result, does Calderon v Thompson, 523 U.S. 538, 548 (1998) Accord at 567 (Souter, J. dissenting) authorize the appellate court to recall the mandate, so as to prevent injustice?

BRIEF SUMMARY

iv. Mr. Justice Story in The Pizarro, 15 U.S. (2 Wheat.) 227 (1817) stated "Spoliation of papers, is not itself a sufficient ground for condemnation in a prize court. It is, undoubtedly, a very

awakening circumstance, calculated, and justify the suspicions of the court.... If, on the other hand, the spoliation be unexplained, or the explanation appear weak and futile, if the cause labor under heavy suspicions, or there be a vehement presumption of bad faith or gross prevarication, it is made the denial of further proof, and condemnation ensues, from defects in the evidence, which the party is not permitted to supply." Id. at 240.

v. When a party to litigation destroys relevant evidence, the judge may issue sanctions under the court's inherent power and statutory authority to punish spoliation of evidence. Chambers v. NASCO, Inc., 501 U.S. 32, 46-47 (1991) (stating inherent power of courts to sanction not displaced by Federal Rules of Civil Procedure); Anderson v. Dunn, 19 U.S. 204, 226-27 (1821) (concluding courts vested, by creation, with power to impose "silence, respect, and decorum").

vi. While the petition to recall the mandate was pending, Corizon filed for bankruptcy. The Clerk of court issued an order on March 13, 2013 stating "no action will be taken on Appellant's motion."

vii. As all other Respondents had not filed for bankruptcy, Petitioner sought review by the panel. The panel declined to review that order and upheld the decision of the Clerk on April 13, 2013.

viii. This case provides the Court with the opportunity to provide further, much needed guidance, as to the duty of the courts to consider the effects of pre-litigation spoliation, prior to considering the spoliator's defenses.

MY REASONS PRESENTED TO THE THIRD CIRCUIT AND WHICH I WOULD HAVE PRESENTED ON CERTIORARI

24. 24 First,--in 1979 a federal court observed that there is an "alarming lack of authority" for the proposition that a party cannot destroy an item of relevant evidence. Barker v. Bledsoe, 85 F.R.D. 545, 547 (W.D. Okla. 1979).The court acknowledged that the parties to a proceeding are free to invoke the protection of the courts to safeguard their right to a fair trial. This privilege, however, must carry a concomitant duty of fairness, both to the court and the other

adversaries. Yet, the topic has received little attention in ethical opinions, scholarly journals, or judicial decisions.

25. Pre-litigation destruction of evidence is a recurring issue which is subject to sanction under Chambers v. NASCO, Inc., 501 U.S. 32, 35 (1991). Circuit Courts of Appeals are—and have long been---in direct conflict with The Pizarro, 15 U.S. (2 Wheat.) 227 (1817) and its protégé, on this important and recurring issue. Only this Court can resolve this stark divide.

26. Second, certiorari is warranted because the decision of the lower courts appears to collide with The Pizarro, 15 U.S. (2 Wheat.) 227 (1817) line of cases. By accepting review, this Court can prevent further erosion of that clear dividing line, in which the Court has invested significant effort to maintain.

27. Third, there is a Circuit split on the issue of pre-litigation spoliation of evidence. Other than the First, Sixth and Ninth Circuits, the remaining Circuits find the courthouse doors altogether closed to such claims.

28. In this case the Third Circuit closed this door, notwithstanding The Pizarro and its protégé. This case presents an important and much-litigated legal issue worthy of this Court's determination. As

noted, this case implicates the delicate relationship between the right to have one's claims heard, and spoliation of evidence.

29. Fourth, there is a Circuit split on the burden on the spoliator.

30. Fifth, this case presents the issue for resolution, clearly and discretely. The courts below refused to address the spoliation issue, but addressed the defenses. Had they addressed the spoliation issue, they would not have addressed the defenses, because the conduct was not harmless.

31. Finally, there is a split in the Circuits on the criteria to recall mandates. This court in Calderon v Thompson, 523 U.S. 538, 549 (1998) Accord at 567 (Souter, J. dissenting) has recognized that Circuit Courts may recall mandates, to prevent injustice, when as in the instant case, substantial rights are involved.

A. Petitioner's Litigation History

32. Petitioner since 1992 has been in litigation in federal and state courts in Arizona, challenging his criminal convictions and conditions of confinement. These Respondents are prison employees, healthcare providers and their lawyers.

33. During litigation, Petitioner has asserted continually that the representations made by Respondents, to federal and state courts, in pleadings and declarations were materially false.

34. The contents of these documents were contradicted by documents created contemporaneously by Respondents agents when events happened. During discovery these documents were not released, because they were inculpatory to prison officials, thereby preventing Petitioner from bringing these to the court's attention.

35. By letter dated April 12, 2018, Attorney Dan Montgomery advised Petitioner that "My analysis of all cases that Paul Carter has been involved in shows in detail what he concealed and falsified to win cases involving prisoners. There is a similar analysis for cases involving Corizon and Wexford in Arizona" Mr. Montgomery also sent Petitioner "nine cds ...with affidavits, law reviews and records."

36. Attorney Frederick A. Romero likewise in his letter dated October 3, 2019, reproduced as App. H, also sent Petitioner CDS with other documents, confirming what Dan Montgomery stated.

37. Petitioner, after receiving these documents, began preparing complaints to be filed.

38. However, prison officials, through privileged communications, became privy to the evidence.

B. Petitioner's Claims in District Court

39. The verified second amended complaint reads in relevant part:

> "In May 2018 I received CDS/DVDS from counsel and this is the first time that I saw documents that reflect the concealment of evidence, a subject matter of this case. In no uncertain terms the documents that I read in these CDS/DVDS from Weber Gallagher, (DEFENDANTS) direct lawyers, not to disclose evidence to prisoners, and to use every procedural device to frustrate prisoner litigation. The evidence that I read were not presented to the judges in the cases that I filed

for had they been presented, I would have prevailed in the litigation. No judge has ever ruled that Defendants did not conceal evidence. (SAC Para 7 through 19)
I also read in these CDS/DVDS motions for sanctions, responses, letters, about 70 settlement agreements nationwide, involving Wexford, Corizon, Centurion, CENTURION LLC in Pennsylvania, New Jersey, Illinois, Florida, New Mexico, Georgia and other states, and ADOC in Arizona, where concealment of evidence was alleged, and sanctions imposed. (SAC Para 12-13)"
Ullibarri Seized And Delivered To Centurion, Wexford, Corizon, Shinn, Ryan, Gottfried And Others Evidence I Had On Cds/Dvds Necessary To Comply With Rules 8 And 9. She Did This Upon The Authorization Of Erwin, Johnson, Glynn, Carter And Others. I have

firsthand knowledge as to what these documents state because I read them .(SAC@ 134-135; SAC@ 7, 8)
Seized Evidence, on the CDS/DVDS I Read, Show Weber Gallagher, Foreman, Zwick Created Policy In Pittsburgh To Frustrate Prisoner Litigation, Create Alternative Facts. Emails From Wexford Approved These.(SAC@ 23-24; SAC@ 1)
Counsel For Wexford, Ryan, Shinn, Corizon, Centurion In Cases Nationwide, Per The Seized Evidence I Read, Approved Above Policy By Emails And Sent Emails To Local Counsel Nationwide For Implementation. (SAC @ 6)
Hochuli; Blair; Rappazzo; Jones Skelton; Metcalf; Rowey; Quintairos Prieto; Fernandez; Conlon; Renaud Drury; Hover: Grimm; Klausner; Glynn; Barnes; Broening Oberg;

Gottfried; Morrissey; Carter; Rand: Struck; Acedo; Struck Weinke; According To Seized Documents On CDS/DVDS, I Read, Are Indemnified And In Exchange Implement This Practice For Wexford, Corizon; Centurion; Ryan; Shinn (SAC @ 139 to 81)
Wexford, Corizon, Centurion, Ryan, Shinn And Others According To Seized Documents I Read, Enter Into Cooperation Agreements To Indemnify Attorney Defendants For Implementing Their Policy (SAC @ 139 to 81)
"These emails and documents would have entitled me to relief in cases that I was involved in and am involved in. They would have shown that higher-ups directed retaliatory actions against me and my medical treatment changed, as retaliation. These would have shown the Providers were just signing off and not making professional judgments as

they have stated." (SAC Para 112)

The United States District Court for the District of Arizona Has Found *Jensen v Shinn* CV 12-0601 Doc 4335

Dr. Jordan testified medical schools do not teach the type of healthcare issues prisoners have, which are very bad. (p 111@ 24-26)(pp 16 @ 21-28)
"The current staffing levels illustrate ADCRR does not have the ability to address the varied and other complex needs of Arizona prisoners" (pp 22 @ 1-2)
"Defendants have failed to provide, and continue to refuse to provide, a constitutionally adequate medical care....Defendants have been aware of their failures for years and

Defendants have refused to take necessary actions to remedy the failures. Defendants' years of inaction, despite Court intervention and imposition of monetary sanctions, establish Defendants are acting with deliberate indifference." (pp 2 @ 4-11)
Nursing Encounter Tools referrals by provider to Utilization Management and the responses, etc. (pp 13@ 12 -14 @ 18)
"The majority of medical staff do not have the necessary training or licensure to provide the type of care that is necessary to provide constitutionally adequate care...The patterns of delay and indifference are pervasive." (pp 69@ line 22-26)
Dr. Wilcox was asked if he was "aware of any other health care settings where the nurse serves as the final decider when someone seeks to access their doctor." He responded "No."

Considering that it's not really legal, you wouldn't expect to find any others. But, you know, can you imagine in the community if you schedule an appointment with your doctor and you're met in the lobby by the nurse who does a little assessment on you and then turns you around and sends you home and you're not allowed to see your doctor? That just doesn't exist in the scope of healthcare anywhere" (pp 28 @ 15-20)
"In Dr. Wilcox's expert opinion "the poor quality of clinical decision-making demonstrated by nurses and providers in the ADCRR harms patients and places them at an unreasonable and substantial risk of serious harm." (pp 28 @ 10-14)

C. The District Court's Decision

40. The District Court adopted the Magistrate Judge's Report and Recommendation, and did not address the spoliation of evidence. Instead the court addressed the defense presented by Defendants.

D. The Decision by the Third Circuit

41. Like the District Court the Third Circuit failed to address the spoliation of evidence, addressing the defenses on the merits.

E. Failure to Recall Mandate

Prior to filing this petition Petitioner moved the circuit court to recall the mandate due to substantial injustice, as a consequence of the failure to address spoliation. The court denied the application.

REASONS WHY THE PETITION SHOULD BE GRANTED

42. As noted in the introduction, the same considerations that motivated this Court to grant certiorari in *The Pizarro* still exist today. Indeed, as will be shown below, the rift between the Circuits has only intensified, making the need for this Court's guidance more urgent.

I. REVIEW WILL ALLOW THIS COURT TO FINALLY RESOLVE THE LONGSTANDING CONFLICT AMONG THE CIRCUITS AS TO PRE-LITIGATION SPOLIATION OF EVIDENCE. PERSONAL JURISDICTION CAN BE ESTABLISHED BY SPOLIATION

43. This Court has held when documents have been destroyed, the Plaintiff has been deemed to have established personal jurisdiction. Ins. Corp. v. Compagnie des Bauxites, 456 U.S. 694 (1982) (affirming order that imposed sanction of deeming personal jurisdiction established) and the Circuit courts are split on this issue.

44. The circuits are split regarding what level of culpability is required on behalf of the spoliator; the minority allows the inference for

negligent destruction of evidence, while the majority requires willful or bad-faith destruction. Baliotis v Mc.Neil, 870 F.Supp. 1285, 1289 (M.D. Pa., 1974), Sacramona v Bridgestone/Firestone, Inc., 106 F.3d 444 (1st Cir.1997), Unigard Sec. Ins. Co. v. Lakewood Eng'g & Mfg. Corp., 982 F.2d 363, 368 (9th Cir. 1992); Blain D. Johnson, Federal Courts' Authority to Impose Sanctions for Pre-litigation or Pre-order Spoliation of Evidence, 156 F.R.D. 313, 318 (1994); Bell v Lakewood Eng'g & Mfg. Corp., 15 F.3d (6th Cir. 1994).

45. Beaven v. U.S. Dep't of Justice, 622 F.3d 540, 553 (6th Cir. 2010) (recognizing negligent spoliation severely prejudiced plaintiff and justified adverse inference), and West v. Goodyear Tire & Rubber Co., 167 F.3d 776, 780 (2d Cir. 1999) (claiming inference, rather than dismissal, properly remedies severe prejudice caused by negligent spoliation), with Bashir v. Amtrak, 119 F.3d 929, 931 (11th Cir. 1997) (issuing inference only when destruction predicated on bad faith (citing Vick v. Texas Emp't Comm'n, 514 F.2d 734, 737 (5th Cir. 1975))), and Brewer v. Quaker State Oil Ref. Corp., 72 F.3d 326, 334 (3d Cir. 1995) (requiring intentional destruction before issuing adverse inference).

II. Federal Courts Have the Power to Deny the Court's Processes to One Who Defiles the Judicial System by Engaging in Pre-Filing Spoliation

46. In *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991) the Supreme Court considered a trial court's imposition of attorneys' fees as a sanction for a broad range of bad faith conduct in litigation over a contract for the sale of a Louisiana television station. The issue in the Supreme Court was whether it was permissible for the trial court to rely on inherent powers when at least some of the conduct was sanctionable under various federal rules or 28 U.S.C. § 1927, which allows a court to require counsel who unreasonably multiply proceedings to bear the marginal costs. The Court began with an explanation of the basis for inherent powers: It has long been understood that "certain implied powers must necessarily result to our Courts of justice from the nature of their institution," powers "which cannot be dispensed with in a Court, because they are necessary to the exercise of all others." For this reason, "Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose

silence, respect, and decorum, in their presence, and submission to their lawful mandates." These powers are "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.

47. Prior cases have outlined the scope of the inherent power of the federal courts. For example, the Court has held that a federal court has the power to control admission to its bar and to discipline attorneys who appear before it. While this power "ought to be exercised with great caution," it is nevertheless "incidental to all Courts." *Chambers*, 501 U.S. at 43 (citations omitted).

48. The Court, in a five-to-four decision, upheld the sanctions under inherent powers: We discern no basis for holding that the sanctioning scheme of the statute and the rules displaces the inherent power to impose sanctions for the bad-faith conduct described above. These other mechanisms, taken alone or together, are not substitutes for the inherent power, for that power is both broader and narrower than other means of imposing sanctions. First, whereas each of the other mechanisms reaches only certain individuals or conduct, the inherent

power extends to a full range of litigation abuses. At the very least, the inherent power must continue to exist to fill in the interstices.

49. The majority recognized that Congress could limit the exercise of inherent powers but expressed the opinion that neither Rule 11 nor Rule 26 had such effect. One area in which the dissenters and the majority disagreed was with respect to the ability of a court to rely on inherent powers where the conduct was sanctionable under a rule or statute. Thus, even the dissenters agreed that a trial court's inherent powers could be relied upon to sanction bad-faith misconduct not governed by rules or statutes. But the majority went one step further: There is, therefore, nothing in the other sanctioning mechanisms or prior cases interpreting them that warrants a conclusion that a federal court may not, as a matter of law, resort to its inherent power to impose attorney's fees as a sanction for bad-faith conduct. This is plainly the case where the conduct at issue is not covered by one of the other sanctioning provisions. But neither is a federal court forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under the statute or the Rules. A court must, of course, exercise caution in invoking its inherent power, and it must comply with the mandates of due process, both in

determining that the requisite bad faith exists and in assessing fees. Furthermore, when there is bad-faith conduct in the course of litigation that could be adequately sanctioned under the Rules, the court ordinarily should rely on the Rules rather than the inherent power. But if in the informed discretion of the court, neither the statute nor the Rules are up to the task, the court may safely rely on its inherent power.

50. Thus, despite what perhaps should be viewed as a preference to use applicable rules and statutes, under Chambers federal trial courts have discretion to invoke their inherent power to mete out sanctions in response to bad faith misconduct in matters pending before them.

51. Courts that dismiss or default for fraud practiced on the court often cite their inherent powers as a source of sanctioning authority. *Brady v. United States*, 877 F. Supp. 444 (C.D. 11. 1994); *Sun World, Inc. v. Lizarazu Olivarria,* 144 F.R.D. 384, 390 (E.D. Cal. 1992); *Eppes v. Snowden*, 656 F. Supp. 1267, 1279 (E.D. Ky. 1986). Perhaps this is because there is not a tight fit between the rules of civil procedure and situations in which litigants repeatedly lie under oath, fabricate evidence to support their claims, or destroy evidence. *TeleVideo Sys.*

Inc. v. Heidenthal, 826 F.2d 915 (9th Cir. 1987); *McDowell v. Seaboard Farms of Athens, Inc.*, No. 95-609-CIV-ORL-19, 1996 U.S. Dist. Lexis 19558 (M.D. Fla. Nov. 4, 1996) (fabrication of evidence); *ABC Home Health Serv. Inc. v. Int'l Bus. Mach. Corp.*, 158 F.R.D. 180 (S.D. Ga. 1994) (evidence destroyed prior to initiation of lawsuit). The federal case law is well established that dismissal is the appropriate sanction where a party manufactures evidence which purports to corroborate its substantive claims. *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1116-1117, 1122 (1st Cir. 1989).

52. Federal courts have the power to deny the court's processes to one who defiles the judicial system by committing a fraud on the court. In its sole reference to the Federal Rules of Civil Procedure, the court said: "The Civil Rules neither completely describe nor purport to delimit, the district court's powers." *HMG Prop. Invs., Inc. v. Parque Indust. Rio Canas, Inc.*, 847 F.2d 908, 915 (1st Cir. 1988); *Brockton Sav. Bank v. Peat, Marwick, Mitchell& Co.*, 771 F.2d 5, 11 (1st Cir. 1985)). Yet, other authorities continue to suggest that the courts' inherent powers may only be utilized to respond to misconduct not addressed by statutory enactments or rules of court. For example,

Professor Moore writes, "when an appropriate sanction for a specific abuse exists under the Rules . . . , a court may not resort to its inherent sanctioning power but must use the sanctions available under the Rules.' 6 *James Wm. Moore Et Al., Moore's Federal Practice* 26.06[1] (Matthew Bender 3d ed. 2000) (citing *Societe Int'l Pour Participations Indus. et Comm'l, S.A. v. Rogers*, 357 U.S. 197, 207 (1958); *Black Panther Party v. Smith*, 661 F.2d 1243, 1259 n.103 (D.C. Cir. 1981), vacated on other grounds, 458 U.S. 1118 (1982)). In *Societe Internationale*, the Supreme Court held that the trial court erred by resorting to inherent powers and Rule 41(b), instead of Rule 37(b) (2) (iii), for authority to dismiss a case because of plaintiffs noncompliance with a discovery order. 357 U.S. at 207. The *Chambers* majority opinion distinguished *Societe Internationale* on the basis that there was "no need" in *Societe Internationale* to invoke inherent powers or Rule 41(b) and that where "individual rules address specific problems... it might be improper to invoke one when another directly applies." *Chambers*, 501 U.S. at 49 n.14.

53. Nonetheless, it is beyond question that many fraud on the court scenarios are not governed by the rules.

54. As "wrongful destruction of documents or other physical evidence prior to the commencement of an action is generally outside the scope of the sanctions available under specific Rules." *Moore,* At 26.06[1]. Accord 8a *Charles Alan Wright Et al., Wright, Miller & Marcus, Federal Practice And Procedure: Civil § 2282* (2d ed. 1994) ("[T]hough the Supreme Court said that Rule 37 is the sole source of sanctions for the discovery violations described in that rule, there are some violations of the discovery rules not within the compass of Rule 37, and it should be held that the court has inherent power to deal with these violations."). Further, "the fabrication of evidence or testimony is subject to the court's inherent sanctioning power and dismissal is a potential sanction." In these situations, federal trial courts clearly are authorized to invoke their inherent power to sanction recalcitrant litigants.

55. The question, then, in deciding whether inherent powers properly should be invoked is whether the specific set of facts constituting fraud on the court is adequately addressed by a rule of civil procedure. In *Derzack v. County of Allegheny*, 173 F.R.D. 400, 412 (W.D. Pa. 1996) (footnote and citations omitted) the court relied on inherent powers to

dismiss for misconduct that included fabrication of evidence. [B]ecause it occurred throughout several aspects of this litigation which are not squarely covered by any one rule, the Court holds, as have most federal courts faced with similar abuse, that plaintiffs' misconduct most directly implicates the inherent power of the court to curb such excesses and, just as clearly, warrants invocation of that power to sanction the responsible parties. It is unclear how tight the fit of the facts to the rule must be before inherent powers should not be relied upon. Compare *Societe Internationale*, 357 U.S. at 207 ([W]hether a court has power to dismiss a complaint because of noncompliance with a production order depends exclusively upon Rule 37, which addresses itself with particularity to the consequences of a failure to make discovery by listing a variety of remedies which a court may employ as well as by authorizing any order which is 'just.' There is no need to resort to Rule 41(b), which appears in the part of the Rules concerned with trials and which lacks such specific references to discovery.) with *Chambers*, 501 U.S. at 50. Because inherent powers can be so potent, the Supreme Court has required that they be exercised with restraint

and discretion. *Chambers*, 501 U.S. at 44; *Roadway Express*, 447 U.S. at 764.

III. The Third Circuit's Refusal to Apply The Pizarro to Pre-Litigation Spoliation is Contrary to the Dictates of This Court

56. Rule 8(a) FRCIVPR states "A pleading that states a claim for relief must contain: (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the clam needs no jurisdictional support; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; (3) and a demand for the relief sought which may include relief in the alternative or different types of relief."

57. In the context of spoliation, this is satisfied, when it has been pled that there has been (1) an act of destruction of evidence; (2) the evidence destroyed was relevant to the dispute; (3) the act of spoliation was intentional and/or negligent; (4) legal proceedings were pending or reasonably foreseeable at the time when destruction occurred; and (5) the act of destruction was taken by the parties or their agents, there is

spoliation. S.C. Johnson & Son, Inc. v. Louisville & Nashville R.R. Co., 695 F.2d 253, 258 (7th Cir. 1983) (holding that court must believe spoliation party acted in bad faith before unfavorable inference can arise), to ensure spoliators must not profit from their wrongs Pomeroy v. Benton, 77 Mo. 64, 86 (1882) spoliation instructions are given.

58. The increasing use of email and other forms of real-time electronic communication has enabled litigators to provide fact finders with highly persuasive contemporaneous records that were unavailable two decades ago. These records can be particularly revealing since people frequently use emails and other new forms of communication casually, without imagining that they might one day surface at a trial. Litigators, by contrast, have come to expect that electronically stored information will be available at trial, greatly expanding the scope of discovery. James N. Dertousos et al., The Legal and Economic Implications of Electronic Discovery, RAND CORP., 2 (2008), available at http://www.rand.org/pubs/occasional-papers/2008/RANDOP183.pdf ("Despite the potential of computer technology to make storage, search, and exchange of information less expensive and less time consuming, the most frequent issue raised by those we interviewed was the

enormous costs-in time and money-to review information that is produced.").

59. Welsh v. United States, 844 F.2d 1239, 1248 (6th Cir. 1988) stated: when, as here, a plaintiff is unable to prove an essential element of her case due to the loss or destruction of evidence by an opposing party, and the proof would otherwise be sufficient to survive a directed verdict, it is proper for the trial court to create a rebuttable presumption that establishes the missing elements of the plaintiffs case that could only have been proved by the availability of the missing evidence. The burden thus shifts to the defendant-spoliator to rebut the presumption and disprove the inferred element of plaintiffs' prima facie case. ("[T]his approach merely selects which of two parties-the innocent or the negligent-will bear the onus of proving a fact whose existence or nonexistence was placed in greater doubt by the negligent party.").

60. Nation-Wide Check Corp., Inc. v. Forest Hills Distrib., Inc., 692 F.2d 214, 217-19 (1st Cir. 1982) held that document destruction that amounted to "knowing disregard" of plaintiff's claim, though not necessarily constituting "bad faith", gave rise to adverse inference that sustained plaintiff's burden of proof.

61. Telectron, Inc. v. Overhead Door Corp., 116 F.R.D. 107, 129 (S.D. Fla. 1987) (holding judicial sanctions guaranteed more predictability than leaving it to jury). The court stated that allowing the jury to draw an inference "would leave too much to fortuity, since we can only speculate as to the significance which a jury might attach to evidence of willful document destruction in the context of a complex and protracted antitrust case." Id. at 136.

62. In Bowman v. American Medical Systems, No. CIV.A.96-7871, 1998 WL 721079 (E.D. Pa. Oct. 9, 1998) the United States District Court for the Eastern District of Pennsylvania granted a defendant manufacturer summary judgment when a plaintiff sued on an individual product malfunction theory and the defective product was discarded by the plaintiffs doctor.

IV. THIS CASE INVOLVES A RECURRING AND HIGHLY RELEVANT ISSUE IN THE GENERAL DEBATE ON PRE-LITIGATION SPOLIATION OF EVIDENCE

63. "When the contents of a document are relevant to an issue in a case, the trier of fact generally may receive the fact of the document's

nonproduction or destruction as evidence that the party that has prevented production did so out of the well-founded fear that the contents would harm him." (emphasis added) Brewer v. Quaker State Oil Ref. Corp., 72 F.3d 326, 334 (3d Cir. 1995) ("Dale A. Nance, Adverse Inferences About Adverse Inferences: Restructuring Juridical Roles for Responding to Evidence Tampering by Parties to Litigation, 90 B.U. L. Rev. 1089, 1134-35 (2010) (discussing presumption of permissive, rather than mandatory, inferences) Gumbs v. Int'l Harvester, Inc., 718 F.2d 88, 96 (3d Cir. 1983) (explaining nonproduction or destruction of relevant evidence justifies spoliation inference). Brewer v. Quaker State Oil Ref. Corp., 72 F.3d 326, 334 (3d Cir. 1995) (explaining rationale behind allowing adverse inference against spoliating party). The inference allows the trier of fact to draw conclusions about what the missing evidence would prove had the offending party preserved it and made it discoverable.

64. For example, if the allegation is that the steering system of a car was defective product, reconstruction may be effectively impossible. There are too many elements of the steering system, potentially manufactured by different entities, to readily allow for sufficient reconstruction in the absence of the allegedly defective original.

65. In the case of documents, even if other copies of the spoliated document are available, a showing of prejudice can be made if the original is the one destroyed or if it can be shown that there was something unique about the destroyed document. For example, if it can be shown that a key individual made notes on his or her copy, and that copy was subsequently spoliated, then a prejudice argument can be made. The spoliator would respond that the written notes can be reconstructed through questioning of the note's maker.

66. In the instant case Petitioner had asked the court for an order that allowed him to conduct limited discovery as to the spoliated evidence, and that was denied. With this limited discovery the spoliated evidence, could possibly have been reconstructed. The Magistrate Judge declined to allow discovery.

67. Obviously, if the spoliated evidence could have been reconstructed or recreated somehow, there is little or no prejudice suffered by the innocent party. The more complex the product or evidence in question is, the more difficult reconstruction may be.

V. THE COURT'S RESOLUTION OF THE QUESTION PRESENTED IN THIS CASE GIVES THIS COURT AN OPPORTUNITY TO ENSURE UNIFORM TREATMENT OF PRE-LITIGATION SPOLIATION CLAIMS

68. Exploring the source of the court's authority to impose sanctions highlights an important distinction within the spoliation cases. Chambers v. NASCO, Inc., 501 U.S. 32, 46 (1991) (qualifying courts' inherent ability to sanction fills "interstices" left by Federal Rules of Civil Procedure) as the harm addressed by sanctioning this conduct is the hardship incurred by the opposing party who can no longer use the evidence at trial, and not the destruction of evidence itself. ("In invoking the inherent power to punish conduct which abuses the judicial process, a court must exercise discretion in fashioning an appropriate sanction, which may range from dismissal of a lawsuit to an assessment of attorney's fees").

69. Regardless of what triggers this nonproduction, courts have inherent and statutory authority to sanction parties for spoliation. Judges enjoy broad discretion in fashioning appropriate sanctions for

the damage incurred by spoliation. Roadway Express, Inc. v. Piper, 447 U.S. 752, 764 (1980) ("Because inherent powers are shielded from direct democratic controls, they must be exercised with restraint and discretion.").

70. In Unigard Security Insurance Co. v. Lakewood Engineering& Manufacturing Corp 982 F.2d 363 (9th Cir. 1992) the Ninth Circuit affirmed the trial court's decision to exclude evidence offered by the plaintiff, but it disagreed with the trial court's choice of authority in excluding the evidence. There was a fire on a yacht insured by the plaintiff. The plaintiff's expert blamed the fire on a space heater manufactured by the defendant. However, the plaintiff's subrogation department determined that the defendant would not be liable because the space heater was labeled with a warning which admonished the user not to leave the unit unattended." The plaintiff's subrogation department discarded the heater and the remaining evidence. However, after hiring a new attorney to handle subrogation cases, the plaintiff decided to file suit.

71. The trial court excluded the testimony of the plaintiff s expert because the defendant was unable to inspect the evidence. The trial court based its decision to exclude the evidence upon Federal Rule of

Civil Procedure 37. However, Rule 37(b) allows the court to impose sanctions only where a party violates a discovery order. In many cases, the court has issued an order during discovery directing the parties to preserve any relevant evidence in their possession. In Unigard, there was no such discovery order. Obviously, there could not have been such an order as the evidence was destroyed before the lawsuit was ever filed.

72. The source of authority may at first appear unimportant. When a situation not covered by Rule 37 arises, the court can simply turn to its inherent power to impose sanctions. However, the Unigard opinion demonstrates why the issue is relevant. The trial court in Unigard apparently felt constrained by the discovery rules, as demonstrated by the great lengths to which it went to stretch Rule 37 to justify sanctions.

73. West v. Goodyear Tire & Rubber Co., 167 F.3d 776, 779 (2d Cir. 1999) (discussing range of sanctions available). While lower court judges enjoy broad discretion in crafting appropriate sanctions for a party's misconduct, that discretion is tempered. ("Although a district court has broad discretion in crafting a proper sanction for spoliation, we have explained that the applicable sanction should be molded to

serve the prophylactic, punitive, and remedial rationales underlying the spoliation doctrine.").

74. Turner v. Hudson Transit Lines, Inc., 142 F.R.D. 68, 75 (S.D.N.Y. 1991) ("It makes little difference to the party victimized by the destruction of evidence whether that act was done willfully or negligently.").

75. Victor Stanley, Inc. v. Creative Pipe, Inc., 269 F.R.D. 497, 532 (D. Md. 2010) ("Spoliation of evidence causes prejudice when, a result of the spoliation, the party claiming spoliation cannot present 'evidence essential to its underlying claim.'" (quoting Krumwiede v. Brighton Assocs., L.L.C., No. 05 C 3003, 2006 WL 1308629, at *10 (N.D. Ill. May 8, 2006))). Only when the nonspoliating party cannot prove its case without the spoliated evidence or expert testimony may dismissal be appropriate. See Phoebe L. McGlynn, Note, Spoliation in the Product Liability Context, 27 U. Mem. L. Rev. 663, 666 (1997) (discussing liability for spoliation). Rachel K. Alexander, E-Discovery Practice, Theory, and Precedent: Finding the Right Pond, Lure, and Lines Without Going on a Fishing Expedition, 56 S.D. L. REV. 25, 82-83 (2011) (discussing courts' willingness to issue inference despite prejudicial effect on spoliator).

76. Boyd v Ozark Air Lines Inc., 568 F.2d 50, 53 (8th Cir. 1977) requires the spoliator disprove the claims when spoliation has occurred. No other Circuit appears to require this. Schwartz v. Subaru, Inc., 851 F. Supp. 191, 192-93 (E.D. Pa. 1994) (granting defendant manufacturer summary judgment when plaintiff destroyed allegedly defective automobile); Smith v. American Honda Motor Co., 846 F. Supp. 1217, 1222 (M.D. Pa. 1994) (granting summary judgment after plaintiff permitted demolition of automobile with allegedly defective seatbelt). Quaile v. Carol Cable Co., No. CIV.A. 90-7415, 1993 WL 53563, at *4 (E.D. Pa. Feb. 26, 1993) (denying defendant's motion for summary judgment when plaintiff discarded allegedly defective drop light). Quaile, 1993 WL 53563, at *3 (refusing summary judgment request when defendant was not prejudiced by loss of lamp that allegedly caused injury because defendant was able to examine other lamps of same design.).

VI. THE CLEAN HANDS DOCTRINE MANDATES SPOLIATION BE ADDRESSED FIRST. THIS CASE SQUARELY PRESENTS THE DISCRETE BUT IMPORTANT ISSUE OF WHETHER SPOLIATION MUST

BE ADDRESSED BEFORE RESOLUTION OF THE DEFENSES ADVANCED BY THE SPOLIATOR

77. The "clean hands" doctrine is a longstanding equitable doctrine whose scope is broader than, but may encompass, fraud on the court. It is "a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant." Precision Instrument Mfg. Co. v. Auto. Main. Mach. Co., 324 U.S. 806, 814- 15 (1945). The doctrine has been invoked to dismiss claims or defenses of litigants who have used underhanded means to advance their cause. So, for example, in Mas v. Coca-Cola Co., 163 F.2d 505 (4th Cir. 1947) a plaintiff used forged documents and perjured testimony in a failed attempt to establish priority of invention before the Patent Office; the plaintiff suffered a dismissal for coming into court with unclean hands. The doctrine, flexible in application, permits a court to exercise broad discretion to deny relief to a litigant who has acted in an unconscionable way that "has immediate and necessary relation to the matter that he seeks in respect of the matter

in litigation." Keystone Driller Co. v. Gen. Excavator Co., 290 U.S. 240, 245 (1933); Precision Instrument. 324 U.S. at 814-15.

78. Accordingly, the clean hands doctrine does not close the courthouse doors to a litigant simply because he is a bad person; rather, relief is denied where a "violation [ ] of conscience as in some measure affect[s] the equitable relations between the parties in respect of something brought before the court for adjudication." Keystone Driller Co. v. Gen. Excavator Co., 290 U.S. 240, 248 (1933).

79. The clean hands doctrine is one that the court applies, not for the protection of the parties, but for its own protection. Its basis was well stated by Professor Pomeroy as follows: It assumes that the suitor asking the aid of a court of equity has himself been guilty of conduct in violation of the fundamental conceptions of equity jurisprudence, and therefore refuses him all recognition and relief with reference to the subject-matter or transaction in question. It says that whenever a party, who, as actor seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his

behalf, to acknowledge his right, or to award him any remedy." John Norton Pomeroy, Equity Jurisprudence § 397 (5th ed. 1941).

80. Another passage by Pomeroy on equity jurisprudence, thus states the rule: "It is not alone fraud or illegality which will prevent a suitor from entering a court of equity; any really unconscientious conduct, connected with the controversy to which he is a party, will repel him from the forum whose very foundation is good conscience.

81. Armed with admissions by the plaintiff pilot that he had committed perjury in his first deposition and his interrogatory responses and that he had "committed fraud by submitting false tax returns in response to Cessna's request for production of documents," Cessna moved, pursuant to the clean hands doctrine and Rule 41 (b) of the Federal Rules of Civil Procedure, to dismiss the pilot's complaint.

82. The clean hands doctrine in its traditional formulation applied against those parties asserting equitable claims or defenses where they arrived before the chancellor with unclean hands. Keystone Driller Co. v. Gen. Excavator Co., 290 U.S. 240, 244-45 (1933).

83. In fact, the clean hands doctrine is unique among the tools for fighting fraud on the court in its applicability solely to misconduct of those (typically, but not always, plaintiffs) seeking the application of

equity. Aris-Isotoner Gloves, Inc. v. Berkshire Fashions, Inc., 792 F. Supp. 969 (S.D.N.Y. 1992) (applying clean hands doctrine to bar defendant's equitable defense of laches). This does not mean, however, that only plaintiffs or counterclaimants will be negatively impacted by the clean hands doctrine. Rather, the doctrine allows the court to deny equity to one who has not acted equitably in the matter and, therefore, can apply to a claimant bringing an equitable claim or a defendant asserting an equitable defense. See, e.g., Fayemi v. Hambrecht & Quist, Inc, 174 F.R.D. 319, 326 (S.D.N.Y. 1997) ("The final issue is whether the Court should withhold any sanction because of the defendants' own misconduct. Because the relief sought by the defendant is equitable, the unclean hands doctrine applies."); Aris-Isotoner, 792 F. Supp. at 972 n.7 ("We further disagree with Berkshire's argument that the doctrine of unclean hands especially applies to plaintiffs, as opposed to defendants. The cases that Berkshire cites do not state that a distinction exists as to the application of the unclean hands doctrine to equitable causes of action on the one hand and to equitable defenses on the other, and such a distinction is needlessly artificial and unwarranted under these circumstances."). When applied in this way,

the doctrine does not call for a balancing of the misconduct on both sides of the case.

84. Traditionally an equitable defense, the clean hands doctrine has been applied to cases at law since the merger of law and equity. As a practical matter, the fraud on the court doctrine is sufficiently developed and, in this context, sufficiently similar to the clean hands doctrine that the clean hands doctrine can be left to its traditional application to equity.

85. The standard exposition of the clean hands doctrine speaks of the requirement of coming into court with clean hands, but many courts also require that hands remain clean during the litigation. Thus, a plaintiff who arrives in court with clean hands may still find herself out of court if her hands become soiled during the litigation. C.C.S. Communication Control, Inc. v. Skylar, No. 86-7191, 1987 U.S. Dist. LEXIS 4280 (S.D.N.Y. June 1, 1987), aft without op., 983 F.2d 1048 (2d Cir. 1992). As one trial court explained: "It would be strange if a court of equity had power-because of public policy for its own protection-to throw out a case because it entered with unclean hands and yet would have no power to act if the unconscionable conduct occurred while the case was in court."

VII. WHEN SPOLIATION HAS BEEN SHOWN, IT IS THE PROPER SUBJECT OF ARGUMENT BY COUNSEL

86. Once there has been proof of spoliation, it is a proper subject of argument by counsel. 6 John Henry Wigmore, Evidence In Trials At Common Law § 1807 (4th ed.1979) ("Where the existence of a material document or witness has appeared in the course of the testimony and yet the opponent has not produced the witness or document, the failure to produce is in evidence from the very nature of the situation, and therefore, when relevant, may be referred to [in argument by counsel]." (Citations omitted)).

87. McCormick on Evidence ("McCormick") treats spoliation of evidence as a form of admission by conduct. Kenneth S. Broun, McCormick On Evidence § 265 (6th ed. 2006) [hereinafter McCormick] ("As might be expected, wrongdoing by the party in connection with its case amounting to an obstruction of justice is also commonly regarded as an admission by conduct."). Id. ("By resorting to wrongful devices, the party is said to provide a basis for believing that he or she thinks

the case is weak and not to be won by fair means, or in criminal cases that the accused is conscious of guilt."). When a party resorts to spoliation, that party provides a basis for inferring that the party believes the case could not be won without destroying evidence. Id. ("By resorting to wrongful devices, the party is said to provide a basis for believing that he or she thinks the case is weak and not to be won by fair means, or in criminal cases that the accused is conscious of guilt."). Id. ("The actor must be connected to the party, or, in the case of a corporation, to one of its superior officers."). Id.

88. "Moreover, the circumstances of the act must manifest bad faith. Mere negligence is not enough, for it does not sustain the inference of consciousness of a weak case." An influential law review article explains the reasoning behind the adverse inference and the need for bad faith as follows: [Spoliation] indicates a belief relevant and detrimental to some feature of his case; therefore he holds that belief; therefore his case in this feature is defective. John MacArthur Maguire & Robert C. Vincent, Admissions Implied from Spoliation or Related Conduct, 45 Yale L.J. 226, 235 (1935).

89. Flury v. Daimler Chrysler Corp., 427 F.3d 939 (11th Cir. 2005) provides an interesting example. The plaintiff in that case fell asleep

while driving his pickup truck at fifty-five miles per hour and crashed into a tree. He was wearing a seatbelt, but his airbag failed to deploy and he suffered a back strain on account of the crash. Soon after the accident, the plaintiff's lawyer sent a letter to the truck's manufacturer notifying the manufacturer of the accident and the airbag's failure to deploy. The manufacturer replied to the letter and requested the location of the vehicle for inspection purposes, but the plaintiff's lawyer did not respond to the request. Sometime between six months and one year after the accident, the plaintiff's insurer sold the truck for salvage, and the plaintiff had no knowledge of its whereabouts thereafter. A little more than six years after the accident, the plaintiff filed a federal court action against the truck's manufacturer claiming enhanced injury to his lower back as a result of the airbag's failure to deploy on account of an alleged manufacturing defect.

90. At the trial, the plaintiff introduced testimony from an accident reconstruction expert that the plaintiff's truck must have been moving at more than fifteen miles per hour when it hit the tree. The expert's testimony was based solely on the accident report and post-accident photographs of the truck. The expert also testified that generally airbags are designed to not deploy at speeds less than eight miles per

hour, to sometimes deploy at speeds between eight and fourteen miles per hour, and to always deploy at speeds of fifteen miles per hour or more. The expert concluded that the airbag should have deployed because the plaintiff crashed into the tree at more than fifteen miles per hour.

91. The judge explained at the conclusion of the trial, what spoliation was and instructed the jury that spoliation creates a rebuttable presumption that evidence not preserved was unfavorable to the party who caused the spoliation. The judge further instructed the jury that if it found that the plaintiff disposed of the truck before giving the defendant an opportunity to inspect it, the jury could presume that there was no defect, but the plaintiff could rebut the presumption. Despite the spoliation instruction, the jury returned a verdict of $250,000 for the plaintiff. On appeal, the Eleventh Circuit reversed, holding that dismissal was required for the plaintiff's spoliation of the evidence and that the spoliation instruction was insufficient to cure the prejudice to the defendant. The appellate court acknowledged that because dismissal is the most severe sanction, it should be ordered only where there is bad faith and lesser sanctions would not suffice. Still, the court determined that dismissal was warranted because the

condition of the airbag and the truck was critical to the case, and the defendant was prejudiced by not being given an opportunity to examine them.

92. The court set out the following five factors to assess whether to order dismissal as a sanction for spoliation of evidence: (1) whether the defendant was prejudiced as a result of the destruction of evidence; (2) whether the prejudice could be cured; (3) the practical importance of the evidence; (4) whether the plaintiff acted in good or bad faith; and (5) the potential for abuse if expert testimony about the evidence was not excluded.

93. Similarly, an order of dismissal as a sanction for spoliation was affirmed in Silvestri v. Gen. Motors Corp., 271 F.3d 583 (2d Cir. 2001) another airbag case. The Fourth Circuit decided that although it was not clear whether the spoliation was negligent or deliberate, dismissal was not an abuse of discretion because the loss of the airbag evidence was critical to the central issue in the case, and therefore highly prejudicial to the defendant. The court held that dismissal for spoliation of evidence would be warranted either if the spoliator's conduct was so egregious that it justified forfeiture of the claim, or if

the spoliation substantially prevented the defendant from putting on a defense."

94. The Flury and Silvestri cases demonstrate the desirability of allowing a court to impose a harsher sanction than an adverse inference instruction for spoliation of evidence because in some circumstances, an adverse inference instruction may not be sufficient to deter spoliation or provide an effective remedy." Barker v. Bledsoe, 85 F.R.D. 545, 548 (W.D. Okla. 1979) ("A presumption as to certain evidence is simply not sufficient to protect against [the destruction of evidence]."); Dale A. Oesterle, A Private Litigant's Remedies for an Opponent's Inappropriate Destructions of Relevant Documents, 61 Tex. L. Rev. 1185 (1983) ("The hostile inferences created by destroying evidence do not seem to offset the strategic gains achieved by the document destroyer of preventing his opponent's use of a particularly damaging document or of adding excessive litigation costs to the opponent's case. Most importantly, the inferences may not be strong enough to counter an opponent's remaining documents, which are carefully retained because of their support of the opponent's case.") (emphasis in original).

VIII. Prefiling Spoliation May Also be Sanctionable Under Rule 11

95. In certain instances, Rule 11 may apply to fraud on the court. R.B. Ventures, Ltd. v. Shane, No. 91-CIV-5678, 2000 U.S. Dist. LEXIS 10170 (S.D.N.Y. July 19, 2000) (citing Bower v. Weisman, 674 F. Supp. 109, 112 (S.D.N.Y. 1987)).While some courts have relied on their inherent powers to dismiss or default a litigant for committing fraud on the court and have imposed monetary sanctions under the authority of Rule 11 as well, Eppes v. Snowden, 656 F. Supp. 1267, 1281-82 (E.D. Ky. 1986) ("The remedy must be sufficient to serve universal notice that this conduct will not be tolerated. The remedy therefore must go further than a dismissal of the counter-claim .... What sanctions then, could be imposed that would impress a gentleman who would pay $2,000,000.00 for a horse .... His net worth is into seven figures. A penalty of $194,131.52, when compared to his net worth, would amount to something just under a 'tithe.'").

96. Other courts have premised dismissal or default directly on Rule 11. Combs v. Rockwell Int'l Corp., 927 F.2d 486 (9th Cir. 1991) (relying

on Rule 11 where counsel made 36 changes on deposition errata sheet after client advised that transcript was accurate and testimony correct); Sun World, Inc. v. Lizarazu Olivarria, 144 F.R.D. 384, 389-90 (E.D. Cal. 1992). This latter use of Rule 11 appears justified by the text of the Rule in those situations where pleadings, motions, or other papers filed with the court contain-or incorporate-fraudulent materials or information. FED. R. Civ. P. 11(a) (1997) ("Every pleading, written motion, and other paper..."); Id. 11(c) (2) ("[T]he sanction may consist of, or include, directives of a nonmonetary nature ..."); advisory committee's notes to 1993 amendments ("The court has available a variety of possible sanctions to impose for violations, such as striking the offending paper ....").

97. In Sun World, Inc. v. Lizarazu Olivarria, 144 F.R.D. 384 (E.D. Cal. 1992) the defendant attached to a brief opposing a motion an altered contract (entitled Notice of Termination), which-if authentic-would have allowed the defendant to avoid liability. He also swore to the authenticity of the Notice of Termination in two affidavits filed with the court. The court did not hesitate to apply Rule 11 to the situation:

98. Application of Rule 11 to these facts is exceedingly simple. Lizarazu admittedly and intentionally defrauded the court by filing the Notice of Termination. He also committed perjury in at least two instances in furtherance of that fraud. Consequently, to say that the Notice of Termination and the two perjured documents were not well grounded in fact is a gross understatement. .. [T]he court finds that the only appropriate sanction is the striking of Lizarazu's answer, the dismissal of his counterclaim and the entry of default judgment against him on Sun World's complaint. Lizarazu's egregious conduct, his lack of repentance and his obvious disregard for this court's authority force the conclusion that no other sanction would be efficacious. Accordingly, pursuant to Rule 11, the court hereby strikes Lizarazu's answer, dismisses his counterclaim, orders the entry of default judgment for Sun World, and orders Lizarazu to pay all costs and attorney's fees incurred by Sun World resulting from and relating to the fraudulent document.

IX. When Substantial Injustice Has Resulted as a Resulted of the Failure to Consider Pre-Filing Spoliation, Circuit Courts Have the Authority to Recall Mandates to Prevent Injustice.

99. Calderon v Thompson, 523 U.S. 538, 549 (1998) Accord at 567 (Souter J, dissenting) reads in pertinent part "the courts of appeals are recognized to have an inherent power to recall their mandates" to prevent the miscarriage of justice.

100. This Court has stated this is essential to prevent the integrity of judicial processes and decisions, and this is subject to review for abuse of discretion by this Court. Hawaii Housing Auth. v Midkiff, 453 U.S. 1323, 1324 (1983) (Rehnquist, J., in Chambers).

101. The circuit courts are split as to the criteria. Scott v Singletary, 38 F.3d 1547, 1551 (11th Cir. 1994) Simmons v Lockhart, 856 F.2d 1144, 1145 (8th Cir. 1988) Nevius v Sumner, 105 F.3d 453, 460 (9th Cir. 1996).

MY CLAIMS IN THE UNITED STATES COURT OF APPEALS IN THE NINTH CIRCUIT THAT CANNOT BE DECIDED DUE TO THE BANKRUPTCY

102, My arguments in the Ninth Circuit were, but they now are abstained due to this bankruptcy:

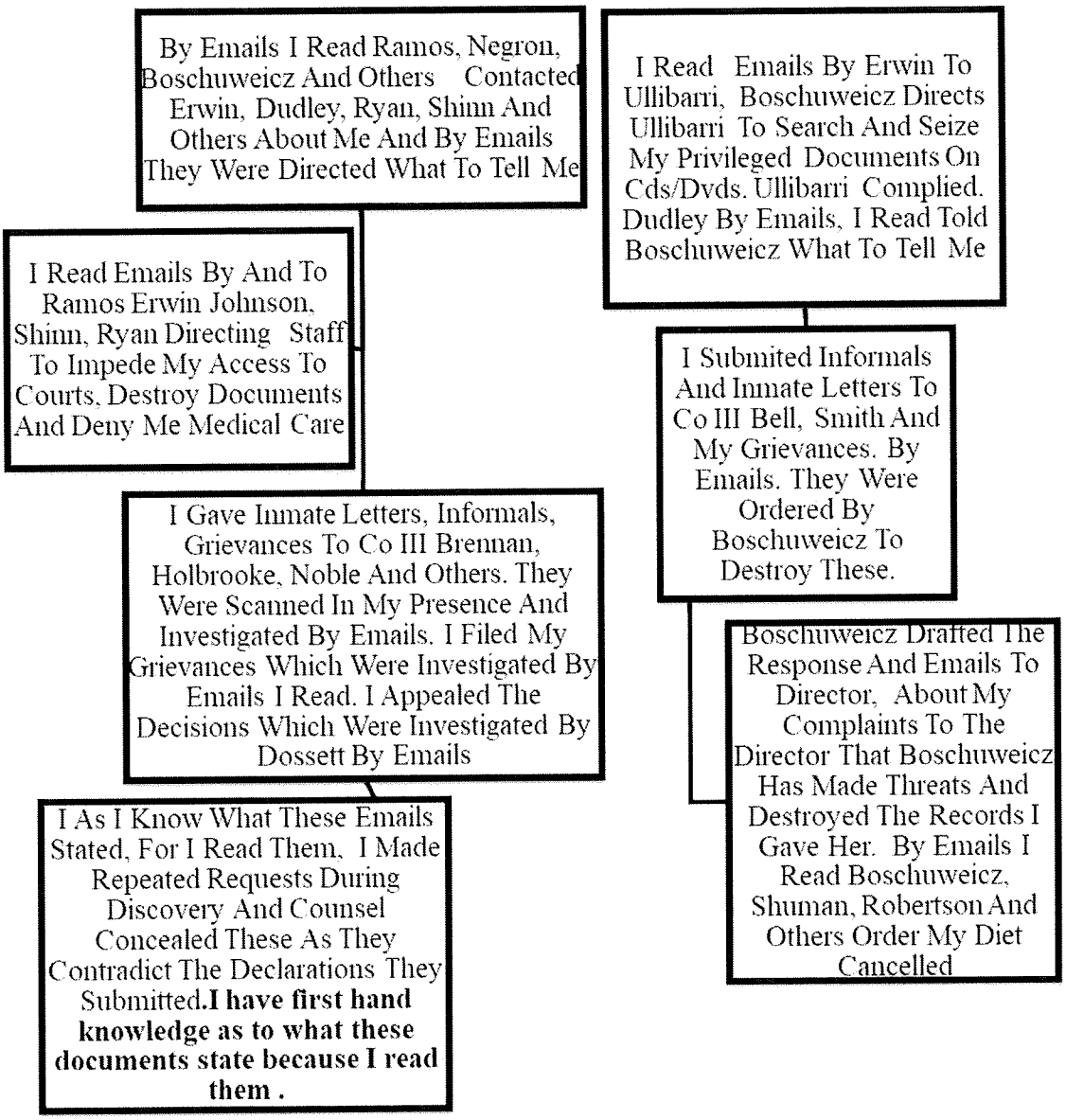
AGGRESSIVE REFUSAL TO DISCLOSE EVIDENCE IN THIS CASE BY COUNSEL PREVENTED THE COURT FROM ALLLOWING A REASONABLE JURY CONSIDERING THE EVIDENCE

i. Keith H. v. Long Beach Unified School Dist., 228 F.R.D. 652 (2005) 62 Fed.R.Serv.3d 186, 199 Ed. Law Rep. 246 states an initial matter, the Court is extremely dismayed by the lack of cooperation between the parties. Thus, the Court is mystified as to why the parties have been unable to amicably resolve this simple matter. As Judge Wayne Brazil has explained: [t]he discovery system depends absolutely on good faith and common sense from counsel. The courts, sorely pressed by demands to try cases promptly and to rule thoughtfully on potentially case dispositive motions, simply do not have the resources to police closely the operation of the discovery process. The whole system of

[c]ivil adjudication would be ground to a virtual halt if the courts were forced to intervene in even a modest percentage of discovery transactions. That fact should impose on counsel an acute sense of responsibility about how they handle discovery matters. They should strive to be cooperative, practical and sensible, and should turn to the courts (or take positions that force others to turn to the courts) only in extraordinary situations that implicate truly significant interests. In re Convergent Technologies Sec. Litigation, 108 F.R.D. 328, 331 (N.D.Cal.1985). The parties must understand that it is for the Court's and their own benefit that they cooperate in presenting to the Court only real discovery disputes for resolution.

ii. Rule 1 of the Federal Rules of Civil Procedure directs that the rules "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." As the Fifth Circuit has noted, "[t]here probably is no provision in the federal rules that is more important than this mandate. It reflects the spirit in which the rules were conceived and written, and in which they should be, and by and large have been, interpreted...." Trevino v. Celanese Corp., 701 F.2d 397, 405 (5th Cir.1983) (citation omitted).

TABLE ONE SHOWING EFFORTS BY DEFENDANTS TO AGGRESSIVELY CONCEAL EVIDENCE CONCERNING PLAINTIFF'S ALLEGATIONS



iii. Rule 26(b)(1) permits discovery in civil actions of "any matter, not privileged, that is relevant to the claim or defense of any party...." Generally, the purpose of discovery is to remove surprise from trial preparation so the parties can obtain evidence necessary to evaluate and resolve their dispute. Oakes v. Halvorsen Marine Ltd., 179 F.R.D. 281,283 (C.D.Cal.1998). Toward this end, Rule 26(b) is liberally interpreted to permit wide-ranging discovery of information even though the information may not be admissible at the trial. Jones v. Commander, Kansas Army Ammunitions Plant, 147 F.R.D. 248, 250 (D.Kan.1993). The party who resists discovery has the burden to show discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections. Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir.1975).

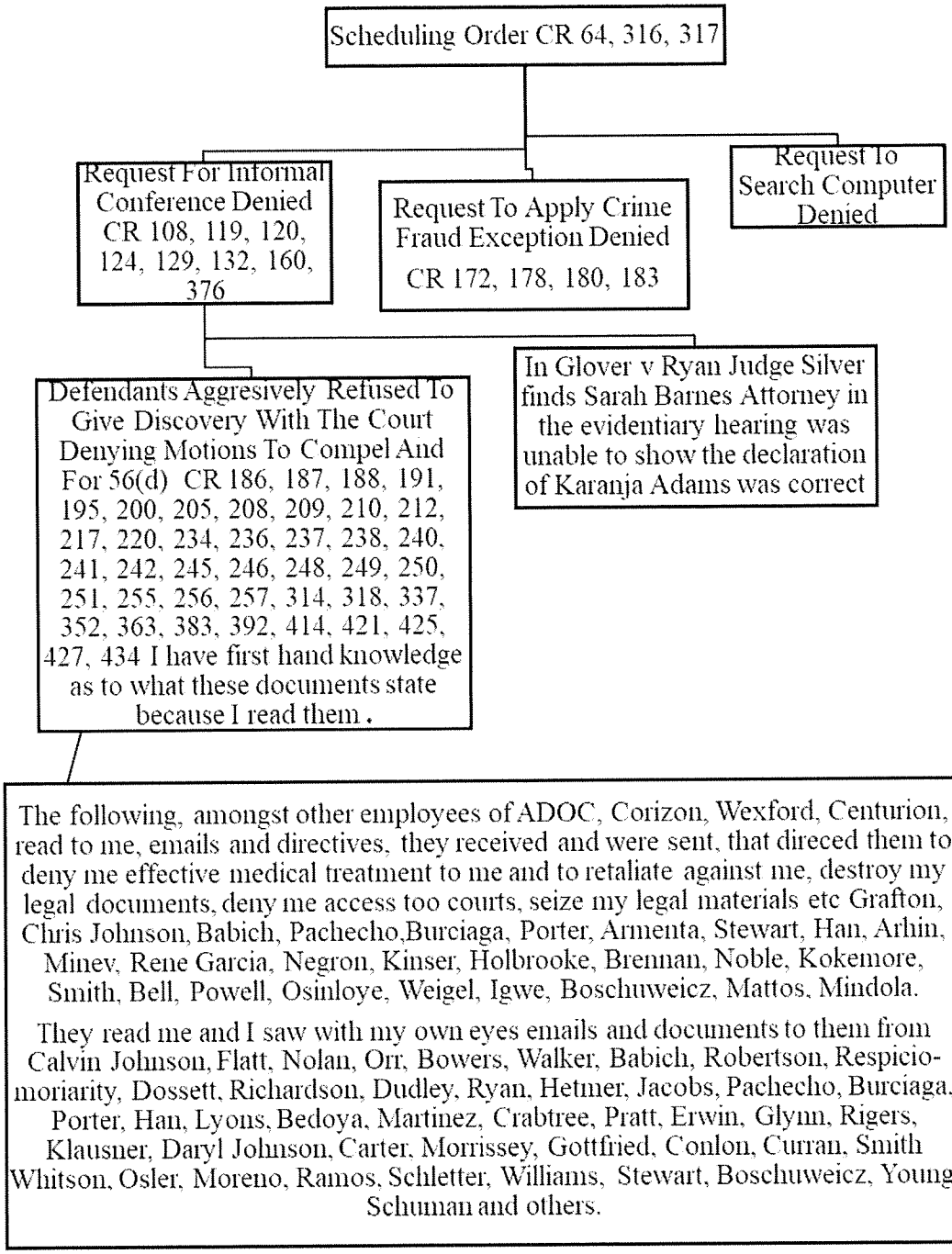
iv. Rule 26(b)(1), as quoted above, specifically provides for discovery of all non-privileged matters "relevant to the claim or defense of any party." Questions of evidentiary privilege arising in the adjudication of federal rights, such as here, are governed by the principles of federal common law. Fed.R.Evid. 501; United States v. Zolin, 491 U.S. 554, 562, 109 S.Ct. 2619, 2625, 105 L.Ed.2d 469 (1989). This is true even where a complaint contains both federal and pendant state law claims.

Religious Tech. Ctr. v. Wollersheim, 971 F.2d 364,367 n. 10 (9th Cir.1992).

v. Rule 34 is one of the discovery tools available to litigants in the federal courts. It broadly provides that: Any party may serve on any other party a request (1) to produce ... any designated documents ... which are in the possession, custody, or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b). Fed.R.Civ.P. 34(a).

vi. "It is well-established that [under the Federal Rules of Civil Procedure,] the fruits of pretrial discovery are, in the absence of a court order to the contrary, presumptively public." San Jose Mercury News, Inc. v. United States Dist. Court N. Dist., 187 F.3d 1096, 1103 (9th Cir.1999); Phillips v. General Motors Corp., 307 F.3d 1206, 1210 (9th Cir.2002). However, Rule 26(c) "authorizes a district court to override this presumption where 'good cause' is shown."

vii. Defendants at DKT 38pp 17-20 state that there was no Eighth Amendment violation and that no rational juror would have found for me. They also argue the discovery was broad. (Dkt. 36 pp 60-64)


Scheduling Order CR 64, 316, 317
Request For Informal Conference Denied CR 108, 119, 120, 124, 129, 132, 160, 376
Request To Apply Crime Fraud Exception Denied CR 172, 178, 180, 183
Request To Search Computer Denied
Defendants Aggresively Refused To Give Discovery With The Court Denying Motions To Compel And For 56(d) CR 186, 187, 188, 191, 195, 200, 205, 208, 209, 210, 212, 217, 220, 234, 236, 237, 238, 240, 241, 242, 245, 246, 248, 249, 250, 251, 255, 256, 257, 314, 318, 337, 352, 363, 383, 392, 414, 421, 425, 427, 434 I have first hand knowledge as to what these documents state because I read them .
In Glover v Ryan Judge Silver finds Sarah Barnes Attorney in the evidentiary hearing was unable to show the declaration of Karanja Adams was correct
The following, amongst other employees of ADOC, Corizon, Wexford, Centurion, read to me, emails and directives, they received and were sent, that direced them to deny me effective medical treatment to me and to retaliate against me, destroy my legal documents, deny me access too courts, seize my legal materials etc Grafton, Chris Johnson, Babich, Pachecho,Burciaga, Porter, Armenta, Stewart, Han, Arhin, Minev, Rene Garcia, Negron, Kinser, Holbrooke, Brennan, Noble, Kokemore, Smith, Bell, Powell, Osinloye, Weigel, Igwe, Boschuweicz, Mattos, Mindola.
They read me and I saw with my own eyes emails and documents to them from Calvin Johnson, Flatt, Nolan, Orr, Bowers, Walker, Babich, Robertson, Respicio-moriarity, Dossett, Richardson, Dudley, Ryan, Hetmer, Jacobs, Pachecho, Burciaga, Porter, Han, Lyons, Bedoya, Martinez, Crabtree, Pratt, Erwin, Glynn, Rigers, Klausner, Daryl Johnson, Carter, Morrissey, Gottfried, Conlon, Curran, Smith Whitson, Osler, Moreno, Ramos, Schletter, Williams, Stewart, Boschuweicz, Young, Schuman and others.

COUNSEL MADE AFFIRMATIVE FALSE AVOWALS AS TO THE MATERIAL EVIDENCE. THEY FALSELY STATED THESE WERE IN THE RECORDS GIVEN TO TRIPATI. SIMILAR AVOWALS BY THESE SAME LAWYERS AS TO THE CONTENTS OF MEDICAL RECORDS AND EMAILS HAVE BEEN REJECTED BY OTHER FEDERAL JUDGES IN ARIZONA

viii. "At a telephonic hearing, Tripati clarified that he was seeking emails concerning his medical care....Counsel for the Centurion Defendants stated, on the record, that all communications concerning Tripati's medical care were contained in his medical records, which he has been provided or had access to...The Court accepted these avowals and found no cause to order additional disclosure." [2] DKT 38 at page 9 see DKT 466 14-15

TABLE SHOWING RECENT FINDINGS BY ARIZONA FEDERAL JUDGES AS TO CONCEALMENT OF EVIDENCE BY THESE

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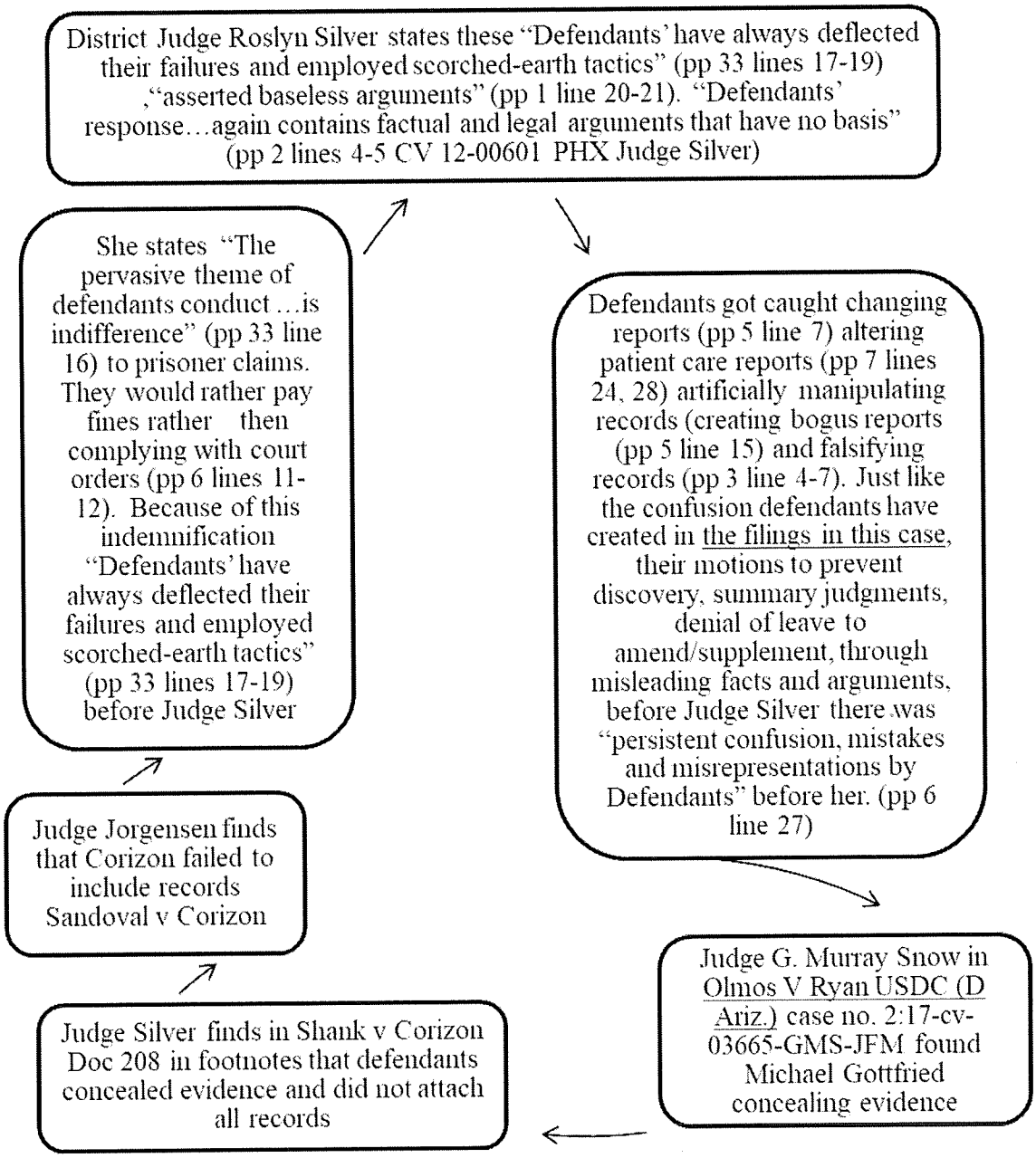
[2] FN 6 9, 11 in Glover v Ryan CIV 21-0676 DKT 47 Sarah Barnes and Centurion retract the statements submitted under the penalty of perjury when directly questioned by Judge Silver. District Court DKT 90-1 is a bogus declaration procured by Sarah Barnes that states no emails exist (para 10-12) when all of a sudden these emails surfaced when ordered.

DEFENDANTS AND THESE LAWYERS



PROOF OF CLAIMS

ix. Judge Cindy Jorgenson rejected the arguments that the emails and electronic policies were a part of the medical record and ordered

- "Centurion points out[3] that Sandoval has access to, and/or has received copies, of his relevant medical records....Centurion shall provide copies of emails from January 1, 2016, through the present regarding Sandoval's medical care, diagnosis, treatment, and decision-making." (DKT.39-3pp169-70)[4]

x. Judge Roslyn Silver ordered Defendants and counsel to search their records for emails and mysteriously thousands of emails surfaced.

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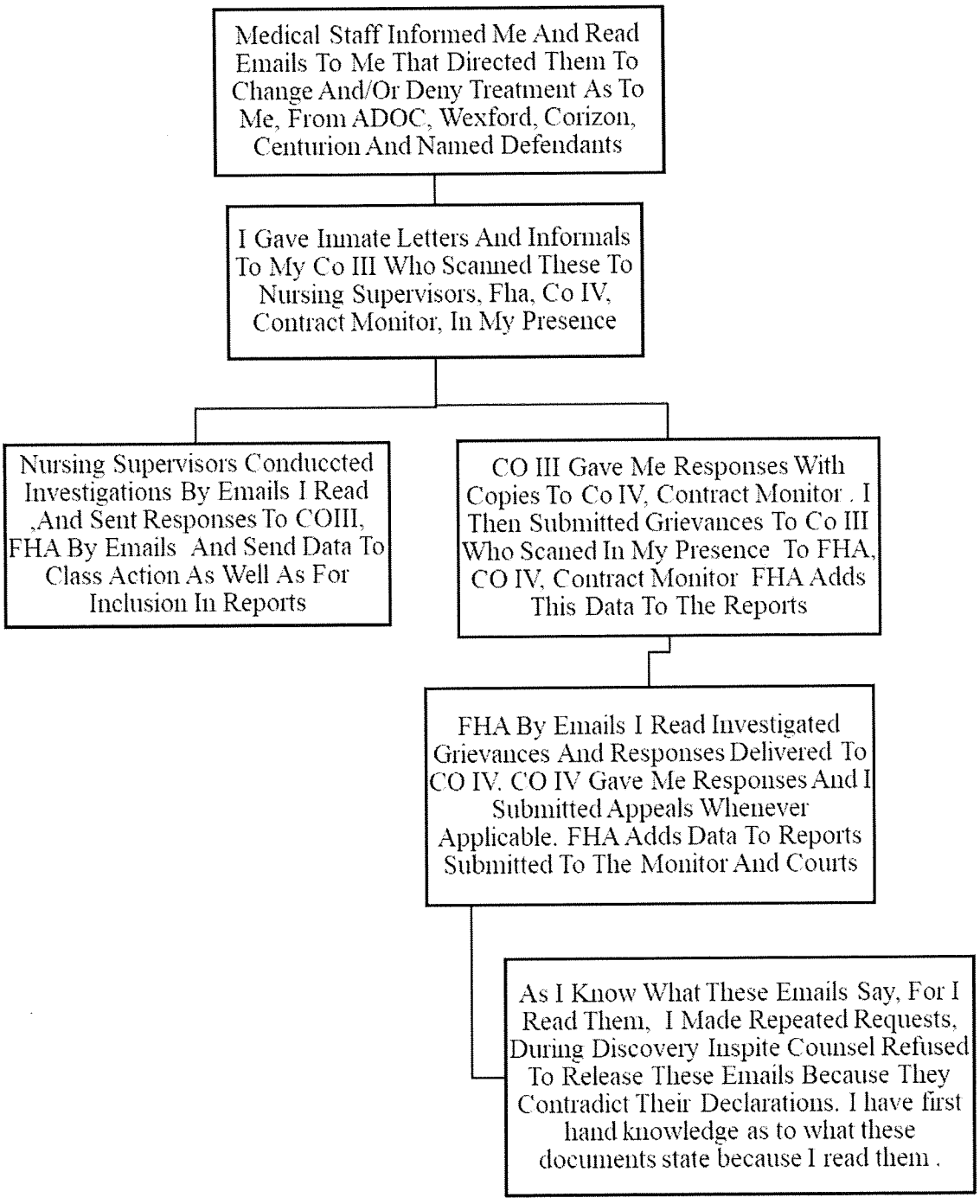
[3] With the same lawyers as in this case.

[4] According to the Court docket sheet when this order was issued, Centurion/Shinn settled the litigation and placed Sandoval on the transplant list.



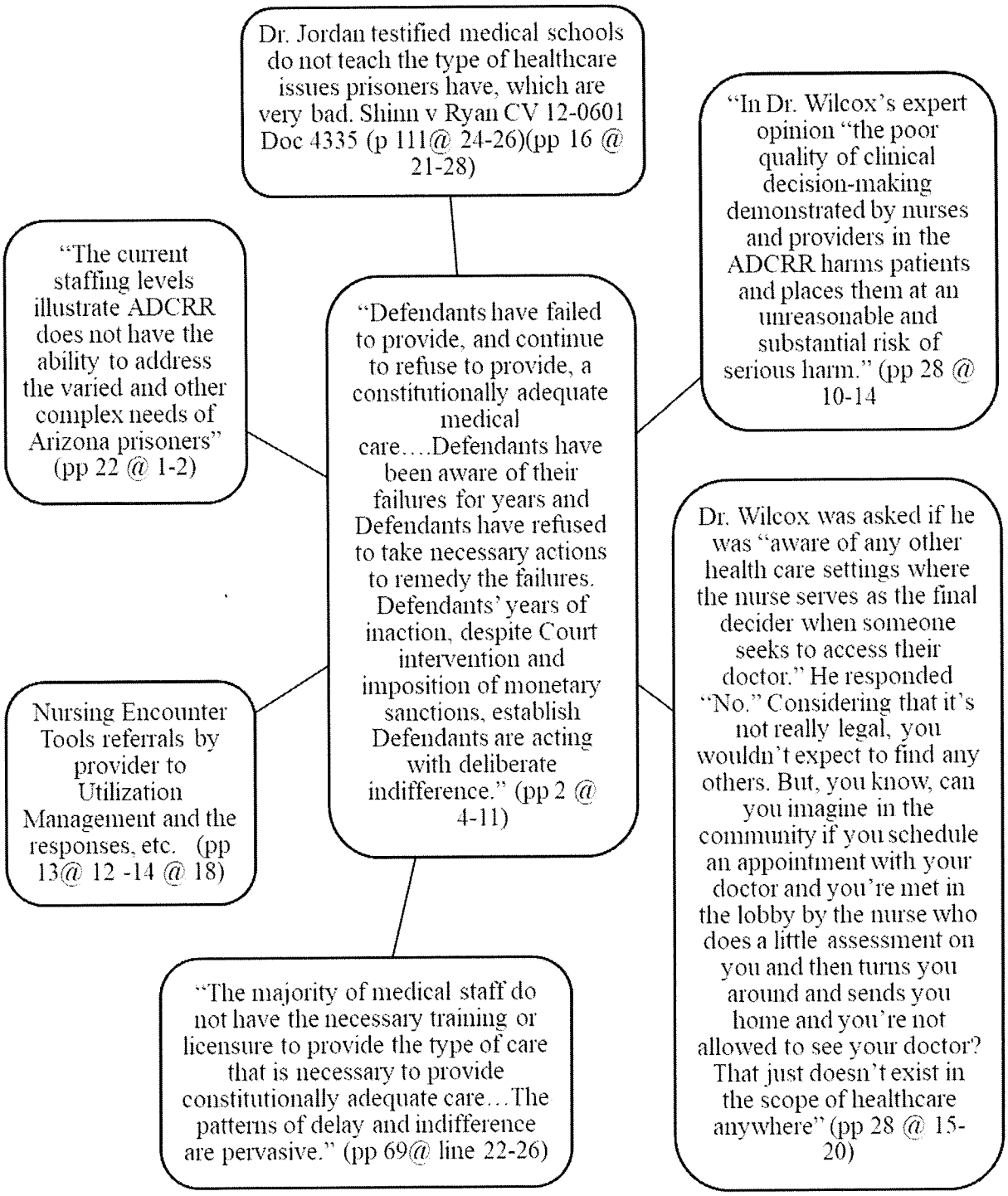
(Dkt. 39-3 pp 127-30, 171-74, 44-45, 459-2, 459-8 Dkt 208 pp1-2 19-Cv 04638)

xi. Judge G Murray Snow in Day v Unknown Party again ordered search and disclosure of emails, and these emails mysteriously surfaced. (DKT.459-5—7)

xii. DKT 38 at pp 13 reads

- "Based on her training, education, experience, and re-review of Tripati's medical records, NP Igwe provided Tripati with all appropriate and medically necessary treatment.....Neither NP Igwe, nor any other Centurion provider, was deliberately indifferent to any of Tripati's medical needs, and there is no other treatment required based on the assessments, outside recommendations, testing, imaging, or lab results."

TABLE SHOWING JUDICIAL FINDINGS AS TO LACK OF TRAINING AND THE CARE GIVEN BY DEFENDANTS


Dr. Jordan testified medical schools do not teach the type of healthcare issues prisoners have, which are very bad. Shinn v Ryan CV 12-0601 Doc 4335 (p 111@ 24-26)(pp 16 @ 21-28)
"In Dr. Wilcox's expert opinion "the poor quality of clinical decision-making demonstrated by nurses and providers in the ADCRR harms patients and places them at an unreasonable and substantial risk of serious harm." (pp 28 @ 10-14
"The current staffing levels illustrate ADCRR does not have the ability to address the varied and other complex needs of Arizona prisoners" (pp 22 @ 1-2)
"Defendants have failed to provide, and continue to refuse to provide, a constitutionally adequate medical care....Defendants have been aware of their failures for years and Defendants have refused to take necessary actions to remedy the failures. Defendants' years of inaction, despite Court intervention and imposition of monetary sanctions, establish Defendants are acting with deliberate indifference." (pp 2 @ 4-11)
Dr. Wilcox was asked if he was "aware of any other health care settings where the nurse serves as the final decider when someone seeks to access their doctor." He responded "No." Considering that it's not really legal, you wouldn't expect to find any others. But, you know, can you imagine in the community if you schedule an appointment with your doctor and you're met in the lobby by the nurse who does a little assessment on you and then turns you around and sends you home and you're not allowed to see your doctor? That just doesn't exist in the scope of healthcare anywhere" (pp 28 @ 15-20)
Nursing Encounter Tools referrals by provider to Utilization Management and the responses, etc. (pp 13@ 12 -14 @ 18)
"The majority of medical staff do not have the necessary training or licensure to provide the type of care that is necessary to provide constitutionally adequate care...The patterns of delay and indifference are pervasive." (pp 69@ line 22-26)

THE EVIDENCE THAT DEFENDANTS AGGRESIVELY CONCEALED AND WHICH WAS A SUBJECT MATTER OF MY 56(D)(H) DECLARATIONS ARE RELEVANT TO THESE CLAIMS

xiii. District court rulings concerning discovery are reviewed for abuse of discretion. Kulas v. Flores, 255 F.3d 780, 783(9th Cir.2001). The same standard applies to a district court's decision not to permit additional discovery pursuant to a motion under Federal Rule of Civil Procedure 56(f). United States v. Kitsap Physicians Serv., 314 F.3d 995, 1000(9th Cir.2002).

xiv. Jones in Jones v. Blanas, 393 F.3d 918 (9th Cir. 2004) assigned error to the district court's series of denials of his requests to extend discovery, and to the court's related denial of Jones's Rule 56(f) motion to stay summary judgment. Under Rule 56(f), the court may postpone ruling on a summary judgment motion where the non-moving party needs "additional discovery to explore 'facts essential to justify the party's opposition.' " Crawford–El v. Britton, 523 U.S. 574, 599 n. 20, 118 S.Ct. 1584, 140 L.Ed.2d 759 (1998) (quoting Fed. R. Civ. Pro. 56(f)). Though the conduct of discovery is generally left to a district court's discretion, summary judgment is disfavored where relevant evidence remains to be discovered, particularly in cases involving

confined pro se plaintiffs. Klingele v. Eikenberry, 849 F.2d 409, 412 (9th Cir.1988); Harris v. Pate, 440 F.2d 315, 318 (7th Cir.1971) (Stevens, J.) (observing that the combined disabilities of self-representation and confinement hinder a plaintiff's ability to gather evidence). Thus summary judgment in the face of requests for additional discovery is appropriate only where such discovery would be "fruitless" with respect to the proof of a viable claim. Klingele, 849 F.2d at 412.

xv. The district court granted summary judgment to Blanas and the County on Jones's unreasonable search claim because Jones failed to present evidence implicating either Blanas or a Sacramento County policy in the searches to which Jones was subjected. However, Jones's discovery requests for jail records related to the searches may well have produced evidence that would have enabled Jones to tie the searches to policies of Blanas or the County. At least with respect to Jones's Fourth Amendment claim, then, additional discovery would not have been "fruitless," Klingele, 849 F.2d at 412, and the district court therefore abused its discretion in refusing to permit it. Summary judgment on the Fourth Amendment claim must accordingly be reversed.

xvi. I submitted the following Rule 56(d) declarations as to my medical claims:

xvii. (DKT 39-9 pp 24-25; 48-61; DKT 39-3 pp 165 447 ;)

xviii. I stated in my Declaration marked Dkt 39-9 pp 50 that Dr. Babich is incorrect as I received medication every 8 hours and it controlled my symptoms (Dec at 1); that I asked counsel and she refused to give me the documents I need to respond (Dkt. 39-9 pp 51 # 2) These emails will show I had encounters with Dr.Babich (Dkt. 39-9 pp 51 # 3), that I have been told by every named defendant and others that due to the cost I cannot be given the treatment. (Dkt. 39-9 pp 51 # 5) and that the medication administration record shall confirm this. (Dkt. 39-9 pp 52 # 8-9) In 18 paragraphs of my declaration I show how the Babich Declaration is false. I speak of the side effects (Dkt. 39-9 pp 55 # 19-20)

xix. I state in paragraphs 21- that the records are missing and altered, missing are the emails, grievances, utilization management files, policies and directives(Dkt. 39-9 pp 56 para 21-25)

xx. I state at (Dkt. 39-9 pp 57para 26) that:

- I was moved by Corizon with they knowing I could not receive the continuity of care. (pp 58 para a)

- When my examinations showed the medication was ineffective Corizon did nothing to treat me. (pp 58 para b)
- I was consistently given meds with side effects. (pp 58-59 para c)
- My condition has worsened by Corizon refusing to give me the treatment I received. (pp 59 para d)

xxi. I submitted my objections to these defendants use of the evidence, and did so through Rule 56(h) motions. DKT 39-9 pp 23-34; 39-8 pp 246-248; 39-8 pp 246-248; 39-8 pp 230-32; 39-8 pp 202-14; 39-8 pp 198-200; 39-8 pp 79-82

GRIEVANCE AND EMAIL ELECTRONIC DOCUMENTS, BOTH MEDICAL AND NON-MEDICAL WERE CONCEALED IN BAD FAITH DKT 39-9 PAGE 24

xxii. Informal resolutions emailed to nursing supervisors by CO IIIs.

xxiii. Nursing supervisors email person whose conduct is in question for a response.

xxiv. Nursing supervisor emails responses back to CO III.

xxv. CO III gets formal grievance and passes it on to CO IV.

xxvi. CO IV logs, assigns number, scans to FHA.

xxvii. FHA scans to person whose conduct is in question, for a response.

xxviii. FHA emails response back to CO IV.

xxix. Copy of everything is sent to contract liaison.

xxx. Appeals scanned to Phoenix.

xxxi. Phoenix emails FHA and people whose conduct is in question for a response.

xxxii. Phoenix emails response to CO IV.

xxxiii. Every defendant witness has sent/received emails about me.

xxxiv. All communications about me were generated electronically.

RELEVANCE

xxxv. These electronic documents are relevant in establishing acquiescence by Corizon and Centurion of the violations that violate the standard of care, policies. Providers, FHA's, Nursing supervisors, utilization management, ADOC Deputy Wardens, CO IVs and witnesses have all sent and received emails regarding me. These are necessary to show biased actions.

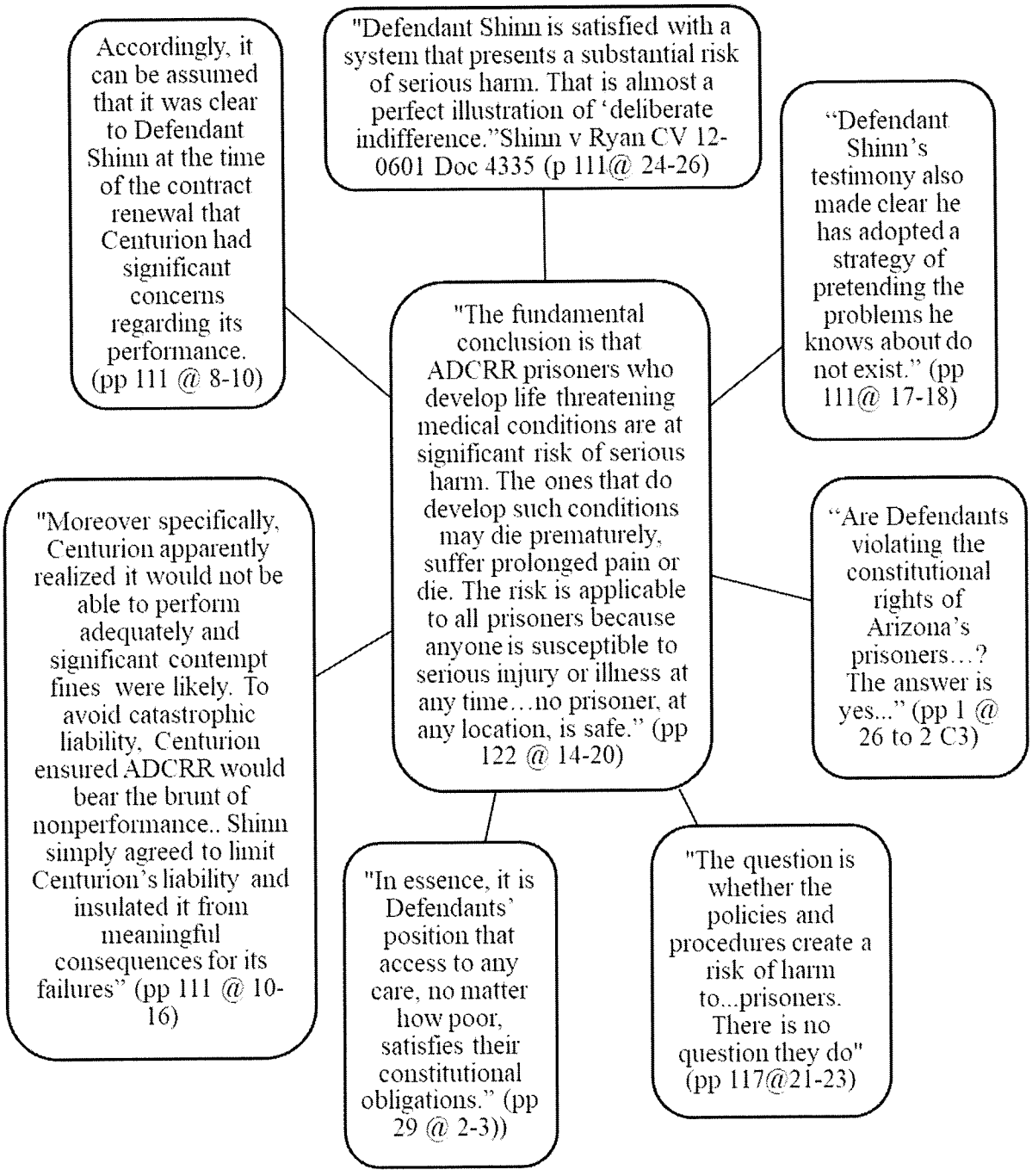
ADOC, CORIZON, CENTURION, EMPLOYEE, UTILIZATION MANAGEMENT FILES CONCEALED IN BAD FAITH

DKT 39-9 PAGE 25

CORIZON FILES	CENTURION FILES
Director C. Ryan' emails concerning bonuses and incentives paid to Corizon for providing inadequate healthcare that violated the standard of care and written policies.	Employee files, syllabus of training and discipline of those who treated me named as Defendants and witnesses, whose records/declarations have been used, with instructions on how to provide care. This is relevant in establishing the lack of raining and discipline required for healthcare in the correctional arena, by showing the continued violations of standard of care and policies
Employee files, syllabus of training and discipline of those who treated me named as Defendants and	Utilization management files monitoring compliance reports on performance measures 5, 35, 48-52,

witnesses, whose records/declarations have been used, with instructions on how to provide care. This is relevant in establishing the lack of raining and discipline required for healthcare in the correctional arena, by showing the continued violations of standard of care and policies	53-56, 71 and 72. This is needed to show standard of care is not followed
Utilization management files monitoring compliance reports on performance measures 5, 35, 48-52, 53-56, 71 and 72. This is needed to show standard of care is not followed	ADOC Employee files syllabus needed to show lack of training given to ADOC staff on seizure of legal mail, contacting inmates counsel without consent and security approval.

TABLE SHOWING HOW DEFENDANTS ARE PLACING MY LIFE, SAFETY, SECURITY IN DANGER


"Defendant Shinn is satisfied with a system that presents a substantial risk of serious harm. That is almost a perfect illustration of 'deliberate indifference."Shinn v Ryan CV 12-0601 Doc 4335 (p 111@ 24-26)
Accordingly, it can be assumed that it was clear to Defendant Shinn at the time of the contract renewal that Centurion had significant concerns regarding its performance. (pp 111 @ 8-10)
"Defendant Shinn's testimony also made clear he has adopted a strategy of pretending the problems he knows about do not exist." (pp 111@ 17-18)
"The fundamental conclusion is that ADCRR prisoners who develop life threatening medical conditions are at significant risk of serious harm. The ones that do develop such conditions may die prematurely, suffer prolonged pain or die. The risk is applicable to all prisoners because anyone is susceptible to serious injury or illness at any time…no prisoner, at any location, is safe." (pp 122 @ 14-20)
"Moreover specifically, Centurion apparently realized it would not be able to perform adequately and significant contempt fines were likely. To avoid catastrophic liability, Centurion ensured ADCRR would bear the brunt of nonperformance.. Shinn simply agreed to limit Centurion's liability and insulated it from meaningful consequences for its failures" (pp 111 @ 10-16)
"Are Defendants violating the constitutional rights of Arizona's prisoners…? The answer is yes..." (pp 1 @ 26 to 2 C3)
"In essence, it is Defendants' position that access to any care, no matter how poor, satisfies their constitutional obligations." (pp 29 @ 2-3))
"The question is whether the policies and procedures create a risk of harm to...prisoners. There is no question they do" (pp 117@21-23)

THE FAILURE TO PROVIDE THE ELECTRONIC EVIDENCE IN THE RULE 56(D)(H) MOTIONS, REQUIRES THIS COURT INFER THE EVIDENCE HAS BEEN DESTROYED, HAS PREJUDICED THE PLAINTIFF AND WARRANTS SPECIFIC SANCTIONS AGAINST COUNSEL AND DEFENDANTS WHO ARE SOPHISTICATED LITIGANTS

xxxvi. Rule 37(e) was completely revised in 2015 and sets the standards for sanctions arising from the spoliation of ESI.

xxxvii. "Spoliation is the destruction or material alteration of evidence, or the failure to otherwise preserve evidence, for another's use in litigation." Surowiec v. Cap. Title Agency, Inc., 790 F. Supp. 2d 997, 1005 (D. Ariz. 2011); see also Pettit v. Smith, 45 F. Supp. 3d 1099, 1104 (D. Ariz. 2014).

xxxviii. Thus, if ESI that should have been produced in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to produce it, a court: (1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or (2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may: (A) presume that the lost information was

unfavorable to the party; (B) instruct the jury that it may or must presume the information was unfavorable to the party; or (C) dismiss the action or enter a default judgment. Fed. R. Civ. P. 37(e).

xxxix. Rule 37(c)(1) authorizes a court to sanction a party for failing to produce information required by Rule 26(a) or (e). Rule 26(a) requires a party to make initial disclosures of information it may use to support its claims or defenses, and it not at issue in this case. Rule 26(e) requires a party to supplement its Rule 26(a) disclosures and its responses to interrogatories, requests for production, or requests for admission. This supplementation must be made "in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional corrective information has not otherwise been made known to the other parties during the discovery process or in writing[.]" Fed. R. Civ. P. 26(e). This "duty to supplement is a continuing duty, and no additional interrogatories by the requesting party are required to obtain the supplemental information – rather the other party has an affirmative duty to amend a prior response if it is materially incomplete or incorrect." Inland Waters Pollution Control v. Jigawon, Inc., No. 2:05-CV-74785, 2008 WL 11357868, at *18 (E.D. Mich. Apr. 8, 2008)

xl. In contrast to Rule 37(d), which applies only when a party fails to respond to a discovery request altogether, see Fjelstad v. Am. Honda Motor Co., Inc., 762 F.2d 1334, 1339 (9th Cir. 1985), sanctions are available under Rule 37(c)(1) – for violating Rule 26(e) – when a party provides incomplete, misleading, or false discovery responses and does not complete or correct them by supplement. See, e.g., Tisdale v . Fed. Express Corp., 415 F.3d 516, 525-26 (6th Cir. 2005) (upholding 37(c)(1) sanctions for failure to comply with Rule 26(e) when plaintiff "provided false responses and omitted information from his responses" to discovery requests); Wallace v. Greystar Real Est. Partners, No. 1:18CV501, 2020 WL 1975405, at *5 (M.D.N.C. Apr. 24, 2020) (holding that "Rule 26(e)'s supplementation mandate also imposed on Defendant GRSSE the responsibility to promptly correct its prior response to Interrogatory 1"); YYGM S.A. v. Hanger 221 Santa Monica Inc., No. CV 14-4637-PA (JPRx), 2015 WL 12660401, at *2 (C.D. Cal. July 24, 2015) (holding sanctions under Rule 37(c)(1) were warranted because, under Rule 26(e), defendants had "a continuing obligation to correct prior 'incomplete or incorrect' responses to discovery"); Cmty. Ass'n Underwriters of Am., Inc. v. Queensboro Flooring Corp., No. 3:10-CV-1559, 2014 WL 3055358, at *7 (M.D. Pa. July 3, 2014) (holding

sanctions under 37(c)(1) were warranted when defendants violated Rule 26(e) by falsely stating in response to an interrogatory that no tape recording had been made).

xli. "Prejudice exists when spoliation prohibits a party from presenting evidence that is relevant to its underlying case." Paisley Park Enters., Inc. v. Boxill, 330 F.R.D. 226, 236 (D. Minn. 2019). Proving that lost evidence is relevant can be a difficult task, however, because the evidence no longer exists. "To show prejudice resulting from the spoliation," therefore, courts have held that "a party must only come forward with plausible, concrete suggestions as to what [the destroyed] evidence might have been." TLS Mgmt. & Mktg. Servs. LLC v. Rodriguez-Toledo, 2017 WL 1155743, *1 (D.P.R. 2017) (internal quotations omitted); see also Paisley Park Enters., 330 F.R.D. at 236 (finding prejudice where "Plaintiffs are left with an incomplete record of the communications that Defendants had with both each other and third parties.").

xlii. Rule 37(e)(2) requires a finding that Defendants deleted or concealed with "the intent to deprive" Plaintiff of their use in this litigation. Fed. R. Civ. P. 37(e)(2). Although direct evidence of such intent is always preferred, a court can find such intent from circumstantial evidence.

See Auer v. City of Minot, 896 F.3d 854, 858 (8th Cir. 2018) (intent required by Rule 37(e)(2) "can be proved indirectly"); Laub v. Horbaczewski, No. CV 17-6210-JAK (KS), 2020 WL 9066078, at *6 (C.D. Cal. July 22, 2020) ("Because courts are unable to ascertain precisely what was in a person's head at the time spoliation occurred, they must look to circumstantial evidence to determine intent."); Paisley Park Enters., 330 F.R.D. at 236 (circumstantial evidence can be used to prove Rule 37(e)(2) intent); Moody v. CSX Transportation, Inc., 271 F. Supp. 3d 410, 431 (W.D.N.Y. 2017) ("[T]he Court may infer an intent to deprive from defendants' actions in this matter."); CAT3, LLC v. Black Lineage, Inc., 164 F. Supp. 3d 488, 500 (S.D.N.Y. 2016) (in addressing Rule 37(e) (2) intent, "circumstantial evidence may be accorded equal weight with direct evidence"); S. Gensler & L. Mulligan, Federal Rules of Civil Procedure, Rules and Commentary (2021) at 1164 ("while direct evidence certainly can show a party's intent to deprive, it is not needed. Rather, a court can find intent to deprive based on circumstantial evidence.").

xliii. The advisory committee note to the 2015 amendment of Rule 37(e) provides that the Court should consider a party's sophistication in determining whether the party took reasonable steps to preserve ESI.

See Rule 37(e) advisory committee note to 2015 amendment. When a litigant failed to take reasonable steps to preserve the ESI contained on the Youngevity Int'l v. Smith, No. 3:16- cv-704-BTM-JLB, 2020 WL 7048687, at *2 (S.D. Cal. July 28, 2020) ("The Relevant Defendants' failure to prevent destruction by backing up their phones' contents or disabling automatic deletion functions was not reasonable because they had control over their text messages and should have taken affirmative steps to prevent their destruction when they became aware of their potential relevance."); Laub, 2020 WL 9066078, at *4 (plaintiff failed to take reasonable steps when he "chose not to backup his text messages that were stored on his iPhone"); Paisley Park Enters., 330 F.R.D. at 233 (parties failed to take reasonable steps when they did not use the "relatively simple options to ensure that their text messages were backed up to cloud storage"); Brewer v. Leprino Foods Co., Inc., No. CV-1:16-1091-SMM, 2019 WL 356657, at *10 (E.D. Cal. Jan. 29, 2019) (party failed to take reasonable steps where the was "no effort to back-up or preserve the Galaxy S3 prior to its loss"); Gaina v. Northridge Hosp. Med. Ctr.,No. CV 18-00177-DMG (RAOx), 2018 WL 6258895, at *5 (C.D. Cal. Nov. 21, 2018) (similar).

xliv. Default or dismissal "constitutes the ultimate sanction for spoliation." Silvestri v. Gen. Motors Corp., 271 F.3d 583, 593 (4th Cir. 2001). It should be used only when the resulting prejudice is "extraordinary, denying [a party] the ability to adequately defend its case." Id. While not dealing with ESI, Silvestri illustrates the type of extreme prejudice that justifies terminating a case as a result of spoliation. The plaintiff in Silvestri claimed injury as a result of faulty airbags, but the car in which he was injured was repaired before the defendant could examine it and the plaintiff failed to preserve the airbags. Id. at 594. As a result, the defendant was denied access to "the only evidence from which it could develop its defenses adequately." Id. The plaintiff's spoliation effectively foreclosed a meaningful defense. Holloway v. Cnty. of Orange, No. SA CV 19-01514-DOC (DFMx), 2021 WL 454239, at *2 (C.D. Cal. Jan. 20, 2021) (granting ESI spoliation sanctions without addressing the requirements of Rule 37(e)); Mercado Cordova v. Walmart P.R., No. 16-2195 (ADC), 2019 WL 3226893, at *4 (D.P.R. July 16, 2019) (same); Nutrition Distrib. LLC v. PEP Rsch., LLC, No. 16cv2328-WQH-BLM, 2018 WL 6323082, at *5 (S.D. Cal. Dec. 4, 2018) (ordering adverse inference instructions without addressing the strict requirements of Rule 37(e) (2), and applying the negligence standard

that Rule 37(e) specifically rejected). Malone v. U.S. Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987). The factors are not specifically tailored to ESI spoliation issues under Rule 37(e).

xlv. In this case, just like Jones, I acted diligently and reasonably in pursuing discovery. On the basis of these of requests alone, it is clear that additional relevant evidence remained to be discovered, as I have been prejudiced..

WHAT EVIDENCE SUPPORTS MY CLAIMS

103. The following evidence support my claims:

THE BANKRUPTCY FRAUD SCHEME BY CORIZON

i. After Scott King Corizon General Counsel submitted requests for pandemic related federal funds for all venues that Corizon was operating under During the period January 2020 through January 2021 Corizon obtained funds authorized by 12 USC 4703a; 15 USC 636; 15 USC 9001; 15 USC 9009a; 15 USC 9011; 15 USC 9051; 21 USC 21516; 22 USC 4801; 42 USC 234; 42 USC 603; 50 USC 4532; amongst others, for the 25 contracts cancelled.

ii. He submitted reports with false declarations that the funds were used to pay employees .

PROOF OF CLAIMS

iii. Corizon sent emails to all management staff upon approval of Sara Tirschwell directing them, to have employees work at least 16 hours daily, and if they did work, they should not be paid overtime, and the Managers shall get bonuses.

iv. The emails also informed managers not to have inmates go to hospital, see specialists, and of hey die, so be it.

v. The Managers implemented the emails and received bonuses.

vi. In furtherance of the scheme Sara Tirschwell; Valitas Intermediate Holdings Incorporated, a Delaware Corporation; M2 HoldCo LLC, a Florida Limited Liability Co; M2 LoanCo LLC, a Florida Limited Liability Co; M2 EquityCo LLC, a Florida Limited Liability Co; Becken Petty O'Keefe, a Delaware Corporation, (hereinafter Valitas Family Of Companies), all through mail and emails from and to ch.com determined that Corizon reorganize in Texas.

vii. They agreed to form Tehum Care Services Inc aka Corizon a Texas Corporation; YesCare Corporation, a TexasCorporation and CHS Tex, a Texas Corpration. Never has Corizon maintained its place of business in Texas. It has always maintained its principal place of business in Tennessee. This was all accomplished by emails sent from corizonhealth.com (hereinafter "ch.com")

viii. They agreed to transfer bulk of the assets to CHS TEX, liabilities to Yescare and bonds and policies to Tehum. This reorganization was a sham designed to defraud.

ix. They then as planned filed for bankruptcy.

x. The Ankura consulting was hired to conduct due diligence. Russell Perry of Ankura did not examine the financials as he should have, especially the use of COVID funds, and any claims against Corizon for spoliation of evidence.

xi. M2 HoldCo LLC, ;M2 LoanCo LLC; M2 EquityCo LLC, agreed to give Coriozn loans from monies laundered from the assets of Corizon. These were sham loans.

xii. March 6, 2020 Nichole Cullen sent emails from qpwblaw.com to Babich and Perkins at cch.com with copies to Gottfried and Carter directing them not to show me emails hat they send or receive. Copies were sent to bowwlaw.com Orm@teamcenturion and cch.com

xiii. November 25, 2018 Dr. Rodney Stewart cch.com sent emails to all staff that they must make sure that the records when submitted pursuant to Parsons, are reconciled with the medical records, and if necessary the medical records changed.

xiv. . May 6, 2018 Dr. Ayodeji Ladele sent emails to all staff directed not to prescribe inmates medication that is cost prohibitive or not to refer inmates for consultation.

xv. May 6, 2018 Dr. Ayodeji Ladele sent emails to all staff that they must change patient records in order to comply with Parsons. Conlon prepared declarations that contradicted these emals. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com

xvi. March 20, 2018 Robert Maldonado from cch.com sent emails that Corizon had altered the records required to be filed by Parsons.

xvii. March 20, 2018 Marlene Bedoya from azadc.gov sent emails that records had been altered by Corizon. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com

xviii. December 2017 Dr. Fallhouse sent a email to Corizon corporate that he had delivered the altered reports pursuant to Parsons the ADCRR as directed by Corizon corporate.

xix. November 2017 Dr. David Robertson sent emails to Dr. Fallhouse that Corizon was altering reports and must stop. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com

xx. November 2017 Specer Sego sent Corizon a email that he had changed the reports that Parson requires to comply with Parsons.

xxi. October 2017 Dr. Fallhouse sent a email to Corizon corporate that he had delivered the altered reports pursuant to Parsons the ADCRR as directed by Corizon corporate.

xxii. April 21, 2017 Dr. Michael Minev sent email to Dr. Rodney Stewart cch.com that he has changed the medical records to comply with the report submitted pursuant to Parsons, as requested

xxiii. April 2017 FHA Porter sent altered reports required by Parsons to ADCRR and notified Corizon corporate.

xxiv. March 21, 2016 Dr. Rodney Stewart cch.com sent emails to all staff that they must make sure that the records when submitted pursuant to Parsons, are reconciled with the medical records, and if necessary the medical records changed.

xxv. August 28, 2014 Dr. Winfred Willliams from ch.com sent emails to staff to ensure that staff change the records to coincide with the reports submitted under Parsons.. Conlon prepared a declaration contradicting the emails. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com

xxvi. March 4, 2014 Joseph Scott Conlon rcdmlaw. Com sent email to Dr. Dimitic Catsaros ch.comasking him to sign an affidavit that contradicted the emails sent by Catsaros when he was with Wexford

health July 16,2012 where he was directed by Wexford change my treatment due to the cost. Catsaros executed the affidavit. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com

xxvii. September 2, 2013 Dr. Lucy Burciaga sent a email to staff to ensure that staff change the records to coincide with the reports submitted under Parsons.. Conlon prepared a declaration contradicting the emails. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com

xxviii. August 3, 2013 Dr. Kevin Lewis sent email to Dr. Joseph Moyse which directed him not to prescribe inmates medication that is cost prohibitive and if inmates die, Corizon will take care of it.

xxix. July 23, 2013 Dr. Winfred Willliams from ch.com sent directives to all staff that they are not to provide treatment, referral to specialists and send inmates to hospitals, due to the cost of treatment. Conlon prepared a declaration contradicting the emails. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com

xxx. July 16, 2013 Weber Gallagher sent a email to Skelton Hochuli that training given to staff are to be released to inmates in discovery..

xxxi. June 26, 2013 NP Unger received a email that directed him not to provide inmates with care that is expensive and not to refer inmates to specialists.

xxxii. February 3 2013 Mullenaux of Wexford sent emails to all staff that staff should just change reports required by Parsons to make it look good.

xxxiii. January 14, 2013 Weber Gallagher sent a email to Skelton Hochuli that no policies by Wexford are to be released to inmates in discovery.

xxxiv. January 4, 2013 Mullenaux of Wexford sent emails to all staff that inmates Wexford staff should not send inmates to hospital and in the event they die, Wexford will take care of it.

xxxv. October 6, 2012 Mullenaux of Wexford sent emails to all staff that inmates are not to be referred to specialists of provided essential treatment as the costs are exorbitant and Wexford s not getting paid much.

xxxvi. September 9, 2012 Weber Gallagher sent a email to Skelton Hochuli that no documents adverse to Wexford are to be released to inmates in discovery.

xxxvii. August 18, 2012 , May 21, 2013; and March 6, 2013 ADCRR informed Wexford by emails that Wexford should reexamine the reports as they appear falsified.

xxxviii. November 9, 2007 Aurora Aguilar sent emails to Johnson and Meyers confirming that Ruobyaines had destroyed my legal materials that I had asked to be copied. She confirmed that Ullibarri had reviewed these, but she nevertheless shall deny my grievance. These were subsequently forwarded to Carter and Brodsky

xxxix. Transcripts holding Ryan in contempt show that Magistrate Judge David Duncan found that Corizon supervisors instructed employees to alter the electronic records, to reflect inmates were receiving treatment, that they were not being given. ECF 2898 CIV 12-0601 (USDC ARIZ PARSONS v RYAN now SHINN v RYAN). This is the regular manner that Corizon operates in all venues.

xl. February 9, 2023 Loresca Purden directed after being told of the electronic evidence sent emails that I not be allowed to review the evidence, unless and until the librarian is present.

xli. October 6, 2022 Dalia Quintero after reviewing electronic evidence sent emails that I not be allowed to review the evidence, unless and until the librarian is present.

xlii. March 6, 2020 Nichole Culllen sent emails from qpwblaw.com to Babich and Perkins at cch.com with copies to Gottfried and Carter directing them not to show me emails hat they send or receive. Copies were sent to bowwlaw.com Orm@teamcenturion and cch.com

xliii. May 28, 2019 Paul Carter sent a email to Shelby Negron azadc.gov and asked her to execute a declaration that contradicted emails she sent to and received from Jose Ramos, Julia Erwin, Betty Ullibarri and Bohuszewicz. Bohuszewicz. Had directed her to destroy my legal materials, and mail CDS to Wexford, Corizon, Centurion, and their lawyers. They contemplated the use of and did use the mail to accomplish this.

xliv. April 6, 2019 Julia Erwin ADCRR sent emails to Kelly Dudley, Boschweicz explaining that Ullibarri had seized evidence against Correctional Health, Attorney general's Office and ADCRR employees on CDS. She explained these were sent to Wexford Corizon Centurion corporate offices and their lawyers, Carter and Gotttfried. She asked Dudley to draft a response for me.

xlv. November 25, 2018 Dr. Rodney Stewart cch.com sent emails to all staff that they must make sure that the records when submitted pursuant

to Parsons, are reconciled with the medical records, and if necessary the medical records changed.

xlvi. May 6, 2018 Dr. Ayodeji Ladele sent emails to all staff directed not to prescribe inmates medication that is cost prohibitive or not to refer inmates for consultation.

xlvii. May 6, 2018 Dr. Ayodeji Ladele sent emails to all staff that they must change patient records in order to comply with Parsons. Conlon prepared declarations that contradicted these emals. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com

xlviii. March 20, 2018 Robert Maldonado from cch.com sent emails that Corizon had altered the records required to be filed by Parsons.

xlix. March 20, 2018 Marlene Bedoya from azadc.gov sent emails that records had been altered by Corizon. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com

l. December 2017 Dr. Fallhouse sent a email to Corizon corporate that he had delivered the altered reports pursuant to Parsons the ADCRR as directed by Corizon corporate.

li. November 2017 Dr. David Robertson sent emails to Dr. Fallhouse that Corizon was altering reports and must stop. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com

lii. November 2017 Specer Sego sent Corizon a email that he had changed the reports that Parson requires to comply with Parsons.

liii. October 2017 Dr. Fallhouse sent a email to Corizon corporate that he had delivered the altered reports pursuant to Parsons the ADCRR as directed by Corizon corporate.

liv. September 28, 2017 Ryan sent emails to CEO Corizon that he was giving them $2,500,00 as bonus, so they would not cancel the contracts. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com

lv. June 6, 2017 CEO of Corizon sent emails to Ryan azadc.gov that in the event Ryan did not increase the fees by 4% Corizon shall move from Arizona. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com

lvi. April 2017 FHA Porter sent altered reports required by Parsons to ADCRR and notified Corizon corporate.

lvii. April 21, 2017 Dr. Michael Minev sent email to Dr. Rodney Stewart cch.com that he has changed the medical records to comply with the report submitted pursuant to Parsons, as requested.

lviii. March 21, 2016 Dr. Rodney Stewart cch.com sent emails to all staff that they must make sure that the records when submitted pursuant

to Parsons, are reconciled with the medical records, and if necessary the medical records changed.

lix. May 12 2015 CEO Corizon sent emails to Ryan azadc.gov that in the event Ryan fails to reduce the penalties imposed on Corzon, it shall move out of Arizona. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com

lx. August 28, 2014 Dr. Winfred Willliams from ch.com sent emails to staff to ensure that staff change the records to coincide with the reports submitted under Parsons.. Conlon prepared a declaration contradicting the emails. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com

lxi. March 4, 2014 Joseph Scott Conlon rcdmlaw. Com sent email to Dr. Dimitic Catsaros ch.comasking him to sign an affidavit that contradicted the emails sent by Catsaros when he was with Wexford health July 16,2012 where he was directed by Wexford change my treatment due to the cost. Catsaros executed the affidavit. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com

lxii. September 2, 2013 Dr. Lucy Burciaga sent a email to staff to ensure that staff change the records to coincide with the reports submitted

under Parsons.. Conlon prepared a declaration contradicting the emails. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com

lxiii. August 3, 2013 Dr. Kevin Lewis sent email to Dr. Joseph Moyse which directed him not to prescribe inmates medication that is cost prohibitive and if inmates die, Corizon will take care of it.

lxiv. July 23, 2013 Dr. Winfred Willliams from ch.com sent directives to all staff that they are not to provide treatment, referral to specialists and send inmates to hospitals, due to the cost of treatment. Conlon prepared a declaration contradicting the emails. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com

lxv. June 26, 2013 NP Unger received a email that directed him not to provide inmates with care that is expensive and not to refer inmates to specialists.

lxvi. November 29, 2010 Gene Greeley sent emails to Carter that no matter what the reason, as I have been challenging the presentation of false evidence by Attorney general's Office my diet should be cancelled.

lxvii. February 20, 2009 Shelly Sonberg sent a email to Greg Fizer that upon discussions with Michael Brodsky and Paul Carter the decisions made

in my favor reconstructing the records, were set aside, and I should sue if I wish to.

lxviii. December 14, 2007 Cheryl Dossett directed Tara Diaz to prepare documents that I was not sent o segregation, for complaining about the killing of an inmate, in case, take this to court.

lxix. November 9, 2007 Aurora Aguilar sent emails to Johnson and Meyers confirming that Ruobyaines had destroyed my legal materials that I had asked to be copied. She confirmed that Ullibarri had reviewed these, but she nevertheless shall deny my grievance. These were subsequently forwarded to Carter and Brodsky

lxx. December 18, 2006 Aurora Aguilar sent emails to Byron Tucker that the documents forged at the request of Paul Carter should be labelled amended.

lxxi. December 12, 1999 Aurora Aguilar directed Byron Tucker to prepare documents that Sgt. Lance Uehlling did not ask sin heads to beat me up, just in case, I take it to court.

lxxii. September 3, 1999 Sgt. Donaldson sent email to Daryl Graves stating she had found nine legal boxes of documents, but they have been removed from a secure area by staff.

lxxiii. August 31, 1999 Daryl Graves ADOC sent emails to Cindy Neese that the property and legal materials had been intentionally destroyed upon orders of central office. Copies were sent to Christopher Copple.

lxxiv. Defendants , implemented these directives, pursuant to cooperation agreements and continued with the scheme. They gave tacit authorization to the misconduct and failed to take remedial actions, when informed, thereby causing the misconduct.

lxxv. Without knowing what the Jensen injunction would be, Naphcare, like Wexford, Corizon and Centurion signed the contract to comply with the prospective conjunction, further informing the court that Techcare, the software it uses shall maintain proper contemporaneous record of care given.

lxxvi. Continuing with the practices implemented by Wexford, Corizon and Centurion, Naphcare has Techcare where records made by nurses and providers vanish, and the reports submitted by the permanent injunction in Jensen are altered to appear they comply with ECF 4410 in Jensen, but they do not.

lxxvii. In violation of HIPPA, all inmates can from their tablets access medical records of any inmate, as long as they have their information.

lxxviii. EMAILS from ADCRR, Naphcare and Dr. Pachecho are and were sent to change treatment that the providers order and these documents appear nowhere in these records, because these emails appear nowhere in the inmate medical records, same as in the case of Wexford, Corizon, Centurion.

lxxix. Pursuant to the litigation strategy adopted outside the adversarial process, to conceal and falsify evidence in prisoner litigation,, Struck and the Struck Law firm, Carter, Morrrissey, Thornell, aware of these actions, continue to conceal these from the courts, thereby as a consequence of their spoliation activities, they denied me denying me the chance to have my claims heard by the courts.

lxxx. Liability Insurers for Defendants are aware of these practices that I set forth in this complaint, and have failed to take actions, mandated by their policies. They have provided performance bonds and liability insurance, have breached the covenant of good faith and fair dealing, fiduciary duty, and engaged in bad faith settlement practices. Liability Insurers have put in place the practice, in violation of law, which forces litigation, in prisoner cases, as in this case.

lxxxi. By omission Liability Insurers have misrepresented facts and policy provisions. They have failed to, as mandated by law, in prisoner cases,

to acknowledge and promptly act on all claims. Liability Insurers fail to follow reasonable standards, standards followed by the insurance community in all cases, for investigation of claims. Liability Insurers deny claims without reasonable investigation.

lxxxii. Liability Insurers compel prisoners to litigate issues, and fail to follow their own rules and regulations, internal policies and guidelines.

lxxxiii. Liability Insurers are required to investigate facts and the law, as if there were no policy limits.

lxxxiv. In prisoner cases, , these Liability Insurers aided and abetted in the prefabrication of defenses and bad faith use of procedural devices, as set forth in the complaint.

WHAT OTHER EVIDENCE SUPPORTS MY CLAIMS

104. In ECF 244; 261; 280 I have set fort my discovery requests for additional evidence that are necessary for me to augment my clams. Once I receive these, I will supplement.

PROOF OF CLAIMS

DAMAGES

105. I have suffered $30,000,000 in actual damages. Other inmates who have had litigation against Defendants have suffered similar damages.

I declare under the penalty of perjury that these facts are true and correct and I am competent to so testify.

Done this 8th day of May 2023.

State of ARIZONA, County of YUMA
This Instrument was acknowledged before me
this 8th day of May, 2023
by Anant K. Tripati
A. Lugo, Notary Public

A. LUGO
Notary Public - Arizona
YUMA COUNTY
Commission # 581596
Expires May 1, 2024

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