

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON

In Re,
Telum Care Services
Debtor

Chapter 11
No. 23-90086-CML

United States Courts
Southern District of Texas
FILED

~~OCT 23 2023~~

Nathan Ochsner, Clerk of Court

OBJECTION TO ECF 986
REQUEST TO AMEND

ECF 986 MUST BE
OVERRULED AND AS ARIZONA
HAS NO LAW LIBRARIES I
ASK I BE GIVEN THROUGH
OCTOBER 31, 2023 TO SUBMIT
THE POINTS AND AUTHORITIES
① Schedule 1 through 9
AND CHANGES 1



(ECF 986 @ 7, 986-1 pp 14

@ P. 1 A, 986-1 pp 15 @ 2.)

FACI to disclose.

(a) the fraudulent transfer
of Assets - Prior to Bankruptcy.

(b) the concealment of
the evidence that the
Debtor - Valutar Intermediary
Holdings - M2 - have on
this issue.

1) SEE ECF 261 260 amongst
with ER Filings in this
Chapter 11 AND the APPEARANCE
23-03072 CML.

② AS BANKRUPTCY PROTECTS
THE HONEST DEBTOR — AND —
AS THE CONCEALED EVIDENCE —
SHOULD SHOW DEBTOR IS
NOT ENTITLED TO RELIEF —
WITHIN THE MEANING OF HUSKY
ELECTRONICS v RYAN 136 S. CT
1581 (2016) — COMBINED
WITH THE FACT — THAT —
AS ARGUED BY THE AMICUS
EOTF 576 — SOME 300,000
VICTIMS HAVE NOT BEEN
ALLOWED TO PARTICIPATE

In these proceedings the
motion should be DENIED

PREJUDICE

③ ECF 906 DOES NOT
ADDRESS those claims
arising out of speculation
AS FULLY SET FORTH
in ECF 906 in the ADVERTISEMENT
← the Debtor HAS
engaged in systemic

2) see Petition for writ of
MANDAMUS being screened
for this issue - by the
District Court

Speculation — AS A MASTER
OF AS OFFICIAL BUSINESS
MORAL — EXTORTION — etc —

AS SEA FORTH & ECF

4335 AND OTHER FINDINGS

by ARTICLE 3 JUDGES (CIV

12-0601-PHX 2008 U.S.

DISTRICT COURT DISTRICT

of Arizona)

(4) The Debtor has

uses — along with WellFare

Health Source — Centurion

of Arizona — Nephcare —

ATTORNEY DANIEL STARK
to help it - ~~PERFORM~~

this stamp upon Article

III Judges - And

(5) Hutch III Judges as
well as the Ninth Circuit
has made this specific
findings

(6) Because of this -
as fully set forth in the
~~advisory~~ - my ~~statement~~
speculation claims could
not be heard - when

The Debtor Filed this
Bankruptcy \approx [App D to F]

Conclusion

① Bankruptcy - Does
NOT PROTECT A Dishonest
Debtor like Tehum.

② ECF 906 MUST BE
REVISED UNTIL THE Debtor
PROVIDES THE INFORMATION

3 | WITH THE HELP OF DANIEL
STINEK AS THE MASTERMIND
- THE DEBTOR AND OTHERS
HAVE COME OUTRIGHT AND
DECEIVED THIS COURT - AS SET
FORTH IN THE ATTACHED

I Requested - showing -
Concealment and Stamp

9 I Am Being prejudiced
by ERF 988.

10 I move to take the
Points and Authority by
October 31, 2023

Respectfully Submitted

10/23/23

Drew [Signature]

Copie [Signature] on my
Partie

10 -

EXHIBIT D

Civil Action No. 2: 20-cv-0427

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

Tripati v. Wexford Health Servs.

Decided Apr 8, 2020

ANANT KUMAR TRIPATI, Plaintiff, v. WEXFORD HEALTH
SERVICES, INC., et al Defendants.

Cynthia Reed Eddy Chief United States Magistrate Judge

*2 28 U.S.C. § 1915(g). Plaintiff, Anant Kumar Tripati, is a very litigious state prisoner currently confined in the Arizona State Prison Complex, East Unit, in Florence, Arizona. At least three of his prior actions or appeals qualify as strikes under 28 U.S.C. § 1915(g):

Therefore, Plaintiff may not bring a civil action without complete prepayment of the \$350.00 filing fee and \$50.00 administrative fee unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

William S. Stickman, IV United States District Judge REPORT &
RECOMMENDATION

I. Recommendation

For the following reasons, it is respectfully recommended that Plaintiff's Motion for Leave to Proceed in forma pauperis (ECF No. 1) be denied in accordance with 28 U.S.C. § 1915(g) and that this action be dismissed without prejudice to Plaintiff reopening it by paying the full statutory filing fee in the amount of \$350.00, plus an administrative filing fee in the amount of \$50.00, for a total of \$400.00.

II. Report

a. Dismissal Pursuant to 28 U.S.C. § 1915(g)

A prisoner may not bring a civil action or appeal a civil judgment in forma pauperis ("IFP") if: the prisoner has, on 3 or more occasions,

while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(1) *Tripati v. Schriro*, No. CV 97-0021-PHX-ROS (D. Ariz. May 22, 1997) (dismissed for failure to state a claim); (2) *Tripati v. Felix*, No. CV 05-0762-PHX-DGC (D. Ariz. Oct. 14, 2005) (same); and (3) *Tripati v. Thompson*, No. CV 03-1122-PHX-DGC (D. Ariz. Dec. 28, 2005) (same).³

Abdul-Akbar, 239 F.3d at 315 (internal citation omitted). Imminent danger requires a showing of serious physical injury at the time the complaint is filed. *Id.* at 312. The imminent danger exception is available only for genuine emergencies where time is pressing and a threat is real and proximate. *Long v. Lanigan, et al.*, CA No. 10-0798, 2010 WL 703181, *2 (D.N.J., Feb. 23, 2010).

¹ An attachment to the Complaint reflects that on November 30, 1993, Plaintiff was convicted in Maricopa County, Arizona, and sentenced to 28 years of imprisonment for fraudulent schemes, 20 years for attempted fraudulent schemes, and 4-1/2 years for false swearing, resulting in an aggregate prison sentence of 52-1/2 years without the possibility of parole. Complaint, Exh. 1 (ECF No. 1-4 at 5).

³ In *Tripati v. Schriro*, 541 U.S. 1039 (2004), the Supreme Court ordered, "As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matter from petitioner unless the docketing fee required by Rule 38(a) is paid and petition submitted in compliance with Rule 33.1." *Id.* at 1039.

Additionally, the Court of Appeals for the Ninth Circuit issued a pre-filing Order on October 14, 1993, which remains in effect. In re *Tripati*, No. 93-80317 (9th Cir. Oct. 14, 1993).

b. Imminent Danger

To satisfy the imminent danger element, Plaintiff must allege facts in his complaint showing that he was in imminent danger at the time the complaint was filed; allegations that the prisoner has faced imminent danger in the past are insufficient to trigger the exception to section *3 1915(g). See *Abdul-Akbar v. McKelvie*, 239 F.3d 307 (3d Cir. 2001) (overruling *Gibbs v. Roman*, 116 F.3d 83, 86 (3d Cir. 1997)). In making this determination, the court should construe all allegations in a complaint in favor of the plaintiff. *Gibbs v. Cross*, 160 F.3d 962,965 (3d Cir. 1998); *Gibbs v. Roman*, 116 F.3d at 86. The Court of Appeals for the Third Circuit has instructed that:

"[i]mmminent" dangers are those dangers which are about to occur at any moment or are impending. By using the term "imminent," Congress indicated that it wanted to include a safety valve for the "three strikes" rule to prevent impending harms, not those harms that had already occurred. The imminent danger exception allows the district court to permit an otherwise barred prisoner to file a complaint I.F.P. if the prisoner could be subject to serious physical injury and does not then have the requisite filing fee.

c. Discussion

On March 27, 2020, Plaintiff initiated this case by the filing of a motion for leave to proceed in forma pauperis, and attached to the motion a thirty-two page handwritten pro se civil rights complaint. (ECF No. 1). In his complaint, Plaintiff names approximately 42 defendants including, inter alia, various former and current prison healthcare contractors (including Wexford Health Sources, Inc.; Corizon, Inc.; Centurion of Arizona) and what appears to be current or former employees of those healthcare contractors; six law firms (Broening Oberg Woods & Wilson PC; Jones Skelton Hochuli PLC; Quintairos Prieto Wood & Boyer PA; Renaud Cook Drury Mesaros PA; Struck Wieneke & Love, PLC; and Weber Gallagher Simpson *4 Stapleton Fires & Newby LLP) and multiple attorneys within each of those firms, as well as a number of attorneys with the Arizona Office of Attorney General; and various Arizona Department of Corrections ("ADOC") policymakers.

Complaint, at ¶ 14. Plaintiff further contends that this "misconduct . . . occurred in and out of courtrooms in Pitts, Tenn., Ill., Fl., Az., Mo." Id. at ¶ 20. Similar allegations are made in the complaint against each of the named law firms and the Arizona Attorney General's office. Complaint, at ¶ 8 (emphasis in original). Additionally, Plaintiff contends that, Id. at ¶¶ 46, 47.

Plaintiff alleges four counts in his verified complaint: Count 1 - violations of the Eighth Amendment; Count II -fraudulent concealment, fraud, deceit; Count III - violations of Customary International Law; and Count VI -conspiracy. He asserts that venue is proper in this district because "events have been directed from this district." Complaint at ¶ 6. Distilled to its essence, the complaint alleges that the various healthcare providers, and their attorneys and ADOC policymakers, have engaged in a vast conspiracy "in advance of litigation . . . [and] have deployed their prefabricated defense against me and other pro per (sic) prisoner plaintiffs. They used the Permissible Procedural Devices in bad faith . . . They [] rigged the game from the very beginning. Seeking truthful, accurate, non-tainted evidence has never been their objective. Not mischaracterizing but creating alternative facts." Complaint at ¶¶ 9 and 9A. For example, Plaintiff alleges that "Wexford, Zwick, Forman, Weber Gallagher":

4 Plaintiff contends that he is "an alien within the meaning of [the Alien Tort Claims Act, 28 U.S.C. 1350] and the conduct [of Defendants] violates Customary International Law as well as Articles I, II, III, X, XI, XXVI, [illegible] of the American Declaration and the Law of Nations." Complaint, at ¶53. ----- assembled template and stock pleadings discovery and motions documents for use by local counsel in proper prisoner litigation, that contained false or misleading information about the practices of Wexford. Specifically, concealed all emails, reports and complaints about the practices of Wexford . . .They concealed these to frustrate prisoner litigation. Then they submitted false sworn and unsworn representations including false affidavits, false and incorrect expert reports and discovery

response verifications by Wexford employees, offices, consultants, and experts.

As to his Eighth Amendment claim, Plaintiff asserts that he has, high blood pressure, shakes, tremors, chronic pain, constipation, prostate issues, allergies. I am suppose to have a nephroblast done to my kidneys to see if there is blockage. If there is no blockage found, then something else shall have to be done. Centurion is procrastinating and not sending me to be treated. They are going through the motions to treat me, but their delays show nothing they are doing helps. They have continued with the practice that Wexford began, Corizon continued, and Centurion, like Wexford and Corizon, have refused to prescribe the course of treatment that did manage my condition. As a result of my being denied treatment for my blood pressure, pain, prostrate and other issues, I have been told that I have to have a nephroplast to see if my kidney is blocked and this may cause me serious injury. Had Wexford, Corizon, Centurion continued with the treatment that I received in March 2012 - . . . - continued with the diet - I would not have been in imminent danger. I am 66 years of age and it is very likely that my injury shall be permanent.

Applying the above legal principles, and taking the complaint as a whole, the Court finds that Plaintiff's allegations are insufficient to satisfy the imminent danger requirement of 28 U.S.C. § 1915(g). While he alleges that he is being denied medical care, identical allegations are currently at issue in a pending case filed by Plaintiff in the United States District Court for District of Arizona. In that case, Plaintiff is alleging that he is receiving inadequate healthcare for high blood pressure, unbearable pain, a lung condition, shakes, tremors, and 6 the denial of a proper medical diet. See *Tripathi v. Corizon, Inc.*, 4:18-cv-00066 (D. Ariz.). *6

The remaining allegations of the complaint in which he alleges fraudulent concealment, fraud, deceit, violations of customary international law, and conspiracy, do not show that Plaintiff is in imminent danger of serious physical injury.

III. Conclusion

Based on the discussion above, it is respectfully recommended that Plaintiff's Motion for Leave to Proceed in forma pauperis (ECF No. 1) be denied in accordance with 28 U.S.C. § 1915(g) and that this action be dismissed without prejudice to Plaintiff reopening it by paying the full statutory and administrative filing fees, totaling \$400.00.

Plaintiff is permitted to file Objections to this Report and Recommendation to the assigned United States District Judge. In accordance with 28 U.S.C. § 636(b), Fed.R.Civ.P. 6(d) and 72(b)(2), and LCvR 72.D.2, Plaintiff, because he is a non-electronically registered party, may file objections to this Report and Recommendation by April 27, 2020. Plaintiff is cautioned that failure to file Objections within this timeframe "will waive the right to appeal." *Brightwell v. Lehman*, 637 F.3d 187, 193 n. 7 (3d Cir. 2011).

Dated: April 8, 2020

/s Cynthia Reed Eddy
Cynthia Reed Eddy
Chief United States Magistrate Judge



**Zone Department of Corrections
Rehabilitation and Reentry
Legal Mail Log**

Legal correspondence shall be opened and inspected only in the presence of the inmate (as outlined in) Corrections, Rehabilitation and Reentry (ADCRR, 914, Inmate Mail). If the inmate is not in the unit return the unopened Legal Mail to Complex Mail Room.

DATE (mm/dd/yyyy)
02/16/2023

Legal and other contraband have been removed prior to issuing to inmate. *

Inmate Name (Inmate Name)	ADCRR Number	Housing	Date (mm/dd/yyyy)	Signature	Received From / Mail To	Tracking Number	Contents	Outgoing Postage	Officer/Badge Number
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IT/A	102081	4D15L	02/16/23	<i>[Signature]</i>	U.S. Court of Appeals 601 Market St #21400 Philadelphia, CA 19106				

Shift Commander shall sign and date upon completion of all Legal/Certified Mail distribution.

COMMANDER NAME (Last, First M.I.) (Please print)	SIGNATURE	DATE (mm/dd/yyyy)
1. J. Servant	<i>[Signature]</i>	2-16-23

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 22-1861

Tripati v. Wexford Health Sources Inc.

To: Clerk

- 1) Suggestion of Bankruptcy received from Appellee Corizon Inc.
- 2) Motion by Appellant titled FRAP 41(d)(1) Application and Request for Other Relief

In light of the suggestion of bankruptcy filed by Appellee Corizon Inc., indicating the defendant in the lower court filed a petition for relief under the Bankruptcy Code, no action will be taken on Appellant's motion. See 11 U.S.C. § 362 (actions against the debtor may not proceed during the pendency of the bankruptcy).

For the Court,

s/ Patricia S. Dodszeit
Clerk

Dated: March 13, 2023

CJG/cc: Anant Kumar Tripati
Christopher J. Watson, Esq.
Joseph J. Bosick, Esq.
Holly M. Whalen, Esq.
Jason M. Yarbrough, Esq.
Rita Bustos, Esq.
Alyssa R. Illsley, Esq.
Kevin L. Nguyen, Esq.
Cassidy L. Neal, Esq.

- 10/18/2022 61 PRO SE REPLY BRIEF on behalf of Appellant Anant Kumar Tripathi. Certificate of Service dated 10/12/2022 by US mail. (IDR) [Entered: 10/18/2022 10:45 AM]
90 pg, 2.61 MB
- 10/31/2022 63 ORDER (Clerk) The motion for leave to file overlength reply brief is referred to the merits panel. (CJG) [Entered: 10/31/2022 04:42 PM]
1 pg, 92.04 KB
- 11/28/2022 64 CALENDARED for Monday, 12/12/2022. (AR) [Entered: 11/28/2022 05:07 PM]
1 pg, 124.36 KB
- 12/12/2022 65 SUBMITTED (Pro Se) on Monday, December 12, 2022. Panel: AMBRO, KRAUSE and SCIRICA, Circuit Judges. (AR) [Entered: 12/12/2022 08:07 AM]
1 pg, 50.33 KB
- 12/15/2022 66 NOT PRECEDENTIAL PER CURIAM OPINION Coram: AMBRO, KRAUSE and SCIRICA, Circuit Judges. Total Pages: 6. Tripathi's motion for permission to file his overlength reply brief is granted. (SLC) [Entered: 12/15/2022 07:19 AM]
6 pg, 206.1 KB
- 12/15/2022 67 JUDGMENT, Affirmed. Costs taxed against Appellant. (SLC) [Entered: 12/15/2022 07:25 AM]
5 pg, 188.43 KB
- 12/28/2022 68 ECF FILER: BILL OF COSTS filed on behalf of Appellee Kelly Joan Morrissey. Certificate of Service dated 12/28/2022. Service made by US mail, ECF. [22-1861] (KLN) [Entered: 12/28/2022 02:12 PM]
2 pg, 172.96 KB
- 12/29/2022 69 REVIEWED & ADJUSTED Bill of Costs filed. After review, costs will be taxed in the amount of \$39.33. (CJG) [Entered: 12/29/2022 08:41 AM]
1 pg, 87.65 KB
- 01/03/2023 70 MOTION filed by Appellant Anant Kumar Tripathi for Extension of Time to File Petition for Rehearing. Response due on 01/17/2023. Certificate of Service dated 01/04/2023. Service made by ECF. (SLC) [Entered: 01/04/2023 11:04 AM]
3 pg, 372.59 KB
- 01/05/2023 71 ORDER (AMBRO, Circuit Judge) granting motion for extension of time to file petition for rehearing filed by Appellant Anant Kumar Tripathi to file a petition for rehearing until February 15, 2023. (SLC) [Entered: 01/05/2023 10:56 AM]
1 pg, 96.62 KB
- 01/09/2023 72 PETITION filed by Appellant Anant Kumar Tripathi for Rehearing En Banc and before Original Panel. Clerk's Office ensured service on 01/11/2023. (SLC) [Entered: 01/11/2023 08:18 AM]
35 pg, 8.84 MB
- 02/01/2023 73 ORDER (CHAGARES, Chief Judge, AMBRO, JORDAN, HARDIMAN, GREENAWAY JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN and SCIRICA*, Circuit Judges) denying Petition for panel and for en banc rehearing filed by Appellant Anant Kumar Tripathi. Ambro, Authoring Judge. (*Judge Scirica's vote is limited to panel rehearing only.) (CJG) [Entered: 02/01/2023 01:43 PM]
2 pg, 100.26 KB
- 02/09/2023 74 MANDATE ISSUED. (SLC) [Entered: 02/09/2023 08:34 AM]
10 pg, 354.67 KB
- 02/13/2023 75 MOTION filed by Appellant Anant Kumar Tripathi to Abate Time to File for Certiorari. (SLC) [Entered: 02/14/2023 08:48 AM]
4 pg, 670.56 KB
- 02/13/2023 76 MOTION filed by Appellant Anant Kumar Tripathi for a Procedural Order as to Certiorari. (SLC) [Entered: 02/14/2023 08:49 AM]
6 pg, 891.57 KB
- 02/17/2023 77 ORDER (Clerk) No action will be taken on Appellant's motions as it noted that the case is closed. As to the motion for Procedural order Ordinarily, the Court does not intervene in the day-to-day operations of a prison. Appellant should contact prison administrators with your concerns and for information on prison grievance procedures. Any inquiry regarding a writ for certiorari should be directed to the United States Supreme Court at the following address: Public Information Center, One First Street, NE, Washington, D.C. 20543-001 (SB) [Entered: 02/17/2023 10:01 AM]
1 pg, 63.98 KB
- 02/17/2023 78 ECF FILER: SUGGESTION OF BANKRUPTCY received from Appellee Corizon Inc. Certificate of Service dated 02/17/2023. Service made by US mail, ECF. [22-1861] (JMY) [Entered: 02/17/2023 02:24 PM]
4 pg, 254.92 KB
- 02/21/2023 79 MOTION filed by Appellant Anant Kumar Tripathi titled FRAP 41(d)(1) Application and Request for Other Relief. Response due on 03/06/2023. Clerk's Office made service on 02/23/2023. Service made by ECF.-- [Edited 03/13/2023 by CJG] (SLC) [Entered: 02/23/2023 10:38 AM]
110 pg, 2.16 MB
- 03/13/2023 80 ORDER (Clerk) in light of the suggestion of bankruptcy filed by Appellee Corizon Inc., indicating the defendant in the lower court filed a petition for relief under the Bankruptcy Code, no action will be taken on Appellant's motion titled FRAP 41(d)(1) application and request for other relief. See 11 U.S.C. Section: 362 (actions against the debtor may not proceed during the pendency of the bankruptcy). (CJG) [Entered: 03/13/2023 02:02 PM]
1 pg, 64.82 KB
- 03/13/2023 81 MOTION filed by Appellant Anant Kumar Tripathi for Leave to File Completed Petition in Support of Pending Motion to Stay and Recall.. (CJG) [Entered: 03/17/2023 10:18 AM]
54 pg, 2.72 MB
- 03/21/2023 82 ORDER (Clerk) The motion for leave to file completed petition in support of motion to stay and recall was received by the Court on March 13, 2023, after a Clerk Order taking no action on Appellant's motion to
1 pg, 63.64 KB



Rehabilitation and Reentry

Inmate Letter

Requests are limited to one page and one issue. NO ATTACHMENTS PERMITTED. Please print all information.

INMATE NAME (Last, First M.I.) (Please print) TRUBATI, Anant	ADC NUMBER 102081	INSTITUTION/UNIT Y09	DATE (mm/dd/yyyy) 9/9/23
-----------------------------------------------------------------	----------------------	-------------------------	-----------------------------

TO Main Room	LOCATION
-----------------	----------

State briefly but completely the problem on which you desire assistance. Provide as many details as possible.

Can you please confirm you did not receive any mail for me from

Meyer Unkovic & Scott Pittsburgh.

During 2/17/23 and 2/28/23.

09/09/2023

In response to your inmate letter, I Coli Muela ID #10288 reviewed the incoming legal mail log.

There is no incoming legal mail from Meyer Unkovic & Scott Pittsburgh during the period of 2/17/23 to 2/28/23.

Thankyou. D. Muela #10288

INMATE SIGNATURE	DATE (mm/dd/yyyy) 9/9/23
------------------	-----------------------------

Have you addressed this with Department staff? Yes No

If yes, give the staff member's name and the date you addressed with them:

(Staff Member's Name) (Please print)

(Date addressed)

Note: Using profanity, insulting, obscene, or abusive language and/or addressing staff with inappropriate names or making inappropriate remarks in this written correspondence (or verbal communication to staff concerning this correspondence), will not be tolerated and may result in no response to the correspondence and/or discipline pursuant to Department Order 303, Inmate Disciplinary Procedure.

EXHIBIT E

FILED

FEB 27 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ANANT KUMAR TRIPATI,

Plaintiff-Appellant,

v.

CORIZON INCORPORATED;
DIMITRIC CATSAROS, Dr.; JOSEPH
MOYSE, Dr.,

Defendants-Appellees,

ARIZONA DEPARTMENT OF
CORRECTIONS,

Intervenor-Defendant-
Appellee.

No. 16-15598

D.C. No. 4:13-cv-00615-DCB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Argued and Submitted February 15, 2018
Pasadena, California

Before: THOMAS, Chief Judge, and REINHARDT and FISHER, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

EXHIBIT F

PM	Location	January 2021	February 2021	March 2021	April 2021
9E	Eyman	80%	82%	94%	82%
9E	Lewis	90%	89%	78%	89%
9E	Winslow	75%	100%	100%	100%
Total Noncompliant		29	25	33	32

This plainly establishes that despite the emergence from the pandemic, Defendants remain noncompliant with some of the most fundamental and critical aspects of medical and mental health care delivery.

RESCISSION

A. Defendants Know Rescission Was Always Possible

After concluding the Stipulation represented an appropriate resolution, the Court closed this case “subject to the Court maintaining jurisdiction to supervise the enforcement of the settlement as provided in the parties’ Stipulation.” (Doc. 1458). On November 15, 2018, the Court warned Defendants their “actions raise the distinct miserable possibility that the Stipulation will have to be set aside and the parties instructed to litigate again.” (Doc. 3057 at 9). Defendants acknowledged as much when arguing before the Ninth Circuit Court of Appeals in September 2019. At oral argument, defense counsel told the Ninth Circuit this Court lacked contempt authority under the Stipulation and argued, instead, that the Court could vacate the settlement and set the case for trial. Defense counsel made this clear in response to Judge Callahan questioning Defendants’ position that the Court lacked the authority to enforce the stipulation through its contempt powers.

Judge Callahan: So the stipulation then just basically means nothing? I mean it’s just this is what we agree to and if it doesn’t work out then that’s it. The court can’t do anything?

Defendants’ Counsel: No. The court definitely has enforcement ability. First of all, if the court concludes that the parties aren’t dealing with the . . . complying with the stipulation, it can vacate the stipulation and we can go back and litigate the case.

Defendants later attempted to graft a post-hoc rationalization for their oral argument statement, saying they meant only that “state law contractual remedies . . . are available to

Am 309

Case 2:12-cv-00601-ROS Document 3921 Filed 07/16/21 Page 28 of 37

1 enforce noncompliance, including initiating an action in state court for breach of contract.”
2 (Doc. 3411 at 1). But that is far from what they said. Rather, Defendants represented that
3 if the Court “concludes that the parties aren’t . . . complying with the stipulation, it can
4 vacate the stipulation” and resume litigation. Defendants were very aware their failures
5 could result in the resumption of litigation.

6 Further, as Defendants were told in October 2019, after reviewing Dr. Stern’s expert
7 report, the Court identified rescission of the Stipulation as one of the three remaining
8 options. The other two—renewed settlement negotiations and further contempt
9 sanctions—have now since been repeatedly attempted but proven unsuccessful in
10 provoking compliance. And the Court recognized in February 2020 that the “record
11 supports a finding of rescission,” but elected to give Defendants “one more, but final,
12 attempt at coercive sanctions.” (Doc. 3495 at 1). As detailed above, that attempt obviously
13 failed again to bring about compliance.

14 B. Legal Basis for Undoing Settlement

15 In 1994, the Supreme Court addressed federal courts’ power to enforce settlement
16 agreements. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994). In
17 distinguishing between a district court enforcing a settlement agreement and reopening a
18 dismissed action because of a parties’ repudiation of a settlement agreement, the Supreme
19 Court recognized that “some Courts of Appeals have held the latter can be obtained under
20 Federal Rule of Civil Procedure 60(b)(6).” *Id.* at 377 (internal footnote omitted). The
21 Supreme Court cited the Ninth Circuit as one such circuit. *Id.* at 378 (citing *Keeling v.*
22 *Sheet Metal Workers Int’l Assn.*, 937 F.2d 408, 410 (9th Cir. 1991)). The Ninth Circuit is
23 not alone as the First, Fourth, and Sixth Circuits have also so held. *See, e.g., Delay v.*
24 *Gordon*, 475 F.3d 1039, 1044-45 & n.11 (9th Cir. 2006); *United States v. Baus*, 834 F.2d
25 1114, 1124 (1st Cir. 1987); *Fairfax Countywide Citizens Assn. v. Fairfax County*, 571 F.2d
26 1299, 1302-1303 (4th Cir. 1978); *Hinsdale v. Farmers Natl. Bank & Trust Co.*, 823 F.2d
27 993, 996 (6th Cir. 1987); *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368, 1371 (6th Cir.
28 1975). Thus, it is well-established that a party’s behavior after entering into a settlement

Inmate _____
ADC # _____
Arizona State Prison Complex _____
Unit _____
AZ _____

NEOPOST
10/18/2023
USPS POSTAGE \$011.29⁰⁰



ZIP 85349
041M11460574

United States Courts
Southern District of Texas

OCT 23 2023

Nathan Ochsner, Clerk of Court

P

COMMERCIAL BASE PRICING

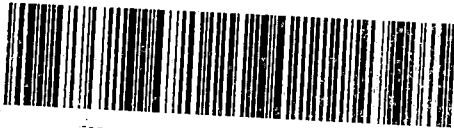
USPS PRIORITY MAIL®

1023

SHIP TO: US BANKRUPTCY COURT
515 RUSK
HOUSTON TX 77002

US Bankruptcy Court
515 Rusk Ave
Houston, TX 77002

USPS TRACKING #



9205 5901 5589 9200 0000 1375 90

ELECTRONIC RATE APPROVED #901558992

BOX 1 OF 1

LEGAL MAIL

LEGAL MAIL