

## APPENDIX

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[1]

**ORDER**

**Third Circuit Court order denied**

**Petition for rehearing or Rehearing enbanc**

**February 3, 2020**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 18-3048

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PAUL PECINA,  
Appellant

v..

ROBERT A. MCDONALD, SECRETARY,  
UNITED STATES DEPARTMENT OF VETERAN AFFAIRS

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(W.D. Pa. No. 2-15-cv-00264)

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SUR PETITION FOR REHEARING

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Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN,  
HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS,  
PORTER, MATEY, PHIPPS, and FUENTES, \*Circuit Judges

The petition for rehearing filed by appellant, in the above-entitled case having  
been submitted to the judges who participated in the decision of this Court and to all the  
other available circuit judges of the circuit in regular active service, and no judge who  
concurred in the decision having asked for rehearing, and a majority of the judges of the

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\* Pursuant to Third Circuit I.O.P. 9.5.3., Judge Fuentes's vote is limited to panel  
rehearing.

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Julio M. Fuentes  
Circuit Judge

Dated: February 3, 2020

Tmm/cc: Paul Pecina  
Donovan J. Cucas, Esq.  
Laura S. Irwin, Esq.

[2]

**ORDER**

**Third Circuit Court order denied**  
**Motion to recall Mandate**

**Dated March 20, 2020**

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 18-3048

PAUL PECINA,  
Appellant

v.

ROBERT A. MCDONALD, SECRETARY,  
UNITED STATES DEPARTMENT OF  
VETERAN AFFAIRS

(W.D. Pa. No. 2-15-cv-00264)

Present: GREENAWAY JR., RESTREPO and FUENTES, Circuit Judges

1. Motion by Appellant to Recall Mandate;
2. Motion by Appellant to Extend Time to File Petition for a Writ of Certiorari to the Supreme Court.

Respectfully,  
Clerk/kr

ORDER

The foregoing motions are denied.

By the Court,

s/Joseph A. Greenaway, Jr.  
Circuit Judge

Dated: March 20, 2020

kr/cc: Paul Pecina  
Donovan J. Cucas, Esq.  
Laura S. Irwin, Esq.

[3]

**ORDER**

Third Circuit Court order denied  
Motion for independent action for  
Fraud on the court

Dated May 29, 2020

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 18-3048

PAUL PECINA,  
Appellant

v.

ROBERT A. MCDONALD, SECRETARY,  
UNITED STATES DEPARTMENT OF VETERAN AFFAIRS

(W.D. Pa. No. 2-15-cv-00264)

Present: GREENAWAY JR., RESTREPO and FUENTES, Circuit Judges

Motion by Appellant to Recall Mandate Titled Independent Action  
for Fraud on the Court and Stay Time to file Appeal to the Supreme Court.

Respectfully,  
Clerk/kr

ORDER

The foregoing motion is denied.

By the Court,

s/Julio M. Fuentes  
Circuit Judge

Dated: May 29, 2020

Lmr/cc: Paul Pecina

Donovan J. Cucas

Laura S. Irwin

[4]

**JUDGEMENT**

**Third Circuit Court Affirmed**

**Order of Lower District Court on August 9, 2019**

**Dated December 6, 2019**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 18-3048

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PAUL PECINA,  
Appellant

v.

ROBERT A. MCDONALD, SECRETARY, UNITED STATES DEPARTMENT OF  
VETERAN AFFAIRS

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On Appeal from the United States District Court  
for the Western District of Pennsylvania  
(D.C. Civil Action No. 2-15-cv-00264)  
District Judge: Honorable David S. Cercone

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Submitted Pursuant to Third Circuit LAR 34.1(a)  
August 26, 2019

Before: GREENAWAY, JR., RESTREPO and FUENTES, Circuit Judges

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**JUDGMENT**

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This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on August 26, 2019. On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgment of the District Court entered August 9, 2018, be and the same is hereby affirmed. The parties shall bear their own costs. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit  
Clerk

Dated: December 6, 2019

**OPINION**

**Third Circuit Court opinion for judgement  
Of December 6, 2019**

**Dated December 6, 2019**

**NOT PRECEDENTIAL**

**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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No. 18-3048

---

PAUL PECINA,  
Appellant

v.

ROBERT A. MCDONALD, SECRETARY, UNITED STATES DEPARTMENT OF  
VETERANS AFFAIRS

---

On Appeal from the United States District Court  
for the Western District of Pennsylvania  
(D.C. Civil Action No. 2-15-cv-00264)  
District Judge: Honorable David S. Cercone

---

Submitted Pursuant to Third Circuit LAR 34.1(a)  
August 26, 2019

Before: GREENAWAY, JR., RESTREPO and FUENTES, Circuit Judges

(Opinion filed: December 6, 2019)

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**OPINION\***

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**PER CURIAM**

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\* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Appellant Paul Pecina appeals the decision of the United States District Court for the Western District of Pennsylvania denying Pecina's post-settlement motion. We will affirm.

Because the parties are familiar with the background, we provide only a summary. In 2015, through counsel, Pecina brought suit against Appellee Robert A. McDonald, Secretary of the United States Department of Veterans Affairs, concerning an employment dispute. After participating in a mediation conference, the parties entered into a settlement agreement memorialized during proceedings held on May 27, 2016, and they executed a stipulation of dismissal with prejudice. On June 3, 2016, the District Court granted the stipulation and dismissed the case with prejudice. Pecina received a lump sum settlement payment shortly thereafter.

On July 22, 2016, Pecina filed a pro se motion to reopen the case. He alleged, among other things, that his attorney did not disclose certain information, failed to prepare him for the mediation conference, and intimidated him into accepting a settlement. Pecina also alleged that the defendant provided incomplete discovery responses. On March 21, 2017, the District Court denied the motion, finding no basis to set aside the settlement and rejecting Pecina's fraudulent inducement argument.

More than eight months later, on November 27, 2017, Pecina filed his "Pro Se Motion To Declare Settlement Agreement Null and Void Upon Fraud On The Court," contending that officers of the court perpetrated fraud on the court that induced him into settling his case. Pecina stated that the opposing counsel made a "fraudulent presentation" of a "nonexistent affirmative defense of mixed-motive" at the mediation

conference, that the court mediator perpetuated the fraud in relaying this defense position, and that Pecina's counsel aided and abetted the fraud by failing to protect his interests. On August 9, 2018, the District Court denied the motion for the reasons set forth in its March 21, 2017 decision. This appeal followed.

We have jurisdiction under 28 U.S.C. § 1291.<sup>1</sup> We exercise plenary review of whether Pecina has made the requisite showing of intentional fraud to obtain relief, but we review the District Court's ultimate decision to deny equitable relief for abuse of discretion. Cf. In re Bressman, 874 F.3d 142, 148 (3d Cir. 2017) (on appeal from the district court of a bankruptcy court decision on a motion to reopen and vacate based on allegations of fraud). We may affirm on any basis supported by the record. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam).

A court may grant relief from a final judgment based on allegations that the opposing party committed fraud on the court. See Fed. R. Civ. P. 60(d)(3). See also In re Bressman, 874 F.3d at 149. The fraud on the court must be intentional, committed by an officer of the court, and directed at the court itself. See id. at 150. A finding of fraud on the court requires "egregious conduct," must be supported by "clear, unequivocal, and convincing evidence," and must actually deceive the court. Id. The misconduct must be

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<sup>1</sup> The Appellee has filed a motion to dismiss the appeal for lack of jurisdiction because Pecina's "motion to declare" was an untimely motion for reconsideration of the District Court's March 21, 2017 order, and Pecina's notice of appeal was filed beyond the sixty-day period for appealing that decision. See Fed. R. App. P. 4(a)(1)(B). We disagree. Pecina's "motion to declare" alleged fraud on the court and is thus best construed as a motion invoking Rule 60(d)(3). The notice of appeal is timely with regard to the District Court's August 9, 2018 denial of that motion; the scope of our review is limited to that order.

sufficiently egregious to warrant a departure from the doctrine of res judicata and justify relief from a judgment. See id. at 152-53.

Upon review, we discern no clear and convincing evidence of fraud on the court. Pecina argued in his motion to set aside the settlement that the Appellee unfairly and improperly presented a mixed-motive defense during mediation, despite failing to plead it as an affirmative defense under Federal Rule of Civil Procedure 8(c). Pecina argued, “It is evident that the [Appellee’s] timing of presenting the misleading stance of the nonexistent affirmative defense of mixed-motive was used as [a] bargaining tool to pressure and corner the Plaintiff.” Motion to Declare at 5. Pecina also argued that the court mediator perpetuated the problem by presenting this defense position during the mediation session, and that Pecina’s own counsel breached his fiduciary duty by failing to mount an effective counter-strategy. See id. at 1-2. However, at most, these allegations concern fraud against him, not directed at the court itself.<sup>2</sup> See, e.g., In re Bressman, 874 F.3d at 145, 151 (describing attorney’s affidavit to the court containing material misrepresentations concerning the amount of judgment owed, filed with intent to deceive the court). Moreover, Pecina states in his brief that he was immediately aware that the Appellee had committed the alleged fraud during the settlement conference, and that that his attorney committed malpractice in convincing him to sign the settlement

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<sup>2</sup> Rule 60(b)(3) allows a court to grant relief from a judgment based on fraud, misrepresentation, or misconduct by an opposing party. To the extent that Pecina’s motion could have been construed under Rule 60(b)(3), the motion was untimely, as it was filed more than one year following the settlement. See Fed. R. Civ. P. 60(c)(1) (establishing deadline for specified Rule 60(b) motions as “no more than a year after the entry of the judgment or order or proceeding”).

papers, anyway, before addressing his concerns to the District Court. See Appellant's Brief at 5. If so, Pecina could not have obtained relief for fraud on the court where he knew of the fraud at the time of settlement and before the entry of the stipulation of dismissal. See United States v. Sierra Pacific Industries, Inc., 862 F.3d 1157, 1168-69 (9th Cir. 2017) (relief for fraud on the court available only where the fraud was unknown at the time of settlement or entry of judgment). We conclude that the District Court acted within its discretion in denying Pecina's motion to obtain relief from the settlement.

Accordingly, we will affirm. The Appellee's motion to dismiss is denied. The Appellee's motion to file a supplemental appendix is granted as to pages 1-290 only but denied in all other respects. The Appellant's motion to supplement the record is denied. The Appellant's motion to correct the conclusion statement in his brief filed in reply to the Appellee's response brief is granted.

**MEMORANDUM OPINION**

**For**

**ORDER**

**Western District Court**

**Judge Cercone**

**of motion denied to reopen case and set aside settlement**

**Dated March 21, 2017**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PAUL PECINA, )  
Plaintiff, )  
v. )  
ROBERT A. MCDONALD, Secretary, )  
United States Department of Veteran Affairs, )  
Defendant. )  
2:15cv264  
Electronic Filing

## **MEMORANDUM OPINION**

At counsels' request a mediation conference was scheduled on Friday, May 25, 2016.

The conference occurred after the completion of discovery but prior to the filing of dispositive motions under the deadlines established in the court's case management order. At the conclusion of the conference the parties through counsel placed a stipulation of settlement on the record. The parties then executed a stipulation of dismissal with prejudice. The court granted the stipulation and dismissed the case with prejudice. Plaintiff then signed a release and received the proceeds of the settlement agreement about three weeks later. Approximately five weeks after that plaintiff filed a *pro se* motion to reopen the case, rescind the settlement, obtain new counsel, reopen discovery and proceed with his claims. Plaintiff recently augmented his motion through the filing of a "Response to Defendant's and Joel Sansone's Responses." Plaintiff's *pro se* motion will be denied for four basic reasons.

First, the court entered an unconditional order dismissing the case with prejudice on June 3, 2016. See Doc. No. 34. Of course, "[a] voluntary dismissal with prejudice operates as a final judgment on the merits." Phillips v. Transunion, LCC, 2012 WL 1439088, at \*6 (E.D. Pa. April 25, 2012) (citing Vacanti v. Apotheker & Assocs., P.C., 2010 WL 4702382, at \*4 (E.D. Pa. Nov. 12, 2010); Toscano v. Connecticut Gen. Life Ins. Co., 288 F. App'x 36, 38 (3d Cir. 2008)

("Judicially approved settlement agreements are considered final judgments on the merits for the purposes of claim preclusion."); Gambocz v. Yelencsics, 468 F.2d 837, 840 (3d Cir. 1972) (holding that "[d]ismissal with prejudice constitutes an adjudication of the merits as fully and completely as if the order had been entered after trial") (citing Lawlor v. Nat'l Screen Serv. Corp., 349 U.S. 322, 327 (1955)); Jamison v. Miracle Mile Rambler, Inc., 536 F.2d 560, 564 (3d Cir. 1976) (same)). Consequently, the order of dismissal bars further action on plaintiff's claims.

Moreover, the parties performed their settlement agreement. The court is now without jurisdiction to take further action that would involve the settlement agreement. Kokkonen v. Gaurdian Life ins. Co., 511 U.S. 375, 381 (1994) (absent the expressed retention of jurisdiction over some aspect of the parties' settlement agreement, a stipulation of dismissal with prejudice divests the court of ongoing jurisdiction over the parties' agreement unless there is some other independent basis for federal court jurisdiction over it); Shaffer v. GTE North, Inc., 284 F.3d 500, 502-04 (3d Cir. 2002) (same). Thus, the court is without jurisdiction over any remaining aspects of the parties' dispute.

Second, at the outset of the mediation conference the parties and counsel were advised by the neutral that the Pennsylvania statute cloaking mediation sessions with an evidentiary privilege of confidentiality would govern all communications made during the conference. See 42 Pa. Cons. Stat. Ann. § 5949 ("Disclosure of mediation communications and mediation documents may not be required or compelled through discovery or any other process. Mediation communications and mediation documents shall not be admissible as evidence in any action or proceeding, including, but not limited to, a judicial, administrative or arbitration action or proceeding."). The four exceptions to this evidentiary protection were highlighted. See 42 Pa.

Cons. Stat. Ann. §§ 5949(b)(1) – (4).<sup>1</sup> The parties acknowledged that they would be bound by these principles by voluntarily proceeding with the conference.

Pennsylvania courts endorse "a strong policy . . . for keeping mediation communications and documents confidential." Dietz & Watson, Inc. v. Liberty Mut. Ins. Co., 2015 WL 365949, \*4 E.D. Pa. January 28, 2015).<sup>2</sup> This privilege protects the lifeblood of mediation and is essential to the ongoing viability and success of this form of alternative dispute resolution. Dietz & Watson, Inc., 2015 WL 365949, at \*4 (collecting cases). The need for strict enforcement of

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<sup>1</sup> These exceptions are:

(b) Exceptions.--

(1) A settlement document may be introduced in an action or proceeding to enforce the settlement agreement expressed in the document, unless the settlement document by its terms states that it is unenforceable or not intended to be legally binding.

(2) To the extent that the communication or conduct is relevant evidence in a criminal matter, the privilege and limitation set forth in subsection (a) does not apply to:

- (i) a communication of a threat that bodily injury may be inflicted on a person;
- (ii) a communication of a threat that damage may be inflicted on real or personal property under circumstances constituting a felony; or
- (iii) conduct during a mediation session causing direct bodily injury to a person.

(3) The privilege and limitation set forth under subsection (a) does not apply to a fraudulent communication during mediation that is relevant evidence in an action to enforce or set aside a mediated agreement reached as a result of that fraudulent communication.

(4) Any document which otherwise exists, or existed independent of the mediation and is not otherwise covered by this section, is not subject to this privilege.

42 Pa. Cons. Stat. Ann. §§ 5949(b)(1)-(4).

<sup>2</sup> This protective policy is reflected throughout Pennsylvania law. See, e.g., Pennsylvania Rule of Civil Procedure 4011(d) (barring discovery of mediation communications).

these principles is even more compelling where a member of the judicial staff trained in the art has extended to the parties a voluntary opportunity to engage in the process and thereby determine whether a resolution can be reached short of an adjudication on the merits.

The communications highlighted in plaintiff's *pro se* motion were generated by a process that falls squarely within the heart of what the privilege is designed to protect. The communications are "mediation communications" within the meaning of 42 Pa. Cons. Stat. Ann. § 5949. See 42 Pa. Cons. Stat. Ann. § 5949(c) (A mediation communication is "[a] communication, verbal or nonverbal, oral or written, made by, between or among a party, mediator, mediation program or any other person present to further the mediation process when the communication occurs during a mediation session or outside a session when made to or by the mediator or mediation program."). Plaintiff's *pro se* motion fails to identify any basis that triggers an exception to the rules of confidentiality. Consequently, he cannot use the communications from the session against defendant in an effort to undoe the decision he made to forego further development of his claims and settle his lawsuit.

Third, plaintiff is bound by the release he signed. "A signed release is binding upon the parties unless executed and procured by fraud, duress, accident or mutual mistake." Three Rivers Motors Co. v. Ford Motor Co., 522 F.2d 885, 892 (3d Cir. 1975) (citing Kent v. Fair, 140 A.2d 445 (Pa. 1958)). Plaintiff had the entire day of the mediation conference to explore, negotiate and reflect on the terms of the ultimate settlement agreement. The potential remedies/recoveries that were being released and the benefits that were being gained were highlighted numerous times throughout the day-long conference and plaintiff discussed these extensively with counsel – both in the neutral's presence and in private consultation. Plaintiff's submissions indicate these consultations with counsel continued up until the time plaintiff signed the release.

There is no basis to infer that plaintiff was under duress. "[U]nder Pennsylvania law, duress is not established merely by showing that the release was given under pressure. Rather, where the contracting party is free to come and go and to consult with counsel, there can be no duress in the absence of threats of actual bodily harm." Thomas v. Sandstrom, 459 F. App'x 93, 95 (3d Cir. 2012) (quoting Three Rivers Motor Co., 522 F.2d at 892 and citing Carrier v. William Penn Broad. Co., 233 A.2d 519, 521 (Pa. 1967); accord Robins v. Bimbo Foods Bakeries Distribution, Inc., 2013 WL 5803783, \*6 (E.D. Pa. Oct. 28, 2013) (duress cannot be established by identifying facts that indicate the release was executed under financial or other similar pressure) (collecting cases)). Plaintiff's Monday-morning quarterbacking and concomitant regrets concerning the bargain he struck fall woefully short of showing a factual basis to undue the release on the basis of duress.

Nor has plaintiff alleged sufficient facts showing that defendant or its representatives fraudulently induced him to sign the release. Under Pennsylvania law, claims for fraudulent inducement have six elements: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance. Robins, 2013 WL 5803783 at \*7 (citing Freeman v. Pittsburgh Glass Works, LLC, 709 F.3d 240, 256-57 (3d Cir. 2013) (citing EBC, Inc. v. Clark Bldg. Sys., 618 F.3d 253, 275 (3d Cir. 2010)).

Plaintiff advances three basic grounds in support of his motion. First, defendant and its counsel failed to provide accurate and complete information in defendant's response to discovery requests. In this regard plaintiff is aware of extensive details about the events underlying his case which were not disclosed or fully accounted for in the discovery produced by defendant. Second, plaintiff's counsel did not fully disclose to plaintiff the information obtained during

discovery and permitted the depositions of defendant's witnesses to occur without the full array of information that could have been brought to bear on the matters addressed therein. Similarly, plaintiff's counsel permitted defense counsel to depose plaintiff without apprising plaintiff of all information that had been gained from defendant through discovery. Finally, plaintiff's counsel failed to defend against and prepare plaintiff properly for defendant's stance during the mediation conference that it would seek to establish that the mix-motives framework governed the disposition of plaintiff's claims - which in turn assertedly would have precluded plaintiff from obtaining the remedy of reinstatement.

Each of plaintiff's grounds fails to raise a basis to establish that defendant fraudulently induced plaintiff to accept the settlement and execute the release. Defendant's responses in discovery, even if evasive and incomplete, simply cannot supply the factual underpinnings needed to meet the elements noted above. The balance of the information highlighted by plaintiff does not involve conduct that properly can be attributed to defendant for the purposes of establishing a claim of fraudulent inducement. It follows that plaintiff has failed to present any basis to support a reopening based on a fraud by his adversary.

Third, plaintiff's contention that he was unaware of all of the terms of the settlement agreement memorialized on the record at the end of the day on May 25, 2015, is at the very least disingenuous. Throughout the entire day all necessary steps were taken to accommodate plaintiff's hearing impairment. The defendant's position and movement in negotiations during the mediation were forthrightly disclosed to plaintiff and his counsel at each step in the session. Plaintiff was given an opportunity to consult with his counsel before responding with counter-communications to defendant. At various intervals plaintiff's consulted extensively with counsel before taking the next step in the process. Plaintiff and his counsel were able to engage the neutral as they deemed appropriate and vis-a-versa. Plaintiff was made aware at the outset and

repeatedly throughout the day that the communications with the neutral about defendant's posturing were not intended to be legal advice and plaintiff was required to consult with and rely on his counsel for such advice. All of the terms of the parties' settlement agreement placed on the record of May 25, 2016, were discussed extensively with plaintiff prior to his agreement to accept them as a final resolution and place a binding agreement of settlement on the record.

Finally, all other matters raised in plaintiff's *pro se* motion appear to be the product of rumination and without any foundation whatsoever. And in any event they are not the proper subject of a motion to set aside a contract of settlement placed on the record and effectuated through a subsequently executed release.

For the reasons set forth above, plaintiff's *pro se* motion to re-open the case will be denied. All accompanying motions will be denied as moot. An appropriate order will follow.

Date: March 21, 2017

s/David Stewart Cercone  
David Stewart Cercone  
United States District Judge

cc: Joel S. Sansone, Esquire  
Massimo A. Terzigni, Esquire  
Jennifer R. Andrade, AUSA

*(Via CM/ECF Electronic Mail)*

Paul Pecina  
5637 Willow Terrace Dr.  
Bethel Park, PA 15102

*(Via United States Postal Service Mail)*

## SCHEDULE OF PROCEEDINGS

## SCHEDULE OF PROCEEDINGS

### Friday May 27, 2016

Court ordered Mediation Conference was conducted lower District Court, a settlement agreement was procured by fraudulent scheme of a mixed-motive defense created and imposed into negotiations by lower District Court. Stipulations of the Settlement agreement was memorialized on record. No Settlement papers were signed at the close of Mediation Conference.

### Tuesday May 31, 2016

May 31, 2016, after doing research over the weekend Pecina sent an email to his Counselors, Joel Sansone/Massimo Terzigni, Pecina distinctively stated he does not want to accept the settlement. Pecina speculates that the mixed-motive presentation was not right, Sansone/Terzigni told Pecina that if he does not sign settlement papers the Court is going to enforce the Settlement, Pecina signed Release and Stipulation of Compromise Settlement, Defendant, Veterans Affairs did not sign settlement papers. Pecina had a 7-day right to revoke his signature.

### Wednesday June 1, 2016

Pecina sent email to Sansone/Terzigni requesting that the settlement be removed from the Court and asked; is that possible? Sansone/Terzigni did not respond to Pecina's email.

### Thursday June 2, 2016

Stipulation of Dismissal with Prejudice [33] was filed by Andrade and entered on the record. The document was signed by Counsel for Defendant, Jenifer Andrade, esquire and Counsel for Plaintiff, Joel Sansone, esquire.

### Friday June 3, 2016

District Court dismissed case with prejudice. Order [34] was entered on the record with e-signature by Judge David Stewart Cercone

### Monday June 6, 2016

District Court filed back-dated fraudulent document [35] to make the record appear that status conference was held on May 27, 2016 instead of the Mediation conducted by District Court.

Document [31]  
**ORDER**  
**District Court**  
**Court Ordered mediation**

**Dated May 10, 2016**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PAUL PECINA, )  
Plaintiff, )  
v. ) 2:15cv264  
ROBERT A. MCDONALD, Secretary, )  
United States Department of Veteran Affairs, )  
Defendant. )  
Electronic Filing

## **ORDER OF COURT**

AND NOW, this 10<sup>th</sup> day of May, 2016, in accordance with the discussions with counsel, a Mediation Conference is set **for Friday, May 27, 2016, at 10:00 a.m.** in Courtroom No. 7A, Seventh Floor, 700 Grant Street, U.S. Courthouse, Pittsburgh, PA 15219. Counsel shall be present and shall physically have present the individuals/principals necessary to make decisions on the pending litigation.

s/**David Stewart Cercone**  
David Stewart Cercone  
United States District Judge

cc: Joel S. Sansone, Esquire  
Massimo A. Terzigni, Esquire  
Jennifer R. Andrade, AUSA

*(Via CM/ECF Electronic Mail)*

Document [32]

District Court

Defendant's motion containing statement parties scheduled to participate in a mediation with District Court May 25, 2016

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**DEFENDANT'S MOTION FOR EXTENSION  
OF TIME TO MOVE FOR SUMMARY JUDGMENT**

Defendant, Robert A. McDonald, Secretary, United States Department of Veterans Affairs, by and through his attorneys, David J. Hickton, United States Attorney for the Western District of Pennsylvania, and Jennifer R. Andrade, Assistant United States Attorney, pursuant to Rule 6(b)(1) of the Federal Rules of Civil Procedure, respectfully files this Motion for Extension of Time to Move for Summary Judgment, and in support thereof states as follows:

1. Discovery in this employment discrimination matter ended on February 12, 2016.

*See ECF No. 24.*

2. The parties are scheduled to participate in a mediation with the Court on May 27,

3. In accordance with the Court's December 15, 2015 Order, summary judgment is due May 25, 2016. *See id.*

4. In the event this matter is not resolved at mediation on May 27, 2016, Defendant respectfully requests an extension of time to move for summary judgment.

WHEREFORE, for the foregoing reasons, Defendant respectfully requests that the Court issue an Order extending the time within which Defendant may move for summary judgment to June 27, 2016.

A proposed Order is attached.

Respectfully submitted,

DAVID J. HICKTON  
United States Attorney

s/ Jennifer R. Andrade  
JENNIFER R. ANDRADE  
Assistant U.S. Attorney  
Western District of PA  
700 Grant Street, Suite 4000  
Pittsburgh, PA 15219  
*Counsel for Defendant*

Document [35]

District Court

Fraudulent document of Status Hearing

Entered on June 6, 2016

Backdated for May 27, 2016

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PAUL PECINA, )  
Plaintiff, )  
v. ) 2:15cv264  
ROBERT A. MCDONALD, Secretary, ) Electronic Filing  
United States Department of Veteran Affairs, )  
Defendant. )

**STATUS CONFERENCE**  
**Before Judge David Stewart Cercone**

Appear for Plaintiff: Joel S. Sansone, Esquire; Massimo A. Terzigni, Esquire  
Appear for Defendant: Jennifer Andrade, Esquire  
Hearing date: 5/27/16  
Hearing begun: 10:00 a.m.  
Hearing concluded: 4:20 p.m.  
Stenographer: None  
Clerk/Deputy Clerk: Mark W. Mohney

REMARKS: The Clerk met with counsel and their principals to explore avenues for resolution of the parties' dispute. The parties were able to reach an amicable resolution, the material terms of which were disclosed to the court. The parties will file a Rule 41(a) stipulation of dismissal in due course.

[11]

Document [33]  
District Court  
Stipulation of Dismissal with prejudice

Dated June 2, 2016

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

**STIPULATION OF DISMISSAL WITH PREJUDICE**

Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, it is hereby stipulated and agreed to by and between the respective parties that the above-captioned case be dismissed with prejudice, each party to bear its own costs, and the Court may enter an Order accordingly, notice by the Clerk being hereby waived.

~~JOEL S. SANSONE  
MASSIMO A. TERZIGNI~~  
*Counsel for Plaintiff*

DAVID J. HICKTON  
United States Attorney

JENNIFER R. ANDRADE  
Assistant U.S. Attorney  
*Counsel for Defendant*

## **ORDER**

AND NOW, to wit, this \_\_\_\_\_ day of \_\_\_\_\_, 2016, it is ORDERED that the above-captioned civil action be dismissed with prejudice, each party to bear their own costs.

UNITED STATES DISTRICT JUDGE

Document [34]

**ORDER**

District Court dismiss case with prejudice

Dated June 6, 2016

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PAUL PECINA, )  
Plaintiff, )  
v. ) Civil Action No. 15-264  
ROBERT A. McDONALD, SECRETARY, )  
UNITED STATES DEPARTMENT OF )  
VETERANS AFFAIRS, )  
Defendant. )  
Judge David S. Cercone

## **STIPULATION OF DISMISSAL WITH PREJUDICE**

Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, it is hereby stipulated and agreed to by and between the respective parties that the above-captioned case be dismissed with prejudice, each party to bear its own costs, and the Court may enter an Order accordingly, notice by the Clerk being hereby waived.

DAVID J. HICKTON  
United States Attorney

~~JOEL S. SANSONE  
MASSIMO A. TERZIGNI  
Counsel for Plaintiff~~

JENNIFER R. ANDRADE  
Assistant U.S. Attorney  
*Counsel for Defendant*

## ORDER

AND NOW, to wit, this 3rd day of June, 2016, it is ORDERED that the above-captioned civil action be dismissed with prejudice, each party to bear their own costs.

s/David Stewart Cercone  
UNITED STATES DISTRICT JUDGE