

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 1:15-cv-13297-NMG

BHARANIDHARAN PADMANABHAN MD PhD )  
(Dr. Bharani) )  
- PLAINTIFF )

JURY TRIAL DEMANDED

vs. )

MAURA HEALEY )  
STEVEN HOFFMAN )  
CHRIS CECCHINI )  
ADELE AUDET )  
JAMES PAIKOS )  
LORETTA KISH COOKE )  
JOHN DOES )  
JANE DOES )  
- DEFENDANTS )

FILED  
IN CLERKS OFFICE  
2015 NOV 19 AM 9:15  
U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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SCREENED

OBJECTION TO THE SIX NAMED DEFENDANTS' UNTIMELY MOTION TO DISMISS  
AND  
PLAINTIFF'S MOTION FOR SANCTIONS

- 1 Named Defendants filed a Motion to Enlarge Time to Answer on October 8th, 2015 and self-selected the date of November 15th, 2015 for them to Answer. (Document 6)
- 2 This Court granted Named Defendants' Motion to extend their time to Answer to their requested date of November 15th, 2015.
- 3 Named Defendants chose to not Answer by their own requested date.
- 4 Firstly, Named Defendants chose to file a Motion to Dismiss in lieu of filing their Answer. (Document 23, 24)
- 5 Named Defendants filed this Motion without ever conferring with opposing Counsel even once in conscious violation of D. Mass. Local Rule 7.1.

6 Plaintiff reserves the right to object to the merits of the arguments presented within their Motion. The present Objection is about the filing of their Motion itself.

7 Secondly, Counsel for Named Defendants, Mark Sutliff, emailed Plaintiff Dr Bharani, who is pro se, on November 16th, 2015, and stated that -

“Your belief that the Defendants are in default for “refusing to answer by even the extended deadline” is incorrect. Under Fed. R. Civ. P. 6(a)(1)(C), “if the last day is a Saturday, Sunday, or legal holiday [as November 15, 2015 was a Sunday], the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday [which is today, Monday, November 16, 2015].””

Exhibit 1

8 As utter lawlessness and bad faith is the baseline conduct at Defendant Attorney General Maura Healey’s Office it is evident that Counsel for Named Defendants assumed that pro se Plaintiff Dr Bharani would be easily misled by Counsel Sutliff’s official written misrepresentation.

9 Even worse, Defendants and their Counsel filed a consciously fraudulent pleading with this Honorable Court the very next day, November 17th, 2015, asserting exactly what Counsel Mark Sutliff wrote in his email to Plaintiff Dr Bharani. (Document 27)

10 In their filed pleading with this Court, Document 27, Defendants through Counsel assert -

“Under Fed.R.Civ.P. 6(a)(1)(C) COMPUTING AND EXTENDING TIME; TIME FOR MOTION PAPERS, “if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.””

- 11 Named Defendants' Counsel Mark Sutliff deliberately and intentionally omitted the full  
category from Rule 6(a)(1) which states unequivocally - "(1) *Period Stated in Days or a  
Longer Unit.*"
- 12 Named Defendants, including this state's Attorney General and their Counsel Mark  
Sutliff, knew from the outset that this Court did not grant the deadline extension in terms  
of a "*Period Stated in Days or a Longer Unit.*"
- 13 This Court unequivocally ORDERED - "**Adele Audet Answer due by 11/15/2015;  
Chris Cecchini Answer due by 11/15/2015; Loretta Kish Cooke Answer due by  
11/15/2015; Maura Healey Answer due by 11/15/2015; Steven Hoffman Answer due  
by 11/15/2015; James Paikos Answer due by 11/15/2015.**"
- 14 It is totally undeniable that this Honorable Court defined and ORDERED a "*Last Day*" to  
Answer.
- 15 The controlling rule is Fed. R. Civ. P. 6(4)(A) which unequivocally states -  
"*(4) "Last Day" Defined. Unless a different time is set by a statute, local rule, or  
court order, the last day ends:  
(A) for electronic filing, at midnight in the court's time zone;*"
- 16 This District's Local Rule 5.4 controls further the practice of electronic filing of Motions  
by parties registered with the ECF system.
- 17 Local Rule 5.4 (D) unequivocally states -  
"**(D) Deadlines.** Although the ECF system is generally available 24 hours a day  
for electronic filing, that availability will not alter filing deadlines, whether set by

rule, court order, or stipulation. All electronic transmissions of documents must be completed prior to 6:00 p.m. to be considered timely filed that day.”

18 Going by the letter and the spirit of both Fed. R. Civ. P. 6 (4)(A) and Local Rule 5.4(D) it is beyond factual dispute that Named Defendants’ Motion to Dismiss was untimely.

19 It is a matter of straight procedure that Named Defendants’ Motion to Dismiss was untimely as the filing deadline was set by Court ORDER as a Defined Last Day and the rule is mandatory and jurisdictional.

20 It is a matter of straight procedure that Named Defendants were required to electronically file their Answer by November 15th, 2015 and “prior to 6:00 p.m. to be considered timely filed that day.”

21 All Federal Districts and Circuits have ruled that it is critical to adhere to federal timing rules, especially when, as here, they are mandatory and jurisdictional. *Gutierrez v. Johnson & Johnson*, 523 F.3d 187, 192 (3d Cir. 2008); *Carpenter v. Boeing Co.*, 456 F.3d 1183, 1190 n. 1 (10th Cir. 2006) (compliance with deadline is "mandatory"); *Coco v. Incorporated Village of Belle Terre*, N.Y., 448 F.3d 490, 491-92 (2d Cir.2006) (per curiam) (deadline is "inflexible"); *Lowry v. McDonnell Douglas*, 211 F.3d 457,464 (8th Cir. 2000) (deadlines for notice of appeal are "mandatory") cf. *United States v. Ortega*, 13-50479, 2014 WL 105462 (5th Cir. Jan. 13, 2014) (summarily dismissing appeal since appellant failed to file notice of appeal within the requisite time period); *Sprout v. Farmers Ins. Exch.*, 681 F.2d

587, 588 (9th Cir. 1982) (dismissing appeal where notice of appeal was "one day late").

- 22 Named Defendants' refusal to file an Answer prior to the expiration of the mandatory deadline ordered by this Court is not "excusable on the absence of "unique or extraordinary circumstances."" Graphic Communications Int'l Union, Local 12-N v. Quebecor Printing Providence 270 F.3d 1 (1st Cir. 2001)
- 23 Named Defendants and their Counsel have not represented that they made an innocent excusable mistake. And as they themselves had selected the deadline date, no neglect may be claimed.
- 24 Named Defendants and their Counsel have not offered any mitigating "unique or extraordinary circumstances" that compelled them to ignore the plain language of both Fed. R. Civ. P. and Local Rule 5.4.
- 25 Instead Named Defendants and their Counsel doubled down and claimed in an email that Plaintiff's "belief" is incorrect and followed it up with a consciously fraudulent Court pleading in gross violation of Rule 11.
- 26 Plaintiff Dr Bharani had not expressed any personal beliefs. He had quoted directly from the plain language of the Rules.
- 27 Furthermore, it is impossible to construe Counsel Mark Sutliff's written statements and selective quotation from the Rules as anything other than willful intentional factual misrepresentation wholly in bad faith and wholly in conscious contravention of Rule 11(b). When Counsel Mark Sutliff signed the Motion on November 17th, 2015, he was fully aware that he had signed a consciously fraudulent affirmative pleading with this

Court. It was not an inadvertent minor error. Furthermore Counsel Mark Sutliff's written pleading "could not have been calculated to assist the Court in the administration of justice, but only to win an advantage." Tesco Corp. v. Weatherford Int'l. Inc., No. H-08-2531, 2014 WL 4244215 (S.D. Tex. Aug. 25, 2014)(Fed. Cir. 2015-1041)

- 28 Plaintiff Dr Bharani has already brought to the notice of this Court the inordinate delay and prejudice to Plaintiff caused by Named Defendants' Motion to enlarge time to Answer as well as the bad faith underlying their actions.
- 29 This time again Named Defendants and Counsel Mark Sutliff have treated the Court's mandatory and jurisdictional Rules with deliberate contempt. There is a pattern of conscious abuse of official power.
- 30 Defendants and their Counsel, Mark Sutliff, assumed they could get away with it because they are the Attorney General's Office and above the law and anyway the Plaintiff is pro se.
- 31 Defendant Maura Healey and Counsel Mark Sutliff must be held to a higher standard of conduct because they are this state's Attorney General and Assistant Attorney General respectively. They are not inexperienced solo lawyers or a pro se neurologist unfamiliar with the Fed. R. Civ. P. or this Court's Local Rules.
- 32 Court rules unequivocally mandate sanctioning Defendants and their Counsel as otherwise this Court would officially be condoning willful conscious misconduct by high Government officials with massive asymmetric power who have consciously willfully filed a fraudulent pleading with this Court. Federal courts have held so even in the case of private attorneys. Monsanto Co. v. E.I. Du Pont de Nemours & Co., Case No. 13-1349

(Fed. Cir., May 9, 2014) “It is beyond dispute that a federal court may suspend or dismiss an attorney as an exercise of the court’s inherent powers.” *Resolution Trust Corp. v. Bright*, 6 F.3d 336, 340 (5th Cir. 1993) (citing *In re Snyder*, 472 U.S. 634, 643–44 (1985)); see also *Crowe v. Smith*, 151 F.3d 217, 229–30 (5th Cir. 1998) (collecting cases); *Flaksa v. Little River Marine Constr. Co.*, 389 F.2d 885, 888 n.10 (5th Cir. 1968) (“The power of a court to discipline members of its own bar can scarcely be doubted seriously. An attorney is under no obligation to seek admission to the bar of a United States district court. . . . But when he does apply and is admitted he secures certain privileges and also assumes definite obligations.”

- 33 It is also the ruling and well established practice in Federal Courts in all Districts that Defendants are responsible for misconduct by their attorneys, who they have freely selected to represent them. “Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have “notice of all facts, notice of which can be charged upon the attorney. ”” *Link v. Wabash R. Co.*, 370 U.S. 626 (1962), *Tesco Corp. v. Weatherford Int’l, Inc.*, No. H-08-2531, 2014 WL 4244215 (S.D. Tex. Aug. 25, 2014)(Fed. Cir. 2015-1041)

WHEREFORE, Plaintiff Dr Bharani respectfully requests this Honorable Court that

- (A) the Motion to Dismiss (Documents 23 and 24) filed by Defendants Healey, Hoffman, Cecchini, Paikos, Cooke and Audet be dismissed with prejudice for being UNTIMELY and in conscious violation of mandatory and jurisdictional rules;
- (B) Defendants Healey, Hoffman, Cecchini, Paikos, Cooke and Audet as well as Counsel Mark Sutliff receive **severe and exemplary sanctions** for conscious affirmative written misrepresentations to this Honorable Court in egregious unequivocal violation of Rule 11, including an Order for Entry of Default against Defendants Healey, Hoffman, Cecchini, Paikos, Cooke and Audet;
- (C) legal fees be awarded to Plaintiff for being forced to bring this Objection to respond to Defendants' and their Counsel's willfully consciously false statements of fact and law in their pleading to this Court.

Respectfully submitted,



Bharanidharan Padmanabhan MD PhD

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19 November 2015



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CERTIFICATE OF COMPLIANCE WITH RULE 7.1

- 1 Plaintiff conferred with AAG Adam LaGrassa and sent him a copy of the Objection and Motion for Sanctions via email for review. Attachment 1
- 2 Plaintiff also sent a copy of the Objection and Motion for Sanctions to AAG Adam LaGrassa by Certified Mail. 7015 0640 0003 4336 7498
- 3 Plaintiff and Counsel for certain named Defendants have been unable to resolve this issue out of court.

Respectfully submitted,

19 November 2015

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