Docket #0164 Date Filed: 10/23/2023

United States Courts
Southern District of Texas
FILED

OCT 23 2023

Nathan Ochsner, Clerk of Court

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re:	
Tehum Care Services, Inc	Case No: 23-90086 (CML)
	CHAPTER 11
Debtor.	
Anant Kumar Tripati	Adv. Pro. No. 23-03072 (CML)
Plaintiff,	
Vs.	
Sarah Tirschwell, et al.,	
Defendants.	

COMBINED RESPONSE TO ECF 153, 154

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing. Represented parties should act through counsel.

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SUMMARY OF THE ARGUMENT

¶ ECF 154 is completely false, frivolous and not support by facts or law.

¶ ECF 153 is devoid of merit as ECF 96, cures the defects set forth in ECF 153.

¶ ECF 153 is not an authorized pleading.

¶ There is no excusable neglect for Defendants to not being truthful, not filing a responsive pleading as ordered by Judge Christopher Lopez. See generally Pioneer Inv. Services Inc v Brunswick Assoc. Ltd Partnership, 507 US 380 (1993) because Patrick M. Kemp Esq; and Robert G. Wall Esq are highly experienced lawyers, who have practiced law since 2003 and 2010 respectively. (EX B, C) They know what a responsive pleading is.

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MEET AND CONFER

¶ August 27, 2023 Judge Christopher Lopez issued the order marked EX A "It is, therefore, ORDERED that Defendant Scottsdale Insurance Company is directed to **file a responsive pleading** to Plaintiff's Complaint no later than October 3, 2003" (emphasis added) (SEE ATTACHED ORDER) 1/

¶September 12, 2023 Scottsdale filed ECF 144 and this is not a responsive pleading within the meaning of the August 27, 2023 order.

¶ ECF 153 filed September 27, 2023 is not a responsive leading within the meaning of the August 27, 2023 order.

¶ Counsel also represented to this court that the spoliation allegations were dismissed in Pittsburgh. (ECF 154 @ 3)

¶ I asked them to provide me with the location where the court decided the claims. I also informed them if they would provide me with this information, I shall dismiss the complaint. They refused.

1/ STATING LAWYERS SHOULD KNOW RULES AND BANKRUPTCY LAW.

¶ I contacted them and informed them that Judge Christopher Lopez had issued the order marked EX A specifically stating "It is, therefore, ORDERED that Defendant Scottsdale Insurance Company is directed to **file a responsive pleading** to Plaintiff's Complaint no later than October 3, 2003" (emphasis added)

SUMMARY OF ECF 153 AND 154

¶ ECF 153 states the complaint does not state a claim for relief.

¶ ECF 154 parrots all other motions for screening, but at states falsely, that I was found to have perpetrated fraud upon the court.

RELEVANT FACTS

¶ Defendants were in default. Judge Christopher Lopez directed they file a responsive pleading by October 3, 2023. (EX A) They did not, instead filed a motion.[1] This is the second default.

¶ Before they filed the complaint Plaintiff moved to file the Second Amended Complaint, curing the defects defendants point out.(ECF 96) They did not address that document as it cures the defects. See ECF 96 Wopsock v Natchees, 2008 US App. Lexis 11206 (10th Cir. 2008)

1 The court, did not state it was relieving them of the default. By ordering the responsive pleading be filed, it can be argued that Judge Lopez wanted to know what their meritorious defense was, to their failing to respond, if any. They have failed in this regards.

DEFENDANTS ARE PLAYING CAT AND MOUSE GAME

¶ Counsel is playing a cat and mouse game, like all the other lawyers, who have moved to screen and filed frivolous motions to dismiss etc. Ali v Tolbert, 636 F.3d 626 (D.C. 2011)

¶ They have not justifiable reason for not to file the "responsive pleading" Judge Christopher Lopez Ordered them to file. (EX A)

¶ They have no justifiable reason to seek screening.

ECF 153 VIOLATES THE PLAIN UNAMBIGUOUS LANGUAGE OF THE AUGUST 27, 2023 ORDER

¶ Neither ECF 144 nor ECF 153 is a responsive pleading within the plain language of August 27, 2023 order.

¶ Rule 7012(a) in plain language reads..."The service of a motion permitted under this rule alters these periods...unless a different time is fixed by order of the court."

¶ The August 27, 2023 order set forth October 3, 2023 as "a different time" fixed for the responsive pleading.

¶Notwithstanding these provisions counsel opted to violate the August 27, 2023 order.

ECF 153 IS NOT THE AUTHORIZED PLEADING

CONTEMPLATED BY THE AUGUST 27, 2023 ORDER

¶ Picking v Pennsylvania RR 5 FRD 289 (Pa. 1946) Birge v Delta Airlines, 597 F.Supp. 448 (ND Ga. 1998) Johnson v Bd. Of Police, 351 F.Supp. 929 (ED Mo. 2004) all clarify what the term responsive pleading means.

¶ ECF 153 is a motion and not a responsive pleading within the meaning of Bankruptcy Rule 7012. With their extensive experience, these lawyers, know this fact. They had the duty to withdraw this filing. (EX B, C)

¶ As such, default should be entered for failing to comply with the August 27, 2023 order (EX A) Final judgment may be entered when a litigant fails to follow a court order, as in this case. Stan v Marshall Chiang v Nelson (In re Death Row Records Inc) 2012 Bankr. Lexis 4948 (9th Cir. 2012) and may also grant summary judgment. Satija v Page (in re Page) 2023 Bankr. Lexis 1949 (Bankr. WD Tex 2023)

¶ A court has the authority to both order entry of default and grant default judgment. Breuer Electric Man. V Tornado Systems of America, 687 F.2d 182 (7th Cir. 1982) When a litigant has not responded in three months, judgment by default is proper. PNCEF LLC v Hendricks Building Supply LLC, 2010 USD Lexis 94712 (S.D.Al. 2010)

¶ Though default judgments are generally disfavored Hassell v United States (In re Hassell) 20003 Bankr. Lexis 1856 (Bankr. N.D.Tex. 2003) they are

nevertheless available for willful failure to respond. United States v Torrence, 2002 US Dist.Lexis 16343 (E.D.Tex. 2002)

¶ Punitive damages may be awarded on default Cutcliff v Reuter, 2015 US App. Lexis 11177 (8th Cir. 2015) to punish defendants for its conduct and to deter future similar conduct. Smith v Wade, 461 US 30, 49-50(1983)

¶The treble damages in RICO are remedial not punitive PacificCare Health Sys, Inc v Book, 538 US 401, 406-07(2003). When common law claims are alleged in addition to RICO claims, punitive damages are available. Humana Inc v Forsythe, 525 US 299, 313 (1999)

¶ When awarding punitive mages, the reprehensibility of the conduct is a key factor. BMW of North America Inc v Gore, 517 U.S. 559, 585-85(1996)

¶ Under the Rules, there is no need to prove the summons and complaint were received only that they were mailed. Rebein v Adkins (III Inc) 2006 Bankr. Lexis 707 (Bankr. Kansas 2006) see also Flores v Safadi (In re Safadi) 2010 Bankr. Lexis 1979 (Bankr. D Ariz. 2010)

THE CONDUCT ATTRIBUTABLE TO SCOTTSDALE

- **"Evanston ; Lexington ; Zurich American ; American Zurich ; Columbia Casualty ; Scottsdale Insurance ; Coverys Specialty ; Hartford Casualty; Lone Star Alliance Inc; Fidelity and Deposit Company Maryland; Powers Leavitt Insurance Agency Inc; Liability Mutual Insurance Company; Berkley Insurance Company; Capital Indemnity Corp; Ironshore Insurance Company; Great American Insurance Company; The Travelers Insurance Co; Liability Insurers For Weber Gallagher unknown at this time.; Liability Insurers Jones**

Skelton unknown at this time.; Liability Insurers Renaud Cook Drury unknown at this time.; Liability Insurers Quintairios Prieto unknown at this time;. Liability Insurers Broening Oberg unknown at this time. Liability Insurers Struck Wienke unknown at this time; Liability Insurers Gottfried Morrissey Carter unknown at this time collectively are referred to as "LIABILITY INSURERS. " (ECF 96 @ 264)

- **Wexford, Corizon, Centurion, Naphcare are healthcare providers that provide healthcare to prisoners nationwide, and Ulibarri provides paralegal services. They fall within 65 Federal Regulations 59448, 59449. OIG Advisory Opinion 12-06 in the context of healthcare programs forbids questionable financial arrangements. This means Wexford, Corizon, Centurion, and Naphcare are mandated to stop fraud and abuse of prisoners, as well as take remedial actions. (ECF 96 @ 265)**
- **LIABILITY INSURERS owe the special duty to me, and other prisoners, which duty mandates they compensate me and other prisoners when the type of misconduct I allege in this complaint happens. They violated their duty of loyalty, duty to exercise reasonable skill and care, and to deal impartially. (ECF 96 @ 266)**
- **LIABILITY INSURERS with their affiliated insurers, have abused their office, me and other prisoners nationwide, because, they do not review and investigate prisoner claims. They have Wexford, Naphcare, Corizon, and Centurion, determine what is or is not to be paid. They force litigation and only when a prisoner litigates a claim and prevails, do they pay, the judgment or settlement during that litigation. (ECF 96 @ 267)**
- **It is a condition precedent for Corizon, Centurion, Naphcare, Wexford, Ulibarri to carry insurance for paying any claims for damages to inmates, including me. Without the insurance they cannot do business with prisoners. (ECF 96 @268)**
- **For Example: Naphcare took the contract and stated they shall comply with the Jensen Injunction. This injunction was not even issued, so how can they know what to comply with. Once Naphcare took over, nurses and providers have left, there is insufficient staffing; inmates are dying; Techcare does not function; Naphcare fired staff who ensured there was adequate care; If these liability insurers and bonding companies, would have conducted the proper underwriting decision, Naphcare would not have got the contract. (ECF 96 @ 269)**
- **LIABILITY INSURERS must pursuant to law, and established insurance standards, as well as their internal policies, promptly investigate all claims and not force litigation. (ECF 96 @ 270)**
- **As I am a prisoner, and in all prisoner cases, discussed in this complaint, they failed to follow these standards, did not investigate, violated their own internal guidelines, and forced litigation. Had**

these been non prisoner claims, they would have investigated and followed the law as well as their internal policies. (ECF 96 @ 271)

- **This is a violation of the spirit and intent of insurance, lack of due diligence, abuse of power, malicious failure to pay claims, wrongful denial of benefits, dishonesty, breach of fiduciary duty, breach of duty of loyalty under the terms of the policy, breach of implied duty of good faith and fair dealing. (ECF 96 @ 272)**
- **This is deceit as it is intentionally falsely leading prisoners to believe, something that is not true, to deceive or trick. This is willfully making false statements, with intent that prisoners like Plaintiff shall act in reliance on it, suffering harm in consequence. These are false representation of facts with knowledge of their falsity by Defendants. (ECF 96 @ 273)**
- **LIABILITY INSURERS have used frivolous or unfounded refusals to pay prisoner claims. Their motives of self-interest or ill will, was and always has been to force litigation by prisoners of their claims. They knew or recklessly disregarded the basis for these claims. (ECF 96 @ 274)**
- **Liability Insurers For Weber Gallagher; Jones Skelton; Renaud Cook; Quintairios Prieto; Broening Oberg; Struck Love; Gottfried, Morrissey, Carter engaged in the conduct in this complaint, have failed to conduct any investigation as to claims against them and their employees for the type of misconduct I state, violating their duty of loyalty, duty to exercise reasonable skill and care, and to deal impartially. (ECF 96 @ 275)**
- **Struck, Gottfried and others are aware of Defendants are manipulating the healthcare programs and laws, in violation of the IG Opinions, from whistleblowers and contract monitoring staff. (ECF 96 @ 276)**
- **Liability Insurers as well as Naphcare, Wexford, Corizon, Centurion are aware of these practices, and have failed to take actions, mandated by their policies. (ECF 96 @ 277)**
- **LIABILITY INSURERS that 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. (ECF 96 @ 278)**
- **Liability Insurers have put in place the practice, in violation of law, that MANDATES litigation, in prisoner cases. (ECF 96 @ 279)**
- **By omission Liability Insurers have failed to, as mandated by law, in prisoner cases, 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, in prisoner cases. Liability Insurers deny claims without reasonable investigation. (ECF 96 @ 280)**

- **Liability Insurers compel prisoners to litigate issues, and fail to follow their own rules and regulations, internal policies and guidelines. (ECF 96 @ 281)**
- **Liability Insurers are required to investigate facts and the law, as if there were no policy limits. (ECF 96 @ 282)**
- **In prisoner cases, , these Liability Insurers aided and abetted by their practices , in the prefabrication of defenses and bad faith use of procedural devices, as set forth in the complaint. (ECF 96 @ 283)**
- **The potential damage through prefabrication and bad faith use of procedural devices, was predictable and foreseeable violation . (ECF 96 @ 284)**
- **This conduct is malicious, oppressive and fraudulent, constituting trickery, deception and deceit, against prisoners. (ECF 96 @ 285)**
- **Liability Insurers are liable, also for negligent misrepresentation, because they are providing false information for the guidance of others, in the course of business, failing to exercise reasonable care or competence, in obtaining or communicating the information. Humble 2016 USDCT Lexis 71127. (ECF 96 @ 286)**
- **To my detriment, as a consequence of the conduct of liability insurers, I suffered physical pain, had my healthcare delayed, and after a 13 year delay have been diagnosed with brain issues during a MRI. Liability Insurers conduct constitutes tortious breach of conduct, done fraudulently, oppressively and with malice. Their conduct was intentional. As a proximate result of Liability Insurers failure and refusal to follow their own industry standards, properly underwrite and process policies and claims, I have been injured. Liability Insurers pursuant to the terms of their policies had the duty to investigate, negotiate, and settle any claim or suit, which in prisoner cases they refuse. (ECF 96 @ 287)**
- **But for the failure of Liability Insurers to follow their policies, guidelines, standards, Defendants would not have engaged in the misconduct set forth above. (ECF 96 @ 334)**
- **As such, policy limits and policy aggregate limits should not apply, because, by their failures and lack due diligence, they allowed the misconduct. (ECF 96 @ 335)**
- **Liability Insurers by their policies and bonds, enabled Defendants to engage in the misconduct. (ECF 96 @ 336)**
- **Without their coverage Ulibarri would not be able to have contracts with Arizona. Without their policies and bonds Naphcare, Corizon, Wexford and Centurion would not be in a position to provide inmates with healthcare. (ECF 96 @ 337)**
- **Liability Insurers have allowed Naphcare, Corizon, Wexford, Centurion and Ulibarri to perform a state function, to the most vulnerable population. (ECF 96 @ 338)**

- **Prisoners must rely on the State to provide healthcare and access to the courts. (ECF 96 @ 339)**
- **The DeShaney duty to protect doctrine, mandates Liability Insurers screen policies bonds coverage to providers of services in prisons and jails, for strict compliance with their standards, insurance standards. (ECF 96 @ 340)**
- **They must be ordered to require, whenever any policyholder that provides services to prisoners, that the policyholder, provide a copy of the coverage and a claim form for any claims. (ECF 96 @ 341)**
- **These claims must be directly reviewed by Lability Insurers. (ECF 96 @ 342)**
- **The Liability Insurers policies and bonds, violate DeShaney. (ECF 96 @ 343)**
- **The injury was foreseeable. (ECF 96 @ 344)**

¶ This is the same spoliation claim that was screened by the District Court and I was allowed to proceed on and which was pending in the Third Circuit when the Bankruptcy was filed.

- **" 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 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. (EX D)**

AS DEFENDANTS HAVE NOT SHOWN EXCUSABLE NEGLECT DEFAULT AND DEFAULT JUDGMENT IS PROPER

¶ Pioneer Inv. Services Inc v Brunswick Assoc. Ltd Partnership, 507 US 380 (1993) sets forth the standards for excusable neglect. The extensive experience (EX B and C) that these lawyers have, show they know what "responsive pleading" means. They made the tactical decision not to comply, as ordered.

¶ Relief from default requires a showing that there is a meritorious defense and Defendants have not made that showing. In re J. B. Lovell Corp, 1988 Bankr. Lexis. 1048 (ND Ga. 1988)

¶ Defendants have proffered no meritorious defense to the allegations Vick v Wong, 263 FRD 325 (ED Va. 2009)

¶ As there is no good reason not to respond as ordered by Judge Christopher Lopez, default is proper. In re Knight, 833 F2d 1515 (11th Cir. 1987)

¶ Defendants intentional refusal to respond, warrants default and judgment by default. Price v America's Servicing Co., (In re Price) 2007 Bankr. Lexis 36662 (Bankr. ED Ark. 2007) Adversary 2008 Bankr. Lexis 1590 (Bankr. ED Ark. 2008)

ECF 154 IS FRIVOLOUS AND FILED IN BAD FAITH

¶ Neither the Third Circuit nor the District Court decided the spoliation issue before the court. Counsel also omit the fact that the Third Circuit declined to rule on the motion as to all Defendants, because of this bankruptcy, and that the United states Supreme Court did not docket the matter, due to this

bankruptcy. (See attached log and order)(EX D) Counsel had the duty to withdraw these.

¶ They advised the court that the court found that there was fraud upon the court (ECF 154 154@4) This is patently false (EX E shows the Ninth Circuit found there was no fraud upon the court).

¶ They stated the District Court found that there was fraud upon the court in CV 16-0282. (ECF 154@4) This is patently false for there was no such determination.

¶ They state that they join ECF 25 (ECF 154@5). As set forth in Exhibits F, the Ninth Circuit and District Courts in Arizona have found Daniel Struck to be deceitful, lying to federal judges and making post hoc rationalizations. They had the independent duty to verify ECF 25 and they failed.

CONCLUSION

¶ There is no valid excuse for Defendants failure. There is no excusbale neglect. They refused to comply with the court's orderin bad faith. Default and judgment by default should be entered for their failure to comply with the August 27, 2023 order.

Respectfully submitted,

Anant Kumar Tripati

The Plaintiff hereby certifies that a true and correct copy of the foregoing document was served by the Court's CM/ECF system on all parties requesting notice/ all parties who have entered appearance.

ENTERED
12/01/2017

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

IN RE:	§	
VICKY GRIBBLE WRIGHT; aka WRIGHT; aka WRIGHT; fdba VICKY WRIGHT/BORDERS CONTRACTORS INC.	§	**CASE NO: 13-10472**
Debtor	§	
	§	**CHAPTER 13**
VICKY GRIBBLE WRIGHT	§	
Plaintiff	§	
VS.	§	**ADVERSARY NO. 16-1004**
WILLIAM A. CSABI, *et al*	§	
Defendants	§	**Judge EDUARDO V. RODRIGUEZ**

MEMORANDUM OPINION
FINDING DEFENDANTS LIABLE FOR VIOLATIONS OF 11 U.S.C. §§ 327, 329, 362 & 504 BANKRUPTCY LOCAL RULE 2014-1 & F. R. BANKR. P. 2014 & 2016
Resolving in Part, ECF No. 1

I. INTRODUCTION

"If citizens cannot trust that laws will be enforced in an evenhanded and honest fashion, they cannot be said to live under the rule of law."[1] When lawyers appear before this Court, they are charged with knowledge of the United States Bankruptcy Code,[2] the Federal Rules of Civil Procedure ("*Civil Rules*"), Federal Rules of Bankruptcy Procedure ("*Bankruptcy Rules*, *Rules*, or *Rule*"), Southern District of Texas Bankruptcy Local Rules ("*Bankruptcy Local Rules*, *BLR*, or *Local Rule*"), and this Court's Procedures and are obliged to follow those Rules and Procedures, without which it could be said that we are not living "under the rule of law." Let it be clear to all

[1] Dale Carpenter, *Flagrant Conduct: The Story of Lawrence v. Texas* 108 (2012).

[2] Any reference to "Code" or "Bankruptcy Code" is a reference to the United States Bankruptcy Code, 11 U.S.C., or any section (i.e. §) thereof refers to the corresponding section in 11 U.S.C.

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that appear before this Court that flagrant violations of the Code and the aforementioned Rules and Procedures will not be tolerated and such violations will be dealt with swiftly by this Court.

Turning to the merits of the case *sub judice*, three local attorneys, James P. Grissom ("*Grissom*"), William A. Csabi ("*Csabi*") and Francisco J. Rodriguez ("*Rodriguez*") (collectively "*Defendants*") chose to test this Court's resolve. Vicki G. Wright "(*Debtor* or *Plaintiff*") filed the instant complaint seeking disgorgement of an unauthorized fee, turnover of property of the estate, and violation of the automatic stay against the three Defendants. Specifically, Plaintiff has alleged that Defendants violated 11 U.S.C. §§ 105, 329, 330, 362, 504, 542 and Rules 2016, and 2017 as well as Texas Rules of Professional Conduct 1.04(d) and 1.04(f). On August 30, 2017,[3] this Court conducted a three-day, bifurcated trial on the merits of Plaintiff's claims against the Defendants as to liability only. Therefore, the instant Memorandum Opinion will address the alleged violations of §§ 329, 362, 504, and Rule 2016. Additionally, and pursuant to the Court's inherent authority provisioned by § 105, the Court will also address patent violations of § 327, Rule 2014, and BLR 2014-1. However, §§ 330, 542 and Rule 2017 relate more to the damages that Plaintiff is seeking, and thus those matters, *inter alia*, will be reserved for a separate trial. Additionally, pursuant to the authority granted by 28 U.S.C. §1334(c)(1) and in the "interest of comity" the Court declines Plaintiff's invitation to address the alleged violations of the Texas Disciplinary Rules of Professional Conduct. Those matters are better suited for the appropriate tribunal, including but not limited to the State Bar of Texas.[4]

At trial, Plaintiff was represented by counsel, Abelardo Limon Jr. ("*Limon*"). Both Grissom and Rodriguez appeared pro se, while Csabi was represented by counsel, Richard O.

[3] Citations to trial minutes shall take the form Min. Entry (date).

[4] Based on evidence presented at trial, there are State Bar of Texas complaints pending against all three Defendants. *See* Pl's. Exs. 32, 33, 34; *see also* Min. Entry (8/31/2017).

Habermann. At the conclusion of trial, the matter was taken under advisement and is now ripe for consideration. The Court has considered the pleadings; the arguments presented by the parties; the evidence; and relevant case law and now issues the instant ruling.

II. JURISDICTION, VENUE, AND THIS COURT'S CONSITUTIONAL AUTHORITY TO ENTER A FINAL ORDER

This Court holds jurisdiction pursuant to 28 U.S.C. § 1334, which provides "the district courts shall have original and exclusive jurisdiction of all cases under title 11." Specifically, 28 U.S.C. § 1334(e), states that the district court in which a case under title 11 is pending has exclusive jurisdiction "(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and (2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327." Section 157 allows a district court to "refer" all bankruptcy and related cases to the bankruptcy court, wherein the latter court will appropriately preside over the matter. 28 U.S.C. § 157(a); *see also* In re: Order of Reference to Bankruptcy Judges, Gen. Order 2012-6 (S.D. Tex. May 24, 2012). This is a core matter as it "concern[s] the administration of the estate." § 157(b)(2); s*ee also In Re Southmark Corp.*, 163 F.3d 925, 930 (5th Cir. 1999).[5]

This Court may only hear a case in which venue is proper. Venue with respect to proceedings arising under title 11 is governed by 28 U.S.C. § 1409, and "may be commenced in the district court in which such case is pending." Plaintiff resides in Harlingen, Texas, and has a Chapter 13 case under title 11 pending before this Court. Therefore, venue is proper within this jurisdiction.

[5] "[A] proceeding is core under section 157 if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case."

Finally, this Court has an independent duty to evaluate whether it has the constitutional authority to sign a final order. *Stern v. Marshall*, 564 U.S. 462 (2011). *But see Wellness Int'l Network v. Sharif*, 135 S. Ct. 1932, 1938–39 (2015) (holding that parties may consent to jurisdiction on non-core matters). However unlike the claims in *Stern*, the instant matter derives solely from the Code, Rules, and Local Rules, specifically §§ 105, 327, 329, 504, and 362; Rule 2014 and 2016; and BLR 2014-1, and cannot exist outside of a bankruptcy proceeding. *Compare* ECF No. 24 *with Stern*, 564 U.S. at 499 ("Vickie's claim, in contrast, is in no way derived from or dependent upon bankruptcy law; it is a state tort action that exists without regard to any bankruptcy proceeding."). As such, *Stern* is not applicable and this Court holds constitutional authority to enter a final order and judgment with respect to the core matter at bar.

III. FINDINGS OF FACT

This Court makes the following findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, which incorporates Fed. R. Civ. P. 52, and 9014. Any finding of fact more properly considered a conclusion of law, or any conclusion of law more properly considered a finding of fact, should be so considered. The case at bar is an adversary proceeding brought by Plaintiff against her former counsel arising from actions taken in connection with Plaintiff's Chapter 13 bankruptcy.[6] Due to the tortured history of this case and overlapping nature of these proceedings, this Court adopts and incorporates by reference each of the finding of facts made in the Bankruptcy Case Memorandum Opinions; Bankr. ECF Nos. 91, 180; the findings of facts made in the Adversary Proceeding Memorandum Opinion; ECF No. 48; and the findings of facts in all relevant prior orders in the Bankruptcy Case and Adversary Proceeding. Bankr. ECF Nos.

[6] Citations to the docket in this adversary proceeding styled *Wright v. Csabi et. al.*, 16–1004 (the "*Adversary Proceeding*"), shall take the form "ECF No. ——," while citations to the bankruptcy case, 13-10472 (the "*Bankruptcy Case*"), shall take the form "Bankr. ECF No. ——."

72, 92, 114, 120, 126, 141, 159, 162, 175, 177, 256, 280; ECF Nos. 49, 56 (collectively, the "*Orders*").

On October 31, 2013, Plaintiff filed a petition under Chapter 13 of the Code. Bankr. ECF No. 1. On March 26, 2014, Plaintiff and Grissom executed an "Amended Attorney Consultation and Fee Contract for Contingency Cases," which reflects a "fee-sharing agreement" with Rodriguez that states, in part, as follows:

> 2.03 Attorney proposes to associate on this matter with another lawyer or law firm. Client's execution of this Agreement represents Client's written consent to the following terms of the association and fee-sharing agreement:
>
> a. [Rodriguez] will participate in the fee-sharing agreement.
>
> b. Fees will be divided based on an agreement by the above-referenced lawyers, law firms and Attorney to assume joint responsibility for the representation.
>
> c. [Rodriguez] and [Grissom] will share equally in all attorneys [sic] fees recovered.

Pl.'s Ex. 1, ¶ 2.03. On April 22, 2014, Grissom and Csabi signed and entered into an agreement that was self-described as a "fee-sharing arrangement," which states, in part, as follows:

> a. [Grissom] and [Csabi] will participate equally in the fee-sharing arrangement for the division of attorneys [sic] fees according to the contract between [Plaintiff] and [Grissom].
>
> b. Fees will be divided based on an agreement by the above-referenced lawyers, law firms and Attorney to assume joint responsibility for the representation.

Pl.'s Ex. 2.

On December 8, 2014, an Application to Employ Grissom, and Grissom alone, as Special Counsel to Plaintiff was filed on the Court's CM/ECF docket, which is to say that Grissom's fee sharing agreements with Csabi and Rodriguez were not filed of record or in any other manner disclosed to the Court. Bankr. ECF No. 71. The Court thereafter approved the employment of Grissom, and Grissom alone, as Special Counsel to Plaintiff on December 31, 2014. Bankr. ECF No. 72.

On April 8, 2016, this Court issued an order awarding $90,000.00 in attorney's fees to Grissom, which were subtracted from Plaintiff's portion of the previously approved settlement proceeds,[7] and this Court ordered Grissom to remit the remainder of the settlement proceeds to Cindy Boudloche, the Chapter 13 trustee, for the benefit of the Plaintiff's Chapter 13 estate. Bankr. ECF No. 114. Despite that order, on April 12, 2016, Csabi and Rodriguez each received a $73,333.00 wire transfer from Grissom's Interest on Lawyers Trust Account (IOLTA). Pl.'s Ex. 21, at 25. On June 10, 2016, Limon faxed a demand letter to Rodriguez and emailed a similar demand letter to Csabi notifying each individual that the $73,333.00 transfer that each had received from Grissom "[were] part of the debtor's bankruptcy estate per the Court's order." and demanded turnover of the funds within the next five (5) days.[8] Pl.'s Exs. 27, 28. A little over eight months later and on February 13, 2017, Csabi deposited the amount of $73,333.30 into the Court's registry for safe keeping. Rodriguez has still not complied with Limon's demand.

On July 26, 2016, an Agreed Order between Plaintiff and Grissom was executed by the parties and signed by this Court, which directed Grissom to, *inter alia*, turnover Plaintiff's portion of the settlement funds in the amount $133,085.10 by August 1, 2016. "The check shall be made payable to the Limon Law Office IOLTA Trust Account and shall be held by the Limon Law Office pending further orders of this Court. *The Court reiterates it's finding that such funds are property of the Debtor's chapter 13 estate.*" Bankr. ECF No. 175 (emphasis added). Despite the Agreed Order issued, August 1, 2016 passed without Grissom's compliance.

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[7] As discussed ad nauseam in previous opinions and orders, there was an initial $650,000 settlement. Of that, $326,914.90 was non-debtors portion which was paid to the Internal Revenue Service on his behalf. The remaining monies were the Plaintiff's portion. And of the Plaintiff's portion, there was an immediate $100,000 carveout to the Chapter 7 trustee, which was approved by this Court. Bankr. ECF No. 91, 92. The total amount remaining was $223,085.10. After the subtraction of Grissom's $90,000 in attorney's fees, the total remaining amount is $133,025.10.

[8] The body of the letter states it was also delivered by certified mail, but no evidence was presented to establish this fact.

On September 6, 2016, Plaintiff initiated the instant adversary proceeding. ECF No. 1. On January 23, 2017, Grissom filed a "Motion for Leave to Amend Motion to Approve Employment of Counsel," two years after the Court approved Grissom's employment. Bankr. ECF No. 238. As a result of that motion, on February, 28, 2017, this Court issued the following order, to wit:

> Grissom filed his Application to Employ on December 8, 2014, and it was approved by the court on December 31, 2014. *See* [ECF Nos. 71, 72]. In the affidavit filed with the Application to Employ, Grissom specifically swore that he has "no connection with … any … parties in interest … [and] that the foregoing statement made pursuant to Bankruptcy Rule 2014(a) … is true and correct to the best of my knowledge." [ECF No. 71 at 3]. Since that time, Grissom has operated under his court-approved employment without any concern regarding the terms of his employment, both disclosed and undisclosed, until May 2016, when the Debtor initiated the dispute at bar. *See generally* [ECF No. 119]. However, now, over 2 years after the court granted his employment and more than 7 months since the Debtor initiated this dispute, Grissom seeks to change the circumstances of his employment. *Compare* [ECF No. 71] and [ECF No. 72] and [ECF No. 119] *with* [ECF No. 238] and [ECF No. 238-2] and [ECF No. 238-1]. For this, Grissom argues that the Debtor had knowledge of these arrangements. [ECF No. 238-2 at ¶¶ 12–13]. Yet, it was Grissom who signed the Application to Employ on behalf of the Debtor and, as the Debtor's proposed attorney in the Application to Employ, Grissom had access to all of the documentation he only now seeks to be weaponized, but did not feel it necessary to disclose then. *Compare* [ECF No. 238-2 at ¶¶ 12–13] *with* [ECF No. 71]. . . . However, Grissom was in the best position to ensure that his Application to Employ was in full compliance with the relevant legal standards and statutory obligations. Grissom did not disclose the involvement of Mr. William Csabi nor Mr. Francisco Rodriguez at any point in his Application to Employ.

Bankr. ECF No. 256, at 2.

At the start of trial on August 30, 2017, this Court ordered the trial bifurcated[9] as to Defendants' liability and Plaintiff's damages; arguments and evidence presented was limited to only the issue of liability. Min. Entry (8/30/2017). Although Plaintiff presented clear and credible evidence as to Defendants' liability, Defendants did not present any credible physical or

[9] The trial was ordered bifurcated to appease the parties regarding an evidentiary dispute that was easier resolved in this manner so as not to delay trial.

testimonial evidence rebutting Plaintiff's allegations of Code and Rule violations. Instead, throughout the trial, the Defendants mostly focused their energies on wholly unrelated issues.[10] *See* Min. Entry (8/30/2017–9/1/2017).

Moreover, the documentary and testimonial evidence presented at trial simply reaffirmed this Court's prior findings of fact and conclusions of law in previous proceedings involving the same parties before it in the instant matter. Bankr. ECF No. 180; ECF No. 48; Orders. This is to say that the documentary and testimonial evidence conclusively established that the two $73,330.00 wire transfers, each to Csabi and Rodriguez for a total of $146,660.00, in unauthorized transactions further corroborated that the undisclosed and unauthorized fee sharing agreements existed among the Defendants. Min. Entry (8/30/2017–9/1/2017); Pl.'s Ex. 21, at 25.

IV. CONCLUSIONS OF LAW

A. The Finality of Rule 8002

Appeals from this Court's "final judgments, orders, and decrees," 28 U.S.C. § 158 (a)(1), must be made "in the time provided by Rule 8002 of the Bankruptcy Rules." § 158 (c)(2). Additionally, an appeal must be filed within fourteen days after entry of this Court's judgment, order, or decree. Fed. R. Bankr. P. 8002. The Fifth Circuit has found that "§ 158, expressly requires that the notice of appeal be filed under the time limit provided in Rule 8002 . . . ." *In re Berman-Smith*, 737 F.3d 997, 1003 (5th Cir. 2013). If no timely notice of appeal is filed in a bankruptcy case, it "deprives both the district court and [the Fifth Circuit] of jurisdiction." *In re Dorsey*, 870 F.3d 359 (5th Cir. 2017); *In re ASARCO, L.L.C.*, 616 F. App'x 178, 179 (5th Cir.

[10] Ample credible evidence was presented and is on the record as showing numerous potential ethical violations that troubled this Court; however, as stated, this Court will leave those matters to the appropriate tribunal, including, but not limited to, the State Bar of Texas.

2015) (finding the district court properly dismissed an appeal that was not filed within the fourteen days required by Rule 8002.) Therefore, unless a party files "a notice of appeal sufficient to confer jurisdiction . . . , *no court* has jurisdiction to review . . . ," and the bankruptcy court's decision is final. *In re Dorsey*, 870 F.3d at 359 (emphasis added).

Here, in both the Adversary Proceeding and the Bankruptcy Case, this Court has issued multiple Memorandum Opinions and orders. Other than one order appealed by Grissom that was later dismissed,[11] no order relevant to the Plaintiff's bankruptcy case or this Adversary Proceeding was appealed by the Defendants. Additionally, all orders issued by this Court are older than fourteen days, meaning the statutory period for a timely appeal of any previous order this Court has issued has passed. *See* 28 U.S.C. § 158; Fed. R. Bankr. P. 8002. Because the time allowed for a timely appeal has passed, all previous orders of this Court are final. *See In re Dorsey*, 870 F.3d at 359. More specifically, the orders, which include: (1) an agreed order between Plaintiff and Grissom stating that the settlement funds are property of the estate, Bankr. ECF No. 175, and (2) an order finding that Grissom did not disclose the employment of Csabi or Rodriguez, Bankr ECF No. 256, are final orders because they are older than fourteen days and no appeal was ever filed. Thus, it is conclusively established that (i) Plaintiff's portion of the settlement funds are property of the estate, and (ii) the employment of Csabi and Rodriguez was never disclosed to—much less approved by—this Court resulting in violations of multiple sections of the Code, Bankruptcy Rules, and Local Rules as discussed more copiously in this memorandum opinion.

B. Employment of Special Counsel

Special counsel acting on behalf of a debtor or the estate must seek lawful employment

[11] Bankr. ECF No. 280, dismissed on May 15, 2017.

from this Court while simultaneously following the required Bankruptcy Rules. 11 U.S.C. § 327; Fed. R. Bankr. P. 2014. Although some courts have found that Chapter 13 debtors do not have to seek court approval of the employment of special counsel because § 327 only applies to trustees, *In re Jones*, 505 B.R. 229, 233 (Bankr. E.D. Wis. 2014), other courts have found that "'[e]mployment of professional persons,' governs the employment of special counsel to the estate representative, *including Chapter 13 debtors*." *In re Lee*, 495 B.R. 107, 114 (Bankr. Mass. 2013) (emphasis added); *see In re Goines*, 465 B.R. 704, 707 (Bankr. N.D. Ga. 2012) ("The most appropriate person to make these specific factual statements, and the person in the best position to do so, is the debtor, not the Chapter 13 trustee"). Irrespective, in the Southern District of Texas, special counsel seeking employment "in an individual chapter . . . 13 case for the purpose of prosecuting a tort claim must . . ." comply with Bankruptcy Local Rules, which requires filing an application or a motion seeking leave of this requirement. BLR 2014-1(d). More specifically, under § 327(e) of the Code, counsel employed "for specified special purpose, other than to represent the trustee in conducting the case" must be approved by this Court. To receive this Court's approval for employment of special counsel there must be an application that

> state[s] the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014(a). The Fifth Circuit has noted that "[a]lthough this provision does not explicitly require ongoing disclosure, case law has uniformly held that under Rule 2014(a), . . .

full disclosure is a continuing responsibility . . . ," and "failure to disclose is sufficient grounds to revoke an employment order and deny compensation." *In re W. Delta Oil Co., Inc.*, 432 F.3d 347, 355 (5th Cir. 2005) (internal quotations omitted). "The standards for the employment of professional persons are strict, for Congress has determined that strict standards are necessary in light of the unique nature of the bankruptcy process." *In re Consol. Bancshares, Inc.*, 785 F.2d 1249, 1258 n. 6 (5th Cir. 1986). Strict standards "enable the court to control administrative expenses and to prevent those performing work without the necessary authority from being 'officious intermeddler[s] or gratuitous volunteer[s].'" *In re Sound Radio, Inc.*, 145 B.R. 193, 202 (Bankr. D.N.J. 1992) (quoting 2 *Collier on Bankruptcy* ¶ 327.02 (15th Ed.1992)).

Despite not being specifically pled, it is clear to this Court that Defendants violated § 327, Rule 2014, and BLR 2014-1, and therefore, this Court will exercise its inherent powers and attend to these violations in order to "prevent an abuse of process." § 105(a);[12] *United States v. Sutton*, 786 F.2d 1305, 1307 (5th Cir. 1986) ("Section 105(a) simply authorizes a bankruptcy court to fashion such orders as are necessary to further the purposes of the substantive provisions of the Bankruptcy Code."). Although some courts have found that Chapter 13 debtors do not have to seek court approval of the employment of special counsel because § 327 only applies to trustees, this Court is not persuaded by that reasoning and is in agreement with the other courts that have found that "'[e]mployment of professional persons,' governs the employment of special counsel to the estate representative, *including Chapter 13 debtors*." *In re Lee*, 495 B.R. at 114 (emphasis added); *see In re Goines*, 465 B.R. at 707. Grissom sought Court approval of his employment in the Plaintiff's case, but the same cannot be said for either Csabi or Rodriguez. *See* Bankr. ECF No. 71. This Court finds that Csabi and Rodriguez clearly violated § 327 by not

[12] "No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

seeking this Court's approval for their employment when they are required to do so.

Simply because Grissom sought Court approval does not mean that his actions were proper. To be clear, this Court finds that Grissom, in addition to Csabi and Rodriguez, violated Rule 2014. Grissom failed to comply with Rule 2014 because he failed to disclose "any proposed arrangement for compensation." Fed. R. Bankr. P. 2014(a). Specifically, Grissom failed to include the fee arrangements with Csabi and Rodriguez, which had been signed and in place months before Grissom filed his initial application to employ with this Court. *Compare* Pl.'s Ex. 1, ¶ 2.03 and Pl.'s Ex. 2 *with* Bankr. ECF No. 71 (showing evidence of Grissom's agreements with Rodriguez and Csabi from March 2014 and April 2014 and Grissom filing an application to employ in December 2014 not disclosing said agreements to the Court). Furthermore, the Fifth Circuit has noted that case law has uniformly held that full disclosure is a continuing responsibility; *In re W. Delta Oil Co., Inc.*, 432 F.3d at 355; here, Grissom woefully failed to meet this standard. Not once were the fee sharing agreements between Defendants disclosed to this Court despite multiple opportunities to do so. *See, e.g.*, Bankr. ECF Nos. 71, No. 107. Neither Grissom's Application for Employment nor Amended Application for Attorney's Fees made the required disclosures. *See, e.g.*, Bankr. ECF Nos. 71, No. 107. Grissom's failure to comply with Rule 2014 does not absolve Csabi or Rodriguez from their failures to comply with Rule 2014. Both Csabi and Rodriguez violated Rule 2014 because they did not: (1) file the required application and (2) file the mandatory disclosure statements required by the Rule.

Turning to BLR 2014-1, similarly to § 327 and Rule 2014, this Court finds Defendants violated BLR 2014-1 due to their failures to accomplish the necessary filings. Starting with Grissom, in this District, an application of an attorney for a debtor must have attached the

statement required by § 329 and Rule 2016. BLR 2014-1(a). As discussed further in the latter portions of this opinion, Grissom did not file an application that met the standards of § 329 and Rule 2016, and therefore, this Court finds that Grissom violated BLR 2014-1(a). In regards to Csabi and Rodriguez, in this District, special counsel seeking employment "in an individual chapter . . . 13 case for the purpose of prosecuting a tort claim must . . . ." file an application to be employed or file a motion seeking leave of the requirement. BLR 2014-1(d). Pursuant to the evidence presented at trial, Csabi and Rodriguez entered into agreements with Grissom to help Grissom prosecute the Plaintiff's tort claim against API Pipe & Supply, LLC in connection with Plaintiff's Chapter 13 case. *See* Pl.'s Exs. 1, 2; Min. Entry (8/31/2017). BLR 2014-1(d) mandated that Csabi and Rodriguez file an application to be employed or file a motion seeking leave of the requirement but neither did so. Thus, this Court finds that both Csabi and Rodriguez violated BLR 2014-1(d).

C. Employment of Any Counsel

Any attorney representing a debtor *in connection* with a bankruptcy case must file a disclosure statement with this Court detailing

> the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

11 U.S.C. § 329 (a). An attorney's services are considered in connection with a bankruptcy case when services rendered or to be rendered by an attorney have or will have an impact on the debtor's bankruptcy case. *In re Healey*, No. 15-60471, 2016 WL 4249897, at *4 (Bankr. E.D. Tex. Aug. 8, 2016); *In re Mayeaux*, 269 B.R. 614, 628 (Bankr. E.D. Tex. 2001); *In re Keller Fin. Servs. of Florida, Inc.*, 248 B.R. 859, 879 (Bankr. M.D. Fla. 2000); *In re Rheuban*, 121 B.R. 368, 378 (Bankr. C.D. Cal. 1990); *In re Ostas*, 158 B.R. 312, 321 (N.D.N.Y. 1993) (all cases standing

for the proposition that an attorney's services are in connection with a bankruptcy case when they have or will have an impact on debtor's bankruptcy case). The mandatory disclosure statement required by § 329 must "includ[e] whether the attorney has shared or agreed to share the compensation with any other entity," and the statement must "include the particulars of any such sharing or agreement to share by the attorney . . . ." Fed. R. Bankr. P. 2016(b). "These provisions apply to *every* attorney employed by every debtor in every chapter, regardless of the purpose for which the attorney is retained, and notwithstanding the fact that an attorney will not be seeking formal employment by, nor compensation from, the bankruptcy estate." *In re Fair*, No. 15-33400-SGJ-13, 2016 WL 3027264, at *13 (Bankr. N.D. Tex. May 18, 2016) (emphasis added). Congress enacted these provisions to ease its concern that a debtor's payments to her attorney present a "serious potential for evasion of creditor protection provisions of the bankruptcy laws." H.R. Rep. No. 95–595, at 329 (1977). Thus, "[t]he honest and comprehensive disclosure of compensation payments plays a vital role in maintaining the integrity of the bankruptcy system." *In re Fair*, 2016 WL 3027264 at *13 (citing *In re Mayeaux*, 269 B.R. at 628).

Defendants represented Plaintiff in connection with the instant Bankruptcy Case because the services rendered by Defendants in the lawsuit against API Pipe & Supply, LLC had an impact on Plaintiff's bankruptcy case when the Defendants achieved the settlement funds of $223,085.10 on behalf of Plaintiff which became property of the bankruptcy estate. *See* Bankr. ECF No. 107, Ex. 1; Pl. Ex. 17; *In re Healey*, 2016 WL 4249897, at *4; *In re Mayeaux*, 269 B.R. at 628; *In re Keller Fin. Servs. of Florida, Inc.*, 248 B.R. at 879; *In re Rheuban*, 121 B.R. at 378; *In re Ostas*, 158 B.R. at 321 (all cases finding an attorney's services are considered in connection with a bankruptcy case when services rendered or to be rendered by an attorney have or will

have an impact on the debtor's bankruptcy case). Thus, as Defendants represented Plaintiff in connection with the Bankruptcy Case, Defendants are required to comply with § 329 disclosure requirements. *See In re Healey*, 2016 WL 4249897, at *4; *In re Mayeaux*, 269 B.R. at 628; *In re Keller Fin. Servs. of Florida, Inc.*, 248 B.R. at 879; *In re Rheuban*, 121 B.R. at 378; *In re Ostas*, 158 B.R. at 321.

Rule 2016 instructs attorneys how to comply with § 329 disclosure requirements. According to Rule 2016, Grissom was required to disclose "whether [he] ha[d] shared or agreed to share the compensation with any other entity," and to "include the particulars of any such sharing or agreement to share." Fed. R. Bankr. P. 2016(b). When Grissom made his filings before the Court, Grissom did not disclose that he had shared or agreed to share the compensation with Csabi and Rodriguez, and Grissom did not include the particulars of the sharing or agreement to share. *See* Bankr. ECF Nos. 71, 107. Additionally, because Csabi and Rodriguez failed to make any filings in the Bankruptcy Case disclosing their fee sharing agreements with Grissom they also violated Rule 2016—and consequently § 329—because Rule 2016 and § 329 leave no room for silence. As stated above, the requirements of § 329 and Rule 2016 applied to Defendants because their representation was in connection with Plaintiff's bankruptcy, and the requirements of § 329 and Rule 2016 applied even though Csabi and Rodriguez failed to seek formal employment from the Court. *See In re Fair*, 2016 WL 3027264, at *13. Therefore, having failed to provide full and complete disclosure as required by the Code and the Rules, the Court finds that Defendants clearly violated § 329 and Rule 2016, which completely undermines the integrity of the bankruptcy system. *See id.*

D. Prohibition on Fee Sharing

There is no doubt that "§ 504 of the Code . . . flatly prohibits the splitting of fees without

prior court approval." *In re Anderson*, 936 F.2d 199, 203 (5th Cir. 1991). Specifically, under § 504(a),

> (a) Except as provided in subsection (b) of this section, a person receiving compensation or reimbursement under section 503(b)(2) or 503(b)(4) of this title may not share or agree to share--
> (1) any such compensation or reimbursement with another person; or
> (2) any compensation or reimbursement received by another person under such sections.

11 U.S.C. § 504(a). Courts widely acknowledge that the exceptions to the prohibition on sharing compensation found in § 504(b) and § 504(c) are limited only to fee sharing between "(1) partners or associates in the same professional association, partnership, or corporation; (2) attorneys for petitioning creditors that join in a petition commencing an involuntary case; and (3) an attorney and a bona fide public service attorney referral program." *In re Smith*, 397 B.R. 810, 816 (Bankr. E.D. Tex. 2008); *see In re Harris-Nutall*, 572 B.R. 184, 190 (Bankr. N.D. Tex. 2017); *In re Ferguson*, 445 B.R. 744, 752–54 (Bankr. N.D. Tex. 2011); *In re Bradley*, 495 B.R. 747, 767 n.11 (Bankr. S.D. Tex. 2013); *In re Ihe*, No. 14-33382-H3-13, 2014 WL 4104204, at *2 (Bankr. S.D. Tex. Aug. 18, 2014). Three elements must be satisfied to find a violation of § 504(a): (1) a person or entity was awarded compensation or reimbursement under § 503(b)(2)[13] or § 503(b)(4);[14] (2) said person or entity shared or agreed to share in the awarded compensation

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[13] Per § 503(b)(2), "compensation and reimbursement awarded under section 330(a) of this title" is an allowed administrative expense. § 503(b)(2). In turn, § 330(a)(1) awards compensation to a professional person employed under § 327 and, furthermore, § 330(a)(4)(B) states that:

> In a . . . chapter 13 case . . . , the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

11 U.S.C. § 330(a)(1),(a)(4)(B).

[14] Section 503(b)(4) allows as an administrative expense "reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under subparagraph (A), (B), (C), (D), or (E) of paragraph (3) of this subsection." § 503(b)(4). And those relevant sections of § 503(b)(3) allow as administrative expenses for the actual, necessary expenses incurred by:

or reimbursement; and (3) the exceptions found in § 504(b) and § 504(c) do not apply to the person or entity that shared or agreed to share in the awarded compensation or reimbursement. *In re Smith*, 397 B.R. at 817; *In re Harris-Nutall*, 572 B.R. at 190; *In re Fair*, No. 15-33400-SGJ-13, 2016 WL 3027264, at *11 (Bankr. N.D. Tex. May 18, 2016). "Importantly, the prohibition on fee sharing applies even though such fee sharing (or fee-splitting) might otherwise be authorized under state bar rules applicable to the professionals." *In re Age Ref., Inc.*, 447 B.R. 786, 798–99 (Bankr. W.D. Tex. 2011). Section 504's purpose is to protect the bankruptcy estate from potential abuse by professionals seeking compensation who are tempted by maximizing their earnings to the detriment of the estate. *See In re Fair*, 2016 WL 3027264, at *11; *In re Harris-Nutall*, 572 B.R. at 193. And courts have found that a "[v]iolation of § 504(a) is dependent only upon a finding that the prohibited conduct occurred. It does not also require a finding that such conduct actually defeated or compromised the policies underpinning the prohibition." *In re Smith*, 397 B.R. at 819 (quoting *In re Peterson*, No. 04-01469, 2004 WL 1895201, at *4 (Bankr. D. Idaho Aug. 25, 2004)).

In the instant matter, Defendants flagrantly violated § 504 when they created the multiple fee sharing agreements between themselves and failed to receive this Court's approval of said fee

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(A) a creditor that files a petition under section 303 of this title;
(B) a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor;
(C) a creditor in connection with the prosecution of a criminal offense relating to the case or to the business or property of the debtor;
(D) a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making a substantial contribution in a case under chapter 9 or 11 of this title; [and]
(E) a custodian superseded under section 543 of this title, and compensation for the services of such custodian[.]

11 U.S.C. § 503(b)(3).

sharing agreements. The Code and the Fifth Circuit are incredibly clear that splitting fees without this Court's approval is strictly prohibited. *See In re Anderson*, 936 F.2d at 203 ("§ 504 of the Code . . . flatly prohibits the splitting of fees without prior court approval."). Evidence presented at trial established that: Defendants intended to split fees as evidenced by the fee sharing agreements made amongst them; Pl.'s Exs. 1, 2; Defendants split fees vis-a-vis distributions made from Grissom's IOLTA; Pl.'s Ex. 21, at 25; and Defendants did not receive this Court's approval to split fees because the fee sharing agreements were never disclosed to this Court. Additionally, the three elements of a violation of § 504 were established at trial: (1) Grissom was awarded compensation or reimbursement under § 503(b)(2) when the Court approved the application to employ; Bankr. ECF Nos. 72,114; (2) Defendants shared or agreed to share in the awarded compensation or reimbursement when they created fee sharing agreements which ultimately resulted in transfers from Grissom's IOLTA to Csabi and Rodriguez; Pl.'s Exs. 1, 2, 21, at 25; and (3) the exceptions found in § 504(b) and § 504(c) do not apply to the Defendants as further discussed *infra*.

Generally there are three widely acknowledged exceptions to the prohibition on fee splitting found in § 504 and none apply to the Defendants. Closer analysis reveals that allowing fee sharing for partners or associates in the same professional association, partnership, or corporation could potentially be the only exception to the Rule that may apply to the Defendants because the remaining two exceptions most certainly do not apply.[15] However, evidence produced at trial, including Defendants' testimony, clearly established that Defendants were not "partners or associates in the same professional association, partnership, or corporation." § 504. Thus, Defendants do not meet any of the widely acknowledged exceptions to the prohibition on

[15] Defendants were not "attorneys for petitioning creditors that join in a petition commencing an involuntary case" nor were they "attorney[s] and a bona fide public service attorney referral program." *In re Smith*, 397 B.R. at 816.

sharing compensation, and therefore, the Court finds that Defendants participated in conduct strictly prohibited by the Code and violated § 504. *See id.*

E. Property of the Estate

When a debtor commences a bankruptcy proceeding, an estate is automatically created, which includes both the legal and equitable interests of the debtor. § 541(a). Additionally, a Chapter 13 debtor's estate includes any additional property that "the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted . . . ." § 1306(a)(1). Settlement proceeds, such as the Plaintiff's, are property of the estate. *Id.*; *In re Bratcher*, No. 08-36225, 2013 WL 5309549, at *3 (Bankr. S.D. Tex. Sept. 19, 2013) (finding settlement proceeds were estate property). Additionally, and pursuant to this Court's previous orders, *see* Orders, evidence presented at trial, Pl's. Ex. 17, and filings made by Grissom before this Court, Bankr. ECF No. 107, Ex. 1, Plaintiff's portion of the settlement funds was $223,085.10. Of the $223,085.10, this Court carved out the amount of $90,000 for the payment of Grissom's attorney's fees, leaving the amount of $133,082.10 in settlement proceeds, which were approved based on the representations made to the Court, and the Court ordered turnover to the Chapter 13 trustee of the remaining monies "within 14 days of the entry of this Order." Bankr. ECF No. 114. Since the settlement proceeds in the amount of $233,085.10 were attained during the pendency of Bankruptcy Case on February 11, 2016, Bankr. ECF No. 92, and the Bankruptcy Case has not been closed, dismissed, or converted, § 1306(a)(1), the settlement proceeds became property of Plaintiff's bankruptcy estate. *See id*; *In re Bratcher*, 2013 WL 5309549, at *3.

Furthermore, Paragraph 14 of the Plaintiff's confirmed Chapter 13 plan states that "property of the estate shall vest in the debtor(s) upon entry of the discharge order." Bankr. ECF

No. 54. "This [Paragraph 14] provision makes it clear that property of the estate does not vest in the debtor until entry of a discharge. All property acquired by the debtor, including post confirmation property, is property of the estate until entry of the discharge order." *In re Bratcher*, WL 5309549, at *4. No discharge order has been entered in the Bankruptcy case; thus, the settlement proceeds remain estate property. *See id.*

Finally, in the Agreed Order entered on July 26, 2016, which is now final, "[this] Court reiterate[d] it's finding that such funds [,$133,085.10,] [were] property of the [Plaintiff]'s chapter 13 estate." Bankr. ECF No. 175. Thus, for the aforementioned reasons, the Court reiterates that the remainder of the settlement proceeds in the amount of $133,085.10 is property of this Plaintiff's bankruptcy estate. *See id.*; § 1306(a)(1); *In re Bratcher*, No. 08-36225, 2013 WL 5309549, at *3.

F. Violations of the Automatic Stay

After a bankruptcy petition is filed, an automatic stay arises to safeguard the newly created estate. § 362(a). "The stay prohibits 'all entities' from making collection efforts against the debtor or the property of the debtor's estate." *Campbell v. Countrywide Home Loans, Inc.*, 545 F.3d 348, 353 (5th Cir. 2008). Specifically, the stay prohibits *any* willful "act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." § 362(a)(3). "Although either 'depleting' or 'dismembering' property of the estate are sufficient to violate the automatic stay under 11 U.S.C. § 362(a)(3), it does not follow that actions so severe are necessary to violate the automatic stay. Rather, the statute's terms 'obtain possession' and 'exercise control' indicate that a wide spectrum of acts are stayed. *In re Montgomery*, 525 B.R. 682, 696 (Bankr. W.D. Tenn. 2015) (citing *In re Allentown Ambassadors, Inc.*, 361 B.R. 422, 437 (Bankr.E.D.Pa.2007) ("The term [exercise control] has

been described as 'elusive' and one which can be defined only in a 'case by case' manner because a 'continuum of conduct exists which the Court must evaluate in determining whether [a party] has assumed control of property of the estate.' ") (citations omitted)); *see also Control*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining Control is as "exercise[ing] power or influence over."). The Fifth Circuit has determined that the Code:

> provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was "willful" or whether compensation must be awarded.

In re Chesnut, 422 F.3d 298, 302 (5th Cir. 2005). With regards to what is considered intentional, the Fifth Circuit has stated that the Code "does not require a specific intent to violate the automatic stay, only that the defendant's actions which violated the stay were intentional." *In re Small*, 486 F. App'x 436, 439 (5th Cir. 2012) (citation omitted). "A violation of the automatic stay in a bankruptcy case . . . can be a serious, unfair, disruptive and, of course, unlawful thing." *In re White-Robinson*, No. 11-32080-SGJ-7, 2011 WL 4807934, at *1 (Bankr. N.D. Tex. Oct. 11, 2011). Violations of the automatic stay are incredibly serious and this Court will exercise little tolerance for actions that violate the automatic stay.

Determining liability for a violation of the automatic stay requires "finding that the [Defendants] knew of the automatic stay and that the [Defendants'] actions which violated the stay were intentional." *See In re Chesnut*, 422 F.3d at 302. On October 19, 2015 the $223,085.10 in settlement proceeds were deposited into Grissom's IOLTA; Pl's. Ex. 21, at 1; Grissom testified that he exercised sole control (power or influence) over this account. *See* Min. Entry (8/30/2017). As early as February 11, 2016, this Court held that Plaintiff's remaining portion of the settlement proceeds were property of the Plaintiff's chapter 13 bankruptcy estate.

See Bankr. ECF Nos. 91, 175. Additionally, and as previously discussed, this Court approved Grissom's attorney's fees in the amount of $90,000 on April 8, 2016, and ordered Grissom to remit the remainder of the settlement proceeds to Cindy Boudloche, Chapter 13 trustee for the benefit of the Plaintiff's Chapter 13 estate. Bankr. ECF No. 114. Instead, on April 12, 2016, Grissom caused his bank to issue two separate wire transfers out of *his* IOLTA in the amount of $73,333.00 to Csabi and $73,333.00 to Rodriguez, out of the $223,085.10 in settlement proceeds, based on previously undisclosed fee sharing agreements between the Defendants. Pl.'s Ex. 21, at 25; Min. Entry (8/30/2017 – 8/31/2017); Pl's. Exs. 1,2. Thus, this Court finds that Grissom's act of causing the bank to issue the electronic wire transfers of $73,333.00 to Csabi and $73,333.00 to Rodriguez, which resulted in a distribution of estate property without this Court's approval, was not only deliberate, but intentional. Additionally, Grissom's intentional acts regarding the wire transfers fall within the "wide spectrum of acts [that] are stayed." *In re Montgomery*, 525 B.R. at 696; *see In re Chesnut*, 422 F.3d at 302; *Control*, BLACK'S LAW DICTIONARY (10th ed. 2014).

Similarly, maintaining possession of estate property falls within the "continuum of conduct [that] exists which the Court must evaluate in determining whether [a party] has assumed control of property of the estate." *In re Allentown Ambassadors, Inc.*, 361 B.R. at 437; *see* § 362(a)(3); *Control*, BLACK'S LAW DICTIONARY (10th ed. 2014). Here, the Court finds that from April 12, 2016 through February 13, 2017, Csabi exercised control over estate property by retaining the $73,333.00 distribution he received from Grissom. *See* Pl.'s Ex. 21, at 25; § 362(a)(3); *In re Allentown Ambassadors, Inc.*, 361 B.R. at 437. Turning to Rodriguez, the Court finds that from April 12, 2016 through the present, Rodriguez has exercised control over estate property by retaining the $73,333.00 distribution he received from Grissom. *See* Pl.'s Ex.

21, at 25; § 362(a)(3); *In re Allentown Ambassadors, Inc.*, 361 B.R. at 437.

In addition to exercising control over estate property, Csabi and Rodriguez also disregarded the prohibition "from making collection efforts against the debtor or the property of the debtor's estate." *Campbell*, 545 F.3d at 353; *see also* § 362(a). When Csabi and Rodriguez each accepted and maintained possession of the $73,333.00 distributions from Grissom, each attorney attempted to collect their unauthorized attorney's fees from estate property. *See Campbell*, 545 F.3d at 353. For the reasons stated above, the Court finds that Grissom exercised control over, and intentionally made distributions of, estate property, that Defendants intentionally exercised control over estate property, and that defendants Csabi and Rodriguez intentionally collected unauthorized attorneys' fees from estate property.

Turning now to Defendants knowledge of the Plaintiff's Chapter 13 bankruptcy and the automatic stay, it is undisputed that Grissom was aware that the Plaintiff was in bankruptcy as evidenced by his application for employment; ergo, Grissom was aware of the bankruptcy's automatic stay. *See* Bankr. ECF No. 71. Based on Csabi's and Rodriguez's testimony, it is unlikely that Csabi and Rodriguez did not know of the stay as well, Min. Entry (8/31/2017), especially Csabi because he was Plaintiff's counsel in the Chapter 7 bankruptcy case, 11-10483, which was inextricably intertwined with Plaintiff's Chapter 13 case. Bankr. ECF Nos. 91, 92. However, even if Csabi and Rodriguez did not know at the time of receipt of the monies that the automatic stay was in effect, Limon's letters to each individual on June 10, 2016 clearly alerted the two lawyers of the stay's existence. Pl.'s Exs. 27, 28. Csabi did not relinquish the $73,333.00 in estate property until February 13, 2017; Rodriguez still maintains possession and control of $73,333.00 in estate property. The Court finds that all of the above actions by Defendants demonstrate actual knowledge of the Plaintiff's bankruptcy case and resulting

automatic stay. *See* Bankr. ECF No. 71; Min. Entry (8/31/2017); Pl.'s Exs. 27, 28.

Finally, there is no weight to the arguments that Csabi and Rodriguez made that they believed the $73,333.00 to be their property. Min. Entry (8/31/2017). Following the law of the Circuit, "[w]hether the party believes in good faith that it had a right to the property is not relevant to whether the act was 'willful'" in determining if an action was a violation of the automatic stay. *In re Chesnut*, 422 F.3d at 302. Here, even if Csabi and Rodriguez believed in good faith that the $73,333.00 each received was actually their property, their belief does not negate the fact that each lawyer acted willfully when they accepted and maintained possession of their respective $73,333.00 transfers. *See id*; Pl.'s Exs. 27, 28, 21, at 25. Accordingly, this Court finds that Csabi's and Rodriguez's actions were willful violations of the automatic stay because the two lawyers were not only aware of the automatic stay, their actions in exercising control over estate property were intentional. *See In re Chesnut*, 422 F.3d at 302; § 362(a).

V. CONCLUSION

The case at bar involves flagrant Code, Bankruptcy Rules, and Local Rules violations by three local attorneys and their troublesome practices before this Court. Defendants willfully failed to meet the disclosure requirements set forth in the Code, the Rules, and the Local Rules. Defendants improperly split fees pursuant to agreements that each individual made with one another, which were secreted from the Court. Moreover, when Defendants collected their improper fees, they demonstrated nothing less than a flagrant disregard of this Court's previous orders and underestimated the power and weight of the automatic stay, the United States Bankruptcy Code, Bankruptcy Rules, and the Southern District of Texas Bankruptcy Local Rules.

After considering the pleadings, arguments presented by the parties, the evidence, and

relevant case law, this Court finds the following:

1. Grissom violated § 327(e) (employment of special counsel), §329(a) (employment of attorneys), §504(a) (prohibition on fee splitting , §362(a) (violation of the automatic stay), Rule 2014(a) (employment of professional persons requirements), Rule 2016(b) (disclosure of compensation requirements), and BLR 2014-1(a) (employment of special counsel);
2. Csabi violated § 327(e), §329(a), §504(a), §362(a), Rule 2014(a), Rule 2016(b), and BLR 2014-1(d); and
3. Rodriguez violated § 327(e), §329(a), §504(a), §362(a), Rule 2014(a), Rule 2016(b), and BLR 2014-1(d).

Therefore, this court holds Defendants Grissom, Csabi, and Rodriguez liable for violations of the above cited Bankruptcy Statutes, Bankruptcy Rules and Bankruptcy Local Rules.

This Memorandum Opinion should serve as a warning to all that appear before this Court that flagrant and willful violations of the Bankruptcy Code, Bankruptcy Rules and Bankruptcy Local Rules will not be endured by this Court.

This Court will issue further orders establishing a separate trial as to the issue of damages. An Order consistent with this Memorandum Opinion will be entered on the docket simultaneously herewith.

SIGNED 12/01/2017.

Eduardo V. Rodriguez
United States Bankruptcy Judge

EXHIBIT A

United States Bankruptcy Court
Southern District of Texas
ENTERED
August 07, 2023
Nathan Ochsner, Clerk

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re: Tehum Care Services, Inc. *Debtor*	Case No.: 23-90086 (CML) CHAPTER 11
Anant Kumar Tripati *Plaintiff*, v. Sarah Tirschwell, et al., *Defendants*.	Adv. Pro. No. 23-03072 (CML)

ORDER GRANTING DEFENDANT SCOTTSDALE INSURANCE COMPANY'S MOTION FOR TIME EXTENSION TO RESPOND TO COMPLAINT

ON THIS DAY came to be heard Defendant Scottsdale Insurance Company's Motion for Time Extension to Respond to Plaintiff's Complaint. After reviewing the Motion, the Court finds that the Motion is well taken, and should be and is GRANTED.

It is, therefore, ORDERED that Defendant Scottsdale Insurance Company is directed to file a responsive pleading to Plaintiff's Complaint no later than October 3, 2023.

Signed: August 07, 2023

Christopher Lopez
United States Bankruptcy Judge

EXHIBIT B

SEGAL McCAMBRIDGE



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EXHIBIT C

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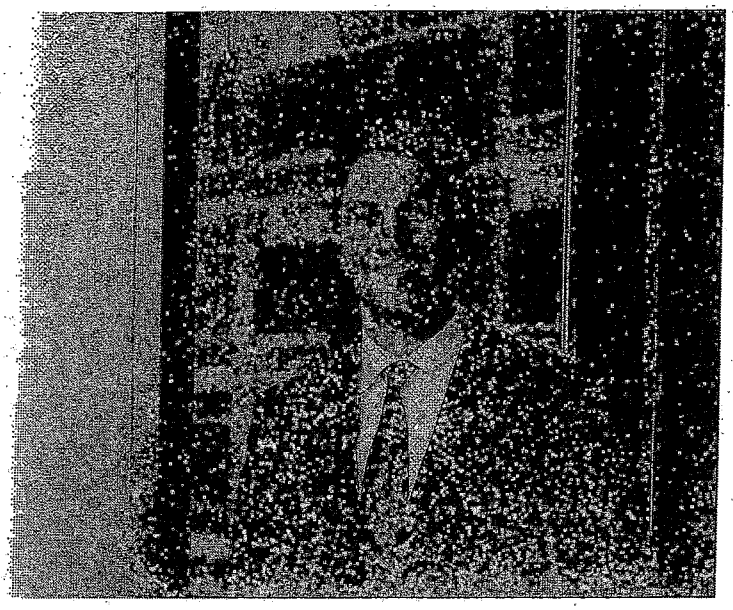
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EXHIBIT D

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]mminent" 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 Tripati 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

Case 23-08072 Document 164-1 Filed in TXSB on 10/23/23 Page 36 of 35

...zona Department of Corrections
...habilitation and Reentry
Legal Mail Log

Legal correspondence shall be opened and inspr for contraband only in the presence of the inmate (As outlined in A Department of Corrections, Rehabilitation and Reentry (ADCRR), partment Order 914, Inmate Mail). If the inmate is not in the unit return the unopened Legal Mail to Complex Mail Room.

A | DATE *(mm/dd/yyyy)* 02/16/2023

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

...te Name *nt name)*	ADCRR Number	Housing	Date *(mm/dd/yy)*	Signature	Received From / Mail To	Tracking Number	Contents	Outgoing Postage	Officer/Badge Number
Th, A	102081	4D15L	02/16/23		U.S Court of Appeals 601 Maricet 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)*
J. U. Sereenti A/ L	Cpl. U. L t 1289	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

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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. Dodszuweit
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 90 pg, 2.61 MB	PRO SE REPLY BRIEF on behalf of Appellant Anant Kumar Tripati. Certificate of Service dated 10/12/2022 by US mail. (IDR) [Entered: 10/18/2022 10:45 AM]
10/31/2022	☐ 63 1 pg, 92.04 KB	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]
11/28/2022	☐ 64 1 pg, 124.36 KB	CALENDARED for Monday, 12/12/2022. (AR) [Entered: 11/28/2022 05:07 PM]
12/12/2022	☐ 65 1 pg, 50.33 KB	SUBMITTED (Pro Se) on Monday, December 12, 2022. Panel: AMBRO, KRAUSE and SCIRICA, Circuit Judges. (AR) [Entered: 12/12/2022 08:07 AM]
12/15/2022	☐ 66 6 pg, 208.1 KB	NOT PRECEDENTIAL PER CURIAM OPINION Coram: AMBRO, KRAUSE and SCIRICA, Circuit Judges. Total Pages: 6. Tripati's motion for permission to file his overlength reply brief is granted. (SLC) [Entered: 12/15/2022 07:19 AM]
12/15/2022	☐ 67 5 pg, 188.43 KB	JUDGMENT, Affirmed. Costs taxed against Appellant. (SLC) [Entered: 12/15/2022 07:25 AM]
12/28/2022	☐ 68 2 pg, 172.96 KB	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. [22-1661] (KLN) [Entered: 12/28/2022 02:12 PM]
12/29/2022	☐ 69 1 pg, 87.65 KB	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]
01/03/2023	☐ 70 3 pg, 372.59 KB	MOTION filed by Appellant Anant Kumar Tripati 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]
01/05/2023	☐ 71 1 pg, 96.62 KB	ORDER (AMBRO, Circuit Judge) granting motion for extension of time to file petition for rehearing filed by Appellant Anant Kumar Tripati to file a petition for rehearing until February 15, 2023. (SLC) [Entered: 01/05/2023 10:56 AM]
01/09/2023	☐ 72 35 pg, 3.84 MB	PETITION filed by Appellant Anant Kumar Tripati for Rehearing En Banc and before Original Panel. Clerk's Office ensured service on 01/11/2023. (SLC) [Entered: 01/11/2023 06:18 AM]
02/01/2023	☐ 73 2 pg, 100.26 KB	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 Tripati. Ambro, Authoring Judge. (*Judge Scirica's vote is limited to panel rehearing only.) (CJG) [Entered: 02/01/2023 01:43 PM]
02/09/2023	☐ 74 10 pg, 354.67 KB	MANDATE ISSUED. (SLC) [Entered: 02/09/2023 08:34 AM]
02/13/2023	☐ 75 4 pg, 670.56 KB	MOTION filed by Appellant Anant Kumar Tripati to Abate Time to File for Certiorari. (SLC) [Entered: 02/14/2023 08:48 AM]
02/13/2023	☐ 76 6 pg, 891.57 KB	MOTION filed by Appellant Anant Kumar Tripati for a Procedural Order as to Certiorari. (SLC) [Entered: 02/14/2023 08:49 AM]
02/17/2023	☐ 77 1 pg, 63.98 KB	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. Appellantshould 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]
02/17/2023	☐ 78 4 pg, 254.92 KB	ECF FILER: SUGGESTION OF BANKRUPTCY received from Appellee Corizon Inc. Certificate of Service dated 02/17/2023. Service made by US mail, ECF. [22-1661] (JMY) [Entered: 02/17/2023 02:24 PM]
02/21/2023	☐ 79 110 pg, 2.16 MB	MOTION filed by Appellant Anant Kumar Tripati 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]
03/13/2023	☐ 80 1 pg, 64.82 KB	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]
03/13/2023	☐ 81 54 pg, 2.72 MB	MOTION filed by Appellant Anant Kumar Tripati for Leave to File Completed Petition in Support of Pending Motion to Stay and Recall. (CJG) [Entered: 03/17/2023 10:18 AM]
03/21/2023	☐ 82 1 pg, 63.64 KB	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

Arizona Department of Corrections
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)	ADC NUMBER	INSTITUTION/UNIT	DATE (mm/dd/yyyy)
TRUPATI Anand	102841	409	9/9/23

TO	LOCATION
Mail Room	

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 Call Mvela D #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. Mvela #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 803, Inmate Disciplinary Procedure.

Distribution: Original – Master File
Copy - Inmate

916-1
7/25/19

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
98	Eyman	80%	82%	94%	82%
98	Lewis	90%	89%	78%	89%
98	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

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

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

B. Legal Basis for Undoing Settlement

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

Ann 3/0

Inmate
ADC #
Arizona State Prison Complex
Unit
AZ

NEOPOST
10/18/2023
US POSTAGE $011.29⁰
PRIORITY MAIL
ComBasPrice
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

USPS TRACKING #
9205 5901 5589 9200 0000 1375 90
BOX 1 OF 1
ELECTRONIC RATE APPROVED #901558992

LEGAL MAIL

US Bankruptcy Court
515 Rusk Ave
Houston, TX 77002

LEGAL MAIL