

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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WALTER BENNETT, GREGORY ROYAL,	:	
and JOHN LACEY, individually	:	Civil Action No.
and jointly on behalf of all	:	02-4993 (NLH)
others similarly situated	:	
	:	
Plaintiffs,	:	
	:	
v.	:	<b><u>ORDER</u></b>
	:	
CORRECTIONAL MEDICAL SERVICES,	:	
INC., LOUIS TRIPOLI, M.D.,	:	
WILLIAM ANDRADE, JAMES J. NEAL,	:	
M.D., JAMES RUMAN, R.N., ROCK	:	
WELCH, ABU AHSAN, M.D., GEORGE	:	
HAYMAN, and JOHN DOE and JANE	:	
ROE 1-10,	:	
	:	
Defendants.	:	
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This matter having come before the Court by letter of the Plaintiff to "enforce the proper payment and execution of a Settlement Document"; and

The Court construing Plaintiff's letter as a motion; and

On October 5, 2009, the Court having been informed that the parties had settled the matter; and

The Court having entered an order dismissing the action "without costs and without prejudice to the rights of either party upon good cause shown to re-open this matter within sixty (60) days for any necessary proceedings"; and

On June 9, 2010<sup>1</sup>, Plaintiff having filed his instant motion to enforce the settlement agreement or increase the amount for damages due to non-payment because Plaintiff's attorney has allegedly failed to disburse settlement monies to Plaintiff; and

The Court notes that Plaintiff alleges Defendants disbursed settlement funds to Plaintiff's counsel; but

The Court not having subject matter jurisdiction to hear Plaintiff's motion because: (1) it was not filed within 60 days of the Court's October 5, 2009 Order, (2) the settlement was not part of the record, and (3) the matter appears to be a dispute between Plaintiff and his counsel<sup>2</sup>, see Kokkonen v. Guardian Life Insurance Co. of America, 511 U.S. 375, 378 (1994) (finding as a general rule that a federal district court does not retain jurisdiction to enforce a settlement agreement unless the court, typically as part of its order of dismissal, orders the parties

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<sup>1</sup>The motion was entered on June 9, 2010, but the motion is dated May 20, 2010. The date of the motion's receipt, however, is irrelevant and has no bearing on the motion's outcome.

<sup>2</sup> Although the Third Circuit permits district courts to exercise ancillary jurisdiction to resolve attorney fee disputes, Novinger v. E.I. DuPont de Nemours & Co., Inc., 809 F.2d 212, 217 (3d Cir. 1987), the facts of this case are substantially different from Novinger. In Novinger, Plaintiff's attorney requested a lien on the settlement prior to the conclusion of the case. The district court subsequently issued an order stating that the court would determine attorney's fees at the conclusion of the case. Here, the court was informed by the parties that the matter had been settled, jurisdiction was not retained to resolve any outstanding issues, and Plaintiff moved for enforcement several months after settlement.

to comply with the terms of the settlement agreement or incorporates terms of a settlement agreement explicitly retaining jurisdiction into one of its orders); Sawka v. Healtheast, Inc., 989 F.2d 138, 141-42 (3d Cir. 1993) (holding that "unless a settlement is part of the record, incorporated into an order of the district court, or the district court has manifested an intent to retain jurisdiction, it has no power beyond the Rules of Civil Procedure to exercise jurisdiction over a petition to enforce a settlement"); Washington Hosp. v. White, 889 F.2d 1294, 1298-99 (3d Cir. 1989) (stating "a district court does not have continuing jurisdiction over disputes about its orders merely because it had jurisdiction over the original dispute"); Knoepfler v. Guardian Life Ins. Co. of Am., 2010 WL 3001380, \*3 (D.N.J. July 28, 2010) (finding that the exercise of ancillary jurisdiction to determine an attorney's fee issue would "resurrect a now-dismissed litigation, rather than facilitate the disposal of it"); and

The Court further noting that Plaintiff's recourse for his attorney's alleged failure to abide by the terms of the settlement agreement may be to file a new action for breach of contract in an appropriate forum, see Sawka, 989 F.2d at 140 (assuming arguendo that defendant breached the terms of the settlement agreement, "that is no reason to set the judgment of dismissal aside, although it may give rise to a cause of action

to enforce the agreement");

Accordingly,

**IT IS HEREBY ORDERED** on this 15th day of October, 2010 that Plaintiff's motion to enforce the proper payment and execution of the settlement document [180] is **DENIED**.<sup>3</sup>

At Camden, New Jersey

s/ Noel L. Hillman  
NOEL L. HILLMAN, U.S.D.J.

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<sup>3</sup> Courts "have an ever-present obligation to satisfy themselves of their subject matter jurisdiction and to decide the issue *sua sponte*. Liberty Mut. Ins. Co. v. Ward Trucking Corp., 48 F.3d 742, 750 (3d Cir. 1995).