

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4

5 SALADIN RUSHDAN,

No. C-90-2895 TEH (PR)

6 Plaintiff,

7 v.

8 JEFFREY BEARD, Director-
9 Secretary, California Department
10 of Corrections and
11 Rehabilitation,

ORDER REOPENING CASE, SETTING
BRIEFING SCHEDULE REGARDING
PLAINTIFF'S MOTION TO ENFORCE
SETTLEMENT AGREEMENT AND FOR
CONTEMPT AND DENYING
PLAINTIFF'S MOTION FOR
APPOINTMENT OF COUNSEL

Docket nos. 118 and 119.

12 Defendant.
13 _____/

I

14 Plaintiff Saladin Rushdan, an inmate at California State
15 Prison in Corcoran (CSP-Corcoran), has filed a motion to enforce a
16 1994 agreement between himself and the Director of the California
17 Department of Corrections and Rehabilitation (CDCR)¹ to settle his
18 claims for deliberate indifference to serious medical needs and
19 related claims asserted in the instant case, C-90-2895 TEH (PR).²
20 He also seeks an order holding the CDCR in contempt for not
21 _____

22 ¹In 1994, this department was known as the California Department
23 of Corrections (CDC). In the settlement agreement it is referred to
24 as the CDC. However, the Court will refer to it by its present name,
the California Department of Corrections and Rehabilitation (CDCR).

25 ²Jeffrey Beard, current CDCR Director-Secretary, is substituted
26 for the former CDCR Director-Secretary. See Will v. Michigan Dep't
27 of State Police, 491 U.S. 58, 71 (1989) ("[A] suit against a state
28 official in his or her official capacity is not a suit against the
official but rather is a suit against the official's office");
Figueroa v. Gates, 120 F. Supp. 2d 917, 920 (C.D. Cal. 2000) (where an
official is replaced during pendency of a suit, it is appropriate to
substitute the name of the replacement in place of the prior official
with regard to the official-capacity basis for suit).

1 complying with the terms of the settlement agreement. This case was
2 dismissed with prejudice on December 28, 1994, pursuant to the
3 settlement agreement. Doc. ## 114-116.

4 Plaintiff attaches a copy of the settlement agreement to
5 his motion. The relevant portions are as follows:

6 Claimant is to receive medical care for his Keloidal
7 condition from Dr. Roy C. Grekin, M.D. or from anyone
8 designated by Dr. Grekin. Dr. Grekin will also prescribe
9 and/or order medical care for the Claimant to be rendered
10 by CDCR staff at the California Medical Facility (CMF) in
11 Vacaville, California. The Chief Medical Officer at CMF
12 will oversee the medical care prescribed and/or ordered by
13 Dr. Grekin for the Claimant at CMF for the period to be
14 prescribed by Dr. Grekin.

15 1994 Settlement Agreement ¶ 4(a).

16 Housing: The Claimant is to be housed in a single cell
17 with a lower bunk for a period not less than fifteen (15)
18 months commencing the date this agreement is signed.

19 Further, the Claimant is to be housed at CMF for the
20 period that he is receiving medical care from Dr. Grekin.

21 Id. ¶ 4(b).

22 Implementation of Agreement: The Director of the
23 California Department of Corrections (hereinafter
24 "Director") shall be specifically responsible for the
25 implementation of the provisions of this Agreement.

26 Further, in the event that any provision of this agreement
27 is not implemented, the Claimant may bring an action
28 against the Director to obtain performance of any of the
provisions of this Agreement.

Id. ¶ 4(d).

In his motion, Plaintiff asserts that his medical
treatment is ongoing to the present and the settlement agreement has
been breached by the following actions: (1) he has been transferred
to various prisons a number of times, a breach of paragraph 4(b),
which requires that he be housed at CMF for the period he is

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III

Based upon the foregoing, the Court orders the following:

1. The Clerk of the Court shall re-open this case.

2. Plaintiff's motion for appointment of counsel is denied without prejudice. Doc. #118.

3. This Order, together with Plaintiff's motion and the accompanying exhibits, doc. #119, shall be served on Defendant, and copies shall be mailed to the State Attorney General's Office in San Francisco. Additionally, the Clerk shall mail a copy of this Order to Plaintiff.

4. Within twenty-eight days from the date of this Order, Defendant shall respond to Plaintiff's motion to enforce the settlement agreement and for contempt. Defendant's response shall include any relevant documentation and declarations. Plaintiff may file a reply within fourteen days thereafter, also including any relevant documentation and declarations.

5. This matter shall be decided on the papers. If the Court determines that a hearing is required, it shall so inform the parties.

IT IS SO ORDERED.

DATED 01/14/2014



THELTON E. HENDERSON
United States District Judge