

APPENDIX TO THE PETITION FOR A  
WRIT OF CERTIORARI

TABLE OF CONTENTS

Arizona Supreme Court-----	30
Court of Appeals-----	31-39
Superior Court-----	40-76

Robert Britinel                      Supreme Court  
    State of Arizona  
Chief justice                                      Tracy K Lindeman  
    Clerk of the court  
February 23, 2023

RE: DAVID-RYNN at al v  
      UHS OF PHOENIX  
      et al Arizona Supreme  
      Court No. CV-22-  
      0251-PR  
      Court of Appeals, Division One No. 1 CA-CV 21-  
      0605  
      Maricopa County Superior Court No. CV2C2D-  
      094244

GREETINGS:

The following action was taken by the Supreme Court  
of the State of Arizona on February 23, 2023, in  
regard to the above-referenced cause:

ORDERED: Appellants Motion to Amend Petition for  
Review = GRANTED.

FURTHER ORDERED: Petition for Review = DENIED.

A panel composed of Vice Chief justice Timmer, Justice  
Lopez, Justice Beene and Justice King participated in the  
determination of this matter.

Tracie K. Lindeman, Clerk

IN THE  
ARIZONA COURT OF APPEALS  
DIVISION ONE  
RICHARD DAVID-RYNN, et at, *Plaintiffs/Appellants*,  
V.  
UHS OF PHOENLY, LLC, et at.. *Defendants/Appellees*.

No. 1 CA-CV 21-.0605  
FILED 9-15-2022

Appeal from the Superior Court in Maricopa County

No. CV2020-094244

The Honorable Peter A. Thompson, Judge

AFFIRMED

DAVID-RYNN, et al. v. UHS OF PHOENIX, et al.  
Decision of the Court

## MEMORANDUM DECISION

Judge Cynthia J. Bailey delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Vice Chief judge David B. Gass joined.

BAILE Y, Judge:

Plaintiffs Richard Rytm and Gelliana David-Rynn, and their children Mathew and Marcella (collectively, "Rynn"), appeal the superior court's judgments dismissing their complaint against the State of Arizona, the Department of Child Safety ("DCS"), the Department of Health Semices ("OHS") (collectively, the State), and healthcare providers VHS of Phoenix, LLC d/b/a Quail Run Behavioral Health ("Quail Run"), La Emmen Empact-SPC ("Empact"), and Devereux. Rynn also appeals the denial of their post-judgment motions. For the following reasons, we affirm.

### FACTS AND PROCEDURAL HISTORY

This case is Rynn's second lawsuit arising from treatment Marcella received from inpatient behavioral health facilities, including treatment rendered during a dependency proceeding while Marcella was in DC:S care. The factual, background of the dependency case is outlined in *Richard R. v. DC.9*, 2 CA-JV 2017-0165, 2013 WL 718932 (Ariz. App. Feb. 6, 2018) (mem. decision), and *Richard .R. v. /XS*, 2 CA-JV 2021-0141, 2022 WL 1087332 (Ariz. App. Apr. 12, 2022) (mem. decision). The first lawsuit, filed in January 2018, was removed to the federal district court, which dismissed the case with prejudice as to all defendants, including the State, Quail Run,

and Empact ("the 2018 litigation"). Rynn did not appeal the 2018 final judgment.

In July 2020, Rynn filed this case, again in Arizona superior court. As amended in August 2020, the complaint in this case again alleges that while Marcella was in art inpatient treatment program in April 2017, Quail Run and Empact physically and emotionally abused her, forcibly medicated her, and made false reports prompting DS to take custody of her. The amended complaint also alleges Quail Run, Empact, and the State made false statements to law enforcement, falsified medical records, and threatened Rynn's family until Marcella was returned to the family's care in June 2018. Rynn's claims for relief included, *inter alio*: defamation, assault, battery, involuntary treatment, child abuse and neglect, emotional distress, and racketeering.

114 Although the State and Rynn stipulated to the filing of a second amended complaint, no other defendants did. In the second amended complaint, Rynn added several new defendants, including Devereux, and alleged Devereux employees abused Marcella during her stay at that facility and made false reports to DG.

115 The superior court granted the defendants motions to dismiss, issued final judgments pursuant to Arizona Rule of Civil Procedure 54(4) and denied Rynn's post-judgment motions for a new trial and relief from judgment, see Ariz. R. Civ. P. 59(a)(1)(D), 60(b)(3). We have jurisdiction over Ryan's timely appeal under Article 6, Section 9, of the Arizona Constitution and Arizona

Revised Statutes ("ARS.") sections 12420.21(A)(1) and 12-2101(A)(1).

#### DISCUSSION

We review *de novo* the grant of a motion to dismiss for failure to state a claim, *ax v. Police ex rel. Cnty. of kfaricopa*, 251 Ariz. 302, 304, f (2021); and questions at law, such as the claim-preclusive effect of a prior judgment, *Howell v. Hodap*, 221 Ariz. 543, 346, 1: 17 (App. 2009). To begin, Rynn's opening brief does not advance a meaningful argument watt supporting reasons or citations to the record or case law. *See* ARCAP 1 1(a)(7)(A). Although we could find Rynn waived the appeal on this basis. *see I.W. a Dep't of Child Safirty*, 252 Ariz. 184, 188, 1111 (App. 2021) (citations omitted), we decline to apply waiver and address the merits of Rynn's argument that the superior court improperly granted the defendants' motions to dismiss.

1. Claim Preclusion

19 Rynn argues the superior court erred in finding the claims against Quail Run, Empact, and the State were precluded by the 2018 litigation's dismissal with prejudice. Rynn contends the previous suit did not involve the same claims or parties.

510 Federal law dictates the preclusive effect of a prior federal judgment. *See, e.g., Sontek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 507 (2001). Claim preclusion bars a claim when the prior litigation "(1) involved the same 'claim' or cause of action as the later suit, (2) reached a final judgment on the merits, and (3) involved identical parties or privies." *Howell*, 221 Ariz. at 546, ¶ 17 (citing *Alma v. Litton Electro-Optical Sys.*, 430 F.3d 985, 987 (9th Cir. 2005)). The same claim means the two suits "arise from 'the same transactional nucleus of facts.'" *Id.* at 547, ¶ 19 (quoting *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1078 (9th Cir. 2003)).

511 True the 2018 litigation advanced different legal theories, including "interference with parent/child relational interest," intentional infliction of emotional distress, wrongful imprisonment, "violation of civil rights" under 42 U.S.C. § 1983, and negligence. But the complaint here arose from the same operative facts and the same alleged harm; namely, Marcella's removal from the Rynn home and her treatment at behavioral health facilities in April 2017. The 2018 litigation involved the same parties, including defendants Empact, Quail Run, the State, and plaintiff Marcella Rynn "by her next friend and parent Richard Rynn." And the federal court's dismissal with prejudice was a final adjudication on

the merits and resulted in the entry of a final judgment. "f he superior court did not err in applytng claim preclusion and dismissing Ryntis complaint as to Quail Run, Empact, and the State.

II. Statute of Limitations

512 Rynn argues the superior court erred in finding the statute of limitations barred Ryan's claims, filed in July 2020, for harms that occurred between April 2017 and June 2018. *See* A.R.S. § 12-542 (stating the statute of limitations for tort claims is two years); A.R.S. § 12-821 (stating all claims against public entities must be brought within one year).

Rynn argues the alleged harm was continuing because in 2020 DCS took physical custody of Mathew Rynn.

513 A tort claim "based on a series of closely related wrongful ads," may be treated as a continuing harm,. particularly where "any one of



[the 'wrongful acts] likely was insufficient by itself to support the claim." *Watkins v. Arpaio*, 239 Ariz. 168, 171-72, C 9, 115 (App. 2016); *see also Floyd v. Donahue*, 186 Ariz. 409, 413 (App. 1996) (holding that the continuing-tort doctrine did not apply because "each claimed act is a separate assault causing separate as well as cumulative injury"). But even if Rynn's allegation that DS wrongly took physical custody of another child could support a claim warranting relief, such an allegation would not extend the statute of limitations because it is not part of a series of closely related wrongful acts. *See Watkins*, 239 Ariz. at 172, 1 9; *Floyd*, 186 Ariz. at 413.

¶114 Although Rynn is correct the statute of limitations on Marcella's damages claims was tolled until she turned eighteen in November 2018, *see* A.R.S. § 12-502, as explained above, she elected to press her claims against Empact, Quail Run, and the State in the 2018 litigation. Those claims are precluded by the 2018 litigation's dismissal and the resulting entry of a final judgment.

115 Marcella's claims against Devereux, even if timely filed, were also properly dismissed. The superior court granted Devereux's motion to dismiss after Rynn failed to respond to Devereux's arguments that Rynn did not serve a summons signed and stamped by the clerk of court, *see* Ariz. R. Civ. P. 4(a), and did not seek leave of court or the consent of all parties before filing the second amended complaint, *see* Ariz. R. Civ. P. 15(a)(2). The superior court found Rynn's responsive filing failed to answer those arguments, and thus Rynn consented to the superior

court granting the motion to dismiss. See Ariz. R. Civ. P. 7.1(b)(1).

<sup>111</sup>16 When the non-movant fails to respond to a motion, the superior court has discretion to grant the motion summarily See Ariz. R. Civ. P. 7.1(b)(1); *Strategic Dev. & Constr., Inc. v. 7th & Roosevelt Partners, LLC*, 224 Ariz. 60,65, 1117 (App. 2010). Here, Rynn filed a response but failed to address Devereux's arguments. The superior court did not abuse its discretion in granting the motion, and even if Rynn had not failed to address Devereux's arguments, Devereux would be entitled to dismissal. Rynn had to serve Devereux with, among other things, a summons, signed and stamped by the clerk of court, see Ariz. R. Civ. P. 4(a), and failed to do so. In fact, Rynn did not file a summons until after the court dismissed the case. That summons was dated nearly a month after the superior court's dismissal, meaning it could not properly have been served on Devereux months earlier. And Rpm's second amended complaint was filed without consent from all parties and without seeking leave of court to amend. The superior court did not err in dismissing Rynn's claims against Devereux.

*See* Ariz. R. Civ. P. 12(b)(4) (stating insufficient process is grounds for dismissing a complaint).

§17 For these reasons, we affirm the superior courts; dismissal of Ryrui's complaint. Although Rynn appealed the denial of the post-judgment motions, Rynn makes no arguments about those motions in the opening brief and has thus waived them. *See LW.*, 252 Ariz. at 188, § 11.

#### CONCLUSION

§18 We affirm the superior court's judgments granting the motions to dismiss and orders denying Rpm's post-judgment motions.

Supreme Court State of Arizona February 23, 2023  
RE: DAVID-RYNN et al v UHS OF PHOENIX et al  
Arizona Supreme Court No. CV-22-0251-PR  
Court of Appeals, Division One No. 1 CA-CV 21-0605  
Maricopa County Superior Court No. CV2020-094244  
GREETINGS: The following action was taken by the Supreme Court of the State of Arizona on February 23, 2023, in regard to the above-referenced cause:  
ORDERED: Appellants Motion to Amend Petition for Review = GRANTED.  
FURTHER ORDERED: Petition for Review = DENIED.

A panel composed of Vice Chief Justice Timmer, Justice Lopez, Justice Beene and Justice King participated in the determination of this matter.

Tracie K. Lindeman, Clerk

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY Filed 4/19/2021  
CV 2020-094244 04/13/2021  
Docket Code 023 Form V000A  
Honorable David J. Palmer  
Richard David-Rynn  
v.  
UHS of Phoenix L L C, et al.

MINUTE ENTRY

Plaintiffs Richard Rynn and Gelliana David-Rynn, husband and wife, Mathew Rynn and Marcella Rynn as individuals filed their Complaint in this matter on July 23, 2020. Prior to the filing of any Answer or Responsive Pleading by any party in this matter, Plaintiffs filed their "Amended Complaint" on August 6, 2020. Plaintiffs had the right to file that Amended Complaint without seeking leave from the Court to do so, pursuant to Rule 15(a)(1), Ariz. R. Civ. P. Thereafter, Plaintiffs and Counsel for Defendants State of Arizona, Arizona Department of Health Services, ("DHS") and Arizona Department of Child Safety's ("DCS") (collectively, "State Defendants") entered into and filed a stipulation on September 10, 2020. In that stipulation, State Defendants agreed to allow Plaintiffs 45 days to file their intended SAC, and the State Defendants would have twenty days after the filing of the SAC to file its Responsive Pleading to the same. The reason stated by those two parties for the extension for the State Defendants' Answer was that "it makes little sense for the State Defendants to answer a complaint that will not be the operative complaint. . . ."

The Court's file does not show that any other Defendants agreed to allow Plaintiffs to file their Second Amended Complaint, nor did Plaintiffs did not seek Leave from the Court to file their Second Amended Complaint in compliance with Rule 15(1), (2). Plaintiffs filed their Second Amended Complaint ("SAC") on October 25, 2020, which alleges the same causes of action the August 6, 2020 Amended Complaint, but apparently included different facts to support those claims. As to the State Defendants, the SAC is the operative complaint. In Response to the SAC, State Defendants filed their Motion to Dismiss on December 15, 2020, which is at issue in this ruling. On January 31, 2021, Plaintiffs sought to add additional Defendants, when they filed two pleadings, specifically, (1) "Plaintiff(s) Rynn Motion for Leave to Amend Complaint and Join Additional Parties, Exhibit 12, Exhibit 13 Amended Complaint for Damages, " (sic.) and (2) "Plaintiffs Support for Motion to Amend Complaint and Add Additional Parties and Plaintiff(s) Objection to State Defendants Response and Motion to Strike Plaintiff(s) Motion for Leave to Amend Exhibit 11 Doug Ducey" (sic). SUPERIOR COURT OF ARIZONA MARICOPA COUNTY CV 2020-094244 04/13/2021 Docket Code 023 Form V000A Page 3 The sum and substance of those pleadings is that Plaintiffs wish to add Governor Doug Ducey, former DCS Director Greg McKay, and former DHS Director Cara Christ as Defendants. State Defendants filed a Response to those motions, asking the Court to dismiss those Motions to Amend as being "futile." The Court is issuing rulings on that Motion separately. The Court has reviewed and considered the State Defendants' December 15, 2020 Motion to Dismiss Plaintiffs'

August 6, 2020 Amended Complaint. In their Motion to Dismiss, the State Defendants argue that regardless of any procedural rules followed or not followed by Plaintiff, that the SAC is the operative pleading before the Court. Therefore, State Defendants ask the Court to dismiss it as well. Plaintiffs did file a pleading an apparent Response on December 28, 2020 entitled: "Plaintiff(s) Exhibit 6 New Evidence, DCS 2020 Report, DCS Auth. Drugs Without Court Ord. Etc.; Plaintiffs Objection to State Defendants Motion to State Defendants Motion to Dismiss and Plaintiffs Support for Second Amended Complaint to Charge State Defendants for Damages." The Court is treating that pleading as a Response to the State Defendants' Motion to Dismiss. State Defendants did file a Reply to that Response on January 11, 2020. Plaintiffs sought relief in this case under several different theories that are each spelled out in their Amended Complaint and SAC. Those theories are, (1) Defamation – Slander and Libel; (2) False Light; (3) Assault and Battery, (citing Criminal Assault and Aggravated Assault Statutes); (4) Involuntary Treatment; (5) Child Abuse and Neglect of Child; (6) Emotional Distress; (7) Abduction of Child; (8) Punitive Damages; (9) Racketeering Claim pursuant to alleged violations of Arizona Racketeer Influenced Corrupt Organization ("RICO") statutes, A.R.S. 13-2314-04(A); (10) Negligence; SUPERIOR COURT OF ARIZONA MARICOPA COUNTY CV 2020-094244 04/13/2021 Docket Code 023 Form V000A Page 4 (11) Sexual Abuse. Plaintiffs also list verbatim in their Amended Complaint in a stand-alone paragraph, the statutory language of "42 U.S.C. Section 1983," but do not allege what if any acts constituted any violations of that provision. In their SAC, the Plaintiffs made claims

under those exact same theories, but added additional/different facts in support of those theories, and named additional parties Defendant. The parties added were State of Arizona, "Chandler Hospital," Devereux, Maricopa Unified School District, Aurora, Day Starz Group Home, and Tamla Alexander. As indicated above, the State Defendant did not object to the filing of the SAC itself, but clearly take issue with the legal viability of the claims made therein.

FACTUAL BACKGROUND Plaintiff Marcella Rynn is the minor child of plaintiffs Richard and Gelliana David-Rynn, and the sister of Plaintiff Mathew Rynn. As pointed out by the State Defendants, due to a mental health crisis, Marcella received voluntary behavioral health treatment at a facility operated by from Quail Run Behavioral Health's, ("Quail Run"), with services provided by Empact-SPC. She eventually went into the physical care and custody of the Arizona Department of Child Safety, ("DCS") and Arizona State Department of Health Services, ("DHS"), after DCS initiated Dependency proceedings based initially on information received from Quail Run and EmpactSPC. She resided in several different facilities until the dependency proceedings were concluded by order of the Maricopa County Juvenile Court in October of 2018. Marcella turned 18 on November 15, 2018. Plaintiffs' claims against the State Defendants are based on allegations that, inter alia, DCS took Marcella from their physical custody without parental consent; that DCS subjected Marcella to physical, emotional and sexual abuse; that they forcibly and unnecessarily medicated her, denied her dental and medical treatment and school, while at the same time, threatening, harassing and interrogating her family.

They further allege that the provider defendants gave false information to DCS, which perpetuated false information in court and other proceedings. They further allege that Marcella and the Rynn family were targeted by all of the Defendants as part of their underlying goal and SUPERIOR COURT OF ARIZONA MARICOPA COUNTY CV 2020-094244 04/13/2021 Docket Code 023 Form V000A Page 5 purpose of Defendants' profiting from the receipt of funds from Social Security and insurance companies connected with the provision of these services. LEGAL PROCEDURAL HISTORY Plaintiffs filed their first Complaint based upon the same allegations made against the State Defendants, as referred to above on January 4, 2018 in another division of this court in CV2018- 090016. Soon thereafter, that case was removed to the U.S. Federal District Court for the District of Arizona, and was numbered as CV-18-00414-PHX-JJT. Judge John J. Tuchi of the U.S. District Court dismissed all of the Counts in that case as to all Defendants, including the State Defendants, Empact and Quail Run Behavioral Health, with prejudice in a November 6, 2018 Order. In that case, Marcella was a Plaintiff, "by her next friend and parent Richard Rynn." The remaining Defendants were essentially and functionally the same as those in the instant case, with the same state agencies and agency heads named as Defendants. The factual allegations in that earlier case revolved around the removal of the child from the home by the State Defendants, including but not particularly limited to DCS, and the other Defendants who had involvement and input in that removal, such as Empact, Quail Run, etc. State Defendants raise six (6) different grounds as a basis for dismissal from the



lawsuit: (1) Plaintiffs' claims against the State Defendants are barred by the doctrine of Claim Preclusion, or Res Judicata, as an impermissible collateral attack on the Federal Court Judgment by virtue of the fact that their claims were previously and finally adjudicated on their merits in the previous case which originated in this Court as CV2018-090016; (2) Virtually all of Plaintiffs' claims were filed after the expiration of the applicable one or two year statutes of limitation that apply subsequent to the events that give rise to Plaintiffs' claims; (3) Plaintiff failed to comply with the Notice of Claims Statute, A.R.S. §12-821.01; (4) The State has immunity from legal action (5) Department of Health Services and Department of Child Safety are not proper parties before the Court, as they are nonjural entities, and have not been properly served. (6) The State and State agencies cannot be sued under 42 U.S.C. §1983, as they are not "persons;" (7) Punitive Damage Claims against the State of State Agencies is legally impermissible; (8) That Plaintiffs' Racketeering Claim should, at a minimum, be stricken, until Plaintiffs comply with the requirements of A.R.S. 13-2314.04, which requires that a person SUPERIOR COURT OF ARIZONA MARICOPA COUNTY CV 2020-094244 04/13/2021 Docket Code 023 Form V000A Page 6 bringing a private racketeering claim give appropriate notice to the Attorney General's office, which inarguably did not occur in this case. CLAIM PRECLUSION/RES JUDICATA Claim preclusion is a legal principle that prevents a party from asserting a cause of action that has previously been subject to a final adjudication on the merits. It is important to note that it was a federal district court's judgment that dismissed the previous course. Therefore, "federal law

dictates the preclusive effect of a federal judgment. In re Gen. Adjudication of All Rights to Use Water in Gila River Sys. and Source, 212 Ariz. 64, 69, 127 P.3d. 882, 887 (2006). The elements needed to establish Res Judicata are: (1) An identity of claims in the previous suit in which a judgment was entered and the current litigation; (2) A final adjudication on the merits in the previous litigation; (3) Identical parties or privity between the parties in the two lawsuits. Id. at 69, 127 P.3d at 887. Those elements are discussed below. 1- Identity of Claims The Arizona Court of Appeals discussed this issue in Howell v. Hodapp, 221 Ariz. 543, 212 P. 3d 881 (App. 2009). In doing so, the Court relied on several opinions from the Ninth Circuit in concluding that "identity of claims exists when two suits arise from the same transactional nucleus of facts. Id. at 547, 885, quoting Tahoe-Sierra Pres. Council Inc., v. Tahoe Reg'l Planning Agency, 322 F.3d 1064, 1078 (9th Cir. 2003). The Court also found "the common nucleus criterion to be outcome determinative." Id., quoting Mpoyo v. Litton Electro-Optical Sys. 430 F.3d 985, 987; "listing cases with the same nucleus of operative facts being the exclusive factor in determining whether a second suit arises out of the same claim." Howell quoting Int'l Union v. Karr, 994 F.2d 1426, 1429-30 9th Cir. 1993). When claim preclusion applies, as is does here, it "bars litigation on all claims that were raised, or could have been raised in the prior action." Nelson v. City of Irvine, 143 F.3d 1196, 1200 (9th Cir. 1998) quoted in Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 713 (9th Cir. 2001). (Emphasis added.) SUPERIOR COURT OF ARIZONA MARICOPA COUNTY CV 2020-094244 04/13/2021 Docket Code 023 Form V000A Page 7

Moreover, federal courts apply the Restatement (Second) of Judgments on questions regarding claim preclusion. *B&B Hardware Inc. v. Hargis Indus. Inc.*, 575 U.S. 138, 148 (2015). On this topic, the Restatement of Judgments provides, *inter alia*, as follows: (1) When a loss resulting from injury to a person may be recovered by either the injured person or another person: .... (b) A judgment for or against any such other person precludes recovery by or on behalf of the injured person of any loss that could have been recovered in the first action. Restatement (Second) of Judgments §48 (1982). There is no question that the operative facts at issue in CV2018-090016, which became CV-18-00414-PHX-JTT are the exact same operative facts at issue in this instant case. Clearly, there is identity of claims between the two cases. **THE COURT FINDS** that there is identity of the claims between the instant case, and the previous case involving these same facts, that was dismissed on its merits by Judge Tuchi in CV18-00414-PHX-JTT after removal to Federal Court. 2- Dismissal in the federal case was a Final Judgment on the Merits It is clear that Judge Tuchi's order dismissing Plaintiff's claims against all parties, including the State defendants, with prejudice, was a final judgment on the merits in that case. A dismissal with prejudice pursuant to a Rule 12(b)(6) motion, as occurred in the prior federal case involving these facts here, is a dismissal on the merits. **THE COURT FINDS** that that there has been a final judgment on the merits dismissing the action in the prior federal case. 3- Identity or Privity of Parties In the instant litigation, the Rynns apparently included their entire immediate family as Plaintiffs. In the previous matter, the named Plaintiffs were Marcella,

who was a minor "by and through her next friend and parent Richard Rynn. Richard was also a Plaintiff on his own behalf. In the instant matter, Richard's wife Gelliana, and Marcelle's brother Mathew were also named. Plaintiffs argue that since the parties Plaintiff in the instant case are not identical to those in the prior case, there is no "identity or privity of parties. Defendants disagree with that notion, as does the Court. SUPERIOR COURT OF ARIZONA MARICOPA COUNTY CV 2020-094244 04/13/2021 Docket Code 023 Form V000A Page 8 Moreover, as to the Defendants at issue, in the prior case, the Defendants were the then-director of the Arizona Department of Child Safety, and the then-director of the Arizona Department of Health Services, the same state agencies named in this matter. Additionally, it names virtually the exact same agencies Plaintiff is suing now. Relevant case law provides that "courts are no longer bound by rigid definitions of the parties or their privies for purpose of applying collateral estoppel or res judicata." Jackson v. Hayakawa, 605 F.2d 1121, 1126 (9th Cir. 1979). In this case, the interests of Ms. Rynn and son Mathew, and the Rynn family, given the nature of the claims being made were adequately represented by their husband and Father as he pursued those claims on behalf of himself and Marcella in the prior case. In making these findings, the Court looks to the holdings of Pedrina v. Chun, 97 F.3d 1296 (9th Cir. 1996), and Hall v. Lalli 194 Ariz. 54, 977 P.2d 776 (1999). Those cases address the issue of claim preclusion/res judicata, holding, inter alia, that privity between a party and non-party requires both a "substantial identity of interests" and a "working or functional relationship" that would protect the

interests of the non-party in the litigation. "Finding privity between a party and a non-party requires both a 'substantial identity of interest' and a 'working or functional relationship' in which the interests of the non-party are presented and protected by the party in the litigation." United States v. ITT Rayonier, Inc., 627 F.2d 996, 1003 (9th Cir. 1980). Based upon the Court's review of the arguments made by the parties, and the relevant case law cited by the Defendants, THE COURT FINDS that the familial relationships between the members of the Rynn family provided those protections to those family members not specifically named as parties in the initial litigation. Therefore, THE COURT FURTHER FINDS there to be Identity and Privity of the parties in both actions; and, THE COURT FURTHER FINDS that Judge Tocchi's order finally dismissing that case, was a final judgment in that matter. SUPERIOR COURT OF ARIZONA MARICOPA COUNTY CV 2020-094244 04/13/2021 Docket Code 023 Form V000A Page 9 Given the foregoing analysis, THE COURT FINDS that the doctrines of Res Judicata and Claim Preclusion apply. THEREFORE, Plaintiff's claims against the State Defendants, are therefore precluded against the State Defendants as named in the Complaint, Amended Complaint and Second Amended Complaint in this matter. IT IS ORDERED dismissing all of Plaintiff's Claims against the State Defendants, as the principles of Res Judicata and apply and preclude Plaintiff's claims in their entirety. STATUTES OF LIMITATION The State Defendants further argue as an alternative and/or additional ground for dismissal of Counts I-VII of Plaintiffs Richard, Gelliana and Mathew's1 purported causes of action against the State

Defendants, that Plaintiffs' Complaint was filed beyond the expiration of the Statutes of Limitation for virtually of those causes of action. State Defendants specifically allege that A.R.S. §12-821, the Statute of Limitations relative to any actions brought against public entities such as the State Defendants here, requires that such actions "shall be brought within one year after the cause of action accrues here. The Complaint alleges causes of action enumerated in Counts I-VII alleging Civil rights violations, Defamation, Assault and Battery, Medical Battery, Intentional Infliction of Emotional Distress, False Imprisonment and Negligence are all subject to either one-year or two-year statutes of limitation. The State Defendants point out that Marcella was returned to her parents and family's care in June of 2018. Yet Plaintiffs' Complaint was not filed until July 23, 2020, well over two years after her return and her 18th birthday. They also state that all of the relevant actions taken by the State Defendants in this case occurred in 2017 and 2018. Moreover, the Plaintiffs filed a lawsuit based upon these same facts against the same parties, making the same claims in January of 2018! Clearly, Plaintiffs knew any possible claim would have accrued by that point.

1 As noted by the State Defendants in their Motion to dismiss, the Statute of Limitations as it applies to Marcella is tolled during her minority under A.R.S. §12-502 and did not begin to run until she turned 18.

SUPERIOR COURT OF ARIZONA MARICOPA  
COUNTY CV 2020-094244 04/13/2021

Docket Code 023 Form V000A Page 10

That prior lawsuit was dismissed in November of 2018. There is no possible calculation of time, which would enable a reasonably intelligent argument to be made that Plaintiff's claims against the State Defendants were filed within the one and two year Statutes of Limitations applicable to from from the date of their accrual. THE COURT THEREFORE FINDS, that in addition to the grounds of Claim Preclusion as to all counts noted above, that Plaintiff's claims in Counts I-VII against the State Defendants were not filed on a timely basis, and within the time requirements of A.R.S. §12-821. Therefore, IT IS ORDERED dismissing Plaintiff's Richard, Gelliana and Mathew's claims named in Counts I-VII against Arizona Department of Child Safety, and Arizona Department of Health Services. "NOTICE OF CLAIM" STATUTE

Additionally and alternatively, State defendants argue that Plaintiff's claims against them as governmental entities must be dismissed due to Plaintiffs' failure to comply with Notice of Claim requirement. In suing the named State Defendants, the Plaintiffs are obviously suing a governmental entity. Before a Plaintiff may file suit against such a governmental entity, Plaintiffs must file a written Notice of Claim, in compliance with A.R.S. §12-821.01, which states: A. Persons who have claims against a public entity, public school or a public employee shall file claims with the person or persons authorized to accept service for the public entity, public school or public employee as set forth in the Arizona rules of civil procedure within one hundred eighty days

after the cause of action accrues. The claim shall contain facts sufficient to permit the public entity, public school or public employee to understand the basis on which liability is claimed. The claim shall also contain a specific amount for which the claim can be settled and the facts supporting that amount. Any claim that is not filed within one hundred eighty days after the cause of action accrues is barred and no action may be maintained thereon. B. For the purposes of this section, a cause of action accrues when the damaged party realizes he or she has been damaged and knows or reasonably should know the cause, source, act, event, instrumentality or condition that caused or contributed to the damage. A.R.S. § 12-821.01 (Emphasis added). SUPERIOR COURT OF ARIZONA MARICOPA COUNTY CV 2020-094244 04/13/2021 Docket Code 023 Form V000A Page 11 The factual and procedural time line discussed above is critical to the Notice of Claim analysis. Plaintiffs indicated they filed a Notice of Claim with the Arizona Attorney General's office on August 18, 2020. However, both Defendant agencies state they never received a Notice of Claim. However, even assuming arguendo, they had received such a notice there, is no possible or logical way State Defendants would have received it on a timely basis. Given the definition stated above for the purposes of Ariz. Rev. Stat. Ann. § 12-821.01(B), Plaintiffs would have "realized [they had] been damaged and [knew] or reasonably should [have known] the cause, source, act, event, instrumentality or condition that caused or contributed to the damage", well over 180 days, and in fact many months and years prior to August 18, 2020. As noted above, the prior lawsuit, based on these same facts was dismissed on June 20, 2018, over two years



prior to the Plaintiffs' filing of their Notice of Claim, which was not properly served<sup>2</sup> on the State Defendants. Given the foregoing, THE COURT FINDS that Plaintiffs failed to comply with the Notice of Claim provisions of A.R.S. § 12-821.01. Therefore, dismissal of Plaintiffs' Claims against the State Defendants, with prejudice is appropriate, and in fact required. Therefore, IT IS ORDERED dismissing all of Plaintiffs' claims against Defendants State of Arizona, Arizona Department of Health Services, and Arizona Department of Child Safety. QUALIFIED IMMUNITY As another an alternative, and/or additional ground for dismissal of the State Defendants from Plaintiffs' case, State Defendants allege that pursuant to relevant Arizona case law, that they and their employees are subject to "qualified immunity" from this legal action. In suing the named State Defendants, the Plaintiffs are suing a governmental entity. State Defendants argue that the principle of Qualified Immunity is applicable to them as such entities. Qualified Immunity is a legal doctrine which protects government employees from liability for discretionary acts taken in good faith. See, Chamberlain v. Mathis, 151 Ariz. 551, 729 P.2d 905 (1986).

<sup>2</sup> The Court's resolution of the issue the notice of claim is not dependent on the issue of whether service properly took place; the fact is even if it had been served on that date, it would have been late by almost 2 years!

SUPERIOR COURT OF ARIZONA MARICOPA  
COUNTY CV 2020-094244 04/13/2021 Docket Code 023  
Form V000A Page 12 While the Arizona Supreme  
Court in Chamberlain discusses the principle in  
general terms, the Court in Carroll v. Robinson, 178  
Ariz. 453, 874 P.2d 1010 (App. 1994) applies the  
doctrine to state employees in the child welfare context.  
In order for a child welfare worker to be liable for her  
actions, the worker must "know or should have known  
that she was acting in violation of established law or in  
reckless disregard of whether her activities would  
deprive another person of her rights." Spooner v. City  
of Phoenix, 246 Ariz. 119, 124, 435 P.3d 462, 467 (App.  
2019). Here, the Plaintiffs have named no DCS  
employees as Defendants and made scant reference to  
any specific employees or their actions. Their action is  
premised on the actions of "the State" when Marcella  
was taken into the care of DCS. However, there is no  
allegation that any DCS employee acted in in violation  
of established law or in reckless disregard of whether  
her activities would deprive another person of her  
rights. Thus, Plaintiff has failed to make any  
allegations that would negate the State's immunity  
from legal action such as that brought here. THE  
COURT THEREFORE FINDS that the State  
Defendants are immune from the legal action brought  
in this matter, pursuant to the holdings in the cases  
cited above. STATE DEFENDANTS ARE NON-JURAL  
ENTITIES As an alternative and/or additional legal  
ground for dismissal, the State Defendants allege that  
as "non-jural" entities, they are not statutorily  
empowered to sue or be sued, or subject to legal action.  
Their argument in that regard, is based on the court's  
holding in Braillard v. Maricopa Cty., 224 Ariz. 481,

232 P.3d 1263 (App. 2010) which states exactly that. Plaintiffs' Response fails to substantively address the issue. Based on the arguments made and authorities cited in State Defendants' Motion to Dismiss, and Reply to Plaintiffs Response, THE COURT FINDS that the State Defendants are non-jural entities, and are therefore not amenable to lawsuits such as the instant matter. Therefore, IT IS ORDERED dismissing the Plaintiffs' claims against the State Defendants, as they are "non-jural" entities. 42 U.S.C. 1983 CLAIM SUPERIOR COURT OF ARIZONA MARICOPA COUNTY CV 2020-094244 04/13/2021 Docket Code 023 Form V000A Page 13 Relatedly, it is a settled principle of law that governmental entities such as the State Defendants are not "persons" for the purposes of maintaining a 42 U.S.C. §1983 action. Will v. Mich. Dep't of State Police, 491 U.S. 58 (1989). Thus, Plaintiffs cannot maintain a §1983 action against either DHS or DCS., or any State Defendant. Moreover, as indicated above, any claims under §1983 are barred by Res Judicata/Claim Preclusion. THE COURT FINDS that Plaintiffs claims against the State Defendants under 42 U.S.C. §1983 is legally barred pursuant to the legal authority cited above, and as stated in State Defendants' written pleadings. IT IS THEREFORE ORDERED DISMISSING any claim made by Plaintiffs against the State Defendants pursuant to 42 U.S.C. §1983. PUNITIVE DAMAGES Plaintiff seeks an award of punitive damages against the State Defendants based. Such an award is legally impermissible. "Neither a public entity nor a public employee acting within the scope of his employment is liable for punitive or exemplary damages." Ariz. Rev. Stat. Ann. § 12-820.04 THE COURT THEREFORE

FINDS, that Plaintiff is not entitled to an award of punitive damages as it pertains to either of the State Defendants, or any of their employees; IT IS THEREFORE ORDERED dismissing all claims for Punitive Damages made by Plaintiffs against the State Defendants. RACKETEERING CLAIMS Plaintiff's Racketeering claims were not filed or served compliant with A.R.S. 13-2314.04. Therefore, IT IS ORDERED striking Plaintiff's claims brought pursuant to Arizona's Civil RICO, without prejudice. Plaintiffs may re-allege these claims upon compliance with that statute. SUPERIOR COURT OF ARIZONA MARICOPA COUNTY CV 2020-094244 04/13/2021 Docket Code 023 Form V000A Page 14 PLAINTIFFS' AMENDED COMPLAINT AND SAC FAIL TO ALLEGE CLAIMS UPON WHICH RELIEF MAY BE GRANTED As an alternative and additional ground for dismissal of Plaintiff's claim against them, State Defendants argue that Plaintiff's Second Amended Complaint fails to adequately allege the nature and basis of their claims and thus does not give fair notice to the Defendants. As examples, State Defendants argue that: • Plaintiff's Assault and Intentional Infliction of Emotional Distress claim fails to allege that any employee of the State Defendants have personally injured, abused or assaulted Marcella, or placed her in apprehension of the same; • Plaintiff's Defamation and Invasion of Privacy Claims, Plaintiffs fail to allege that any state employees published to a third party, any false or defamatory communication, either knowing of its falsity or negligently failing to ascertain the truth or falsity of the communications; • Plaintiff's False Imprisonment/Abduction claims fail to state that the Plaintiffs Richard, Gelliana, or Mathew

were subject to any imprisonment, detention or confinement. Therefore the claims as to those Plaintiffs cannot be established; • Plaintiffs' Racketeering claim fails to state in any fashion other than conclusory, nondefinitive statements that the State Defendants conducted any actions for the purpose of financial gain. Based upon the foregoing analysis and findings, THE COURT FINDS that Plaintiffs' Complaint fails to state claims against the State Defendants upon which relief may be granted, pursuant to Rule 12(b)(c), upon which relieve may be granted on the following counts: • Assault and Intentional Infliction of Emotional Distress; • Defamation and Invasion of Privacy Claims; • False Imprisonment /Abduction; • Racketeering pursuant to the Arizona RICO statutes. IT IS THEREFORE ORDERED granting State Defendants' Motion to Dismiss those alleged causes of action pursuant to Rule 12(b)(6) analysis; IT IS FURTHER ORDERED dismissing the Counts alleging as to State Defendants: SUPERIOR COURT OF ARIZONA MARICOPA COUNTY CV 2020-094244 04/13/2021 Docket Code 023 Form V000A Page 15 • Assault and Intentional Infliction of Emotional Distress; • Defamation and Invasion of Privacy Claims; • False Imprisonment /Abduction. • Racketeering pursuant to the Arizona RICO statutes. Plaintiff has failed to adequately state claims under these theories upon which relief may be granted.

CV 2020-094244 Filed 4/19/2021  
SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY  
CLERK OF THE COURT K. Tiero Deputy  
HONORABLE David J. Palmer

RICHARD DAVID-RYNN, et al.  
v.  
U H S OF PHOENIX L L C, et al.

04/13/2021

MINUTE ENTRY

The Court has reviewed and considered Defendant La Frontera Empact-SPC's ("Empact") Motion to Strike or in the Alternative, Dismiss Plaintiffs' Amended Complaint. Defendants UHS of Phoenix, LLC, dba Quail Run Behavioral Health ("Quail Run"), filed a Joinder to Empact's Motion to Strike or in the Alternative Dismiss Plaintiffs Amended Complaint and the Reply thereto. By virtue of that joinder, Quail Run joins in and adopts as its own, Empact's Motion to Strike Plaintiff's Amended Complaint and its Reply to Plaintiff's Response. Plaintiffs did file a Response to the Motion to Strike/Dismiss, to which Empact, (and therefore Quail Run,) also filed a Reply. Plaintiffs sought relief in this case under several different theories spelled out in their Amended Complaint. Those theories include, inter alia, (1) Defamation – Slander and Libel; (2) False Light; (3) Assault and Battery, (citing Criminal Assault and Aggravated Assault Statutes); (4) Involuntary Treatment; (5) Child Abuse and Neglect of Child; (6) Emotional Distress; (7) Abduction of Child; (8) Punitive Damages; (9)

Racketeering Claim pursuant to alleged violations of Arizona Racketeer Influenced Corrupt Organization ("RICO") statutes, A.R.S. 13-2314-04(A); (10) Negligence; (11) Sexual Abuse.

**FACTUAL BACKGROUND** Plaintiff Marcella Rynn is the child of plaintiffs Richard and Gelliana David-Rynn, and the sister of Plaintiff Mathew Rynn. Previously, Marcella received voluntary behavioral health treatment and eventually went into the care of the Arizona Department of Child Safety, and Arizona State Department of Health Services (collectively "DCS" or "State Defendants"). Plaintiffs argue DCS took Marcella from their physical custody without consent. They further allege that DCS subjected Marcella to physical and emotional abuse, and forcibly and unnecessarily medicated her. Plaintiffs apparently allege that Empact, as well as Quail Run as contractors for services provided through DCS, engaged in actions in furtherance of the above-alleged tortious and illegal acts committed against the Plaintiffs. SUPERIOR COURT OF ARIZONA MARICOPA COUNTY CV 2020-094244 04/13/2021 Docket Code 019 Form V000A Page 3 Plaintiffs further allege that DCS and its service providers, including Empact, threatened them, and made false statement about them in medical records, in reports to law enforcement agencies.

#### **LEGAL PROCEDURAL HISTORY**

Plaintiffs filed their original Complaint based upon the Defendants' actions referred to above on January 4, 2018 in another division of this court in CV2018-090016. Soon thereafter, that case was removed to the U.S. Federal District Court for the District of Arizona,

and was numbered as CV-18-00414-PHX-JTT. The District Court dismissed the Counts in that case as to all Defendants, including Empact and Quail Run, with prejudice, in a November 6, 2018 Order issued by U.S. District Court Judge, the Honorable John J. Tuchi. In that case, Marcella was a Plaintiff, "by her next friend and parent Richard Rynn." The remaining Defendants were essentially and functionally the same as those in the instant case, with the same state agencies and agency heads named as Defendants. The factual allegations stated in that earlier revolved around the removal of the child from the home by the State of Arizona, through the named agencies, in particular DCS, those contracted to perform services such as Empact and Quail Run. In its Motion to Dismiss, Empact raised three grounds as a basis for dismissing it from this lawsuit: (1) Plaintiffs' claim against Empact is barred by the doctrine of Claim Preclusion, or Res Judicata, by virtue of the fact that his claims were previously and finally adjudicated on their merits by the Federal Court in the previous case referenced above; (2) The majority of Plaintiffs' claims were filed after the expiration of the one or two year statutes of limitation that apply subsequent to the events that give rise to Plaintiffs' claims; (3) That Plaintiffs' Racketeering Claim should at a minimum be stricken, until Plaintiffs comply with the requirements of A.R.S. 13-2314.04, which requires that a person bringing a private racketeering claim provision that requires CLAIM PRECLUSION/RES JUDICATA

Claim preclusion is a legal principle that prevents a party from asserting a cause of action that has previously been subject to a final adjudication on the



merits. Empact asserts that given SUPERIOR COURT OF ARIZONA MARICOPA COUNTY CV 2020-094244 04/13/2021 Docket Code 019 Form V000A Page 4 the federal district court's judgment previously issued in its favor, precludes this second 'bite at the apple' by Plaintiffs. The elements needed to establish the applicability of the doctrine of Res Judicata are: (1) An identity of claims in the previous suit in which a judgment was entered and the current litigation; (2) A final judgment on the merits in the previous litigation; (3) Identity or privity between the parties in the two lawsuits. 1- Identity of Claims The Arizona Court of Appeals discussed this issue in *Howell v. Hodapp*, 221 Ariz. 543, 212 P. 3d 881 (App. 2009). In doing so, the Court relied on several opinions from the Ninth Circuit in concluding that "identity of claims exists when two suits arise from the same transactional nucleus of facts." *Id.* at 547, 885, quoting *Tahoe-Sierra Pres. Council Inc., v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1078 (9th Cir. 2003). The Court also stated that "the common nucleus criterion to be outcome determinative." *Id.*, quoting *Mpoyo v. Litton ElectroOptical Sys.* 430 F.3d 985, 987; "listing cases with the same nucleus of operative facts being the exclusive factor in determining whether a second suit arises out of the same claim." *Howell* quoting *Int'l Union v. Karr*, 994 F.2d 1426, 1429-30 9th Cir. 1993). There is no question that the operative facts at issue in CV2018-090016, which became CV-18-00414-PHX-JTT are the same. 2- Dismissal was a Final Judgement on the Merits It is clear that Judge Tuchi's order dismissing Plaintiff's claims against Empact, and all other defendants, with prejudice, was a final judgment on the merits in that case. 3- Identity or Privity of

Parties In the instant litigation, the Rynns apparently included their entire immediate family as Plaintiffs. In the previous matter, the named Plaintiffs were Marcella, who was a minor "by and through her next friend and parent Richard Rynn. Richard was also a Plaintiff on his own behalf. In the instant matter, Richard's wife Gelliana, and Marcelle's brother Mathew were also named.

1 In determining the claim preclusive effect of a Federal Court's order, the controlling federal law in the circuit where the order occurred is determinative. Thus, Ninth Circuit case law is appropriately cited here.

SUPERIOR COURT OF ARIZONA MARICOPA  
COUNTY CV 2020-094244 04/13/2021 Docket Code 019

Form V000A Page 5

Plaintiffs argue that since the parties Plaintiff in the instant case are not identical to those in the prior case, there is no "identity or privity of parties. Defendants disagree with that notion, citing case law that states, "Courts are no longer bound by rigid definitions of the parties of their privies for purpose of applying collateral estoppel or res judicata." Jackson v. Hayakawa, 605 F.2d 1121, 1126 (9th Cir. 1979). In this case, the interests of Ms. Rynn and son Mathew, and the Rynn family, given the nature of the claims being made were clearly represented by their husband and Father as he pursued those claims on behalf of himself and Marcella. In making these findings, the Court looks to the holdings of Pedrina v. Chun, 97 F.3d 1296 (9th Cir. 1996), and Hall v. Lalli 194 Ariz. 54, 977 P.2d 776 (1999). Those cases address the issue of claim preclusion/res judicata, holding, inter alia, that privity between a party and non-party requires both a "substantial identity of interests" and a "working or functional relationship" that would protect the interests of the non-party in the litigation. Based upon the Court's review of the arguments made by the parties, and the relevant case law cited by the Defendants, THE COURT FINDS that the familial relationships between the members of the Rynn family provided those protections to those not named as parties in the initial litigation. THE COURT THEREFORE FINDS that there was identity and privity between the name plaintiffs in both legal actions. Based upon those rulings, IT IS ORDERED

dismissing Plaintiffs' claims against Empact and Quail Run in their entirety, as the claims are barred pursuant to the doctrine of Res Judicata, or Claim Preclusion. STATUTES OF LIMITATION As an alternative and/or additional basis for the dismissal of Plaintiffs' Complaint, Empact and Quail Run argue Plaintiff's failure to comply with relevant Statutes of Limitation as an SUPERIOR COURT OF ARIZONA MARICOPA COUNTY CV 2020-094244 04/13/2021 Docket Code 019 Form V000A Page 6 additional ground for dismissal of Plaintiffs Richard, Gelliana and Mathew's2 purported causes of action against Empact. The Complaint alleges causes of action enumerated in Counts I-VII alleging Civil Rights violations, Defamation, Assault and Battery, Medical Battery, Intentional Infliction of Emotional Distress, False Imprisonment and Negligence are all subject to either oneyear or two-year statutes of limitation. Empact points out that Marcella was returned to her family in June of 2018, yet Plaintiffs' Complaint was not filed until July 23, 2020. Moreover, Plaintiffs acknowledge in their Response that in April 2017, Empact reported "false damaging information" to others, and allege one other incident of wrongdoing-threats made to the Rynn family- in June of 2018. Yet Plaintiffs' Complaint was not filed until July 23, 2020, well over two years after her return and her 18th birthday. All of the relevant actions taken by Empact and Quail Run in this case occurred in 2017 and 2018. Moreover, the Plaintiffs filed a lawsuit based upon these same facts against the same parties, making the same claims in January of 2018! THE COURT THEREFORE FINDS, the Plaintiffs claims against Defendants Empact and Quail Run were not filed on a timely basis, and within the

time requirements of A.R.S. §12-821. Therefore, IT IS ORDERED dismissing Plaintiffs Richard, Gelliana and Mathew's claims against Empact and Quail Run in Counts I-VII, with prejudice, as such claims were not filed in compliance with A.R.S. §12-821.01. Those counts allege civil rights violations, Defamation, Assault and Battery, Medical Battery, Intentional Infliction of Emotional Distress, False Imprisonment and Negligence, against Empact, as those claims were not filed within the relevant Statutes of Limitation for those alleged tort claims against Defendants Empact, and UHS of Phoenix, dba Quail Run Behavioral Health. PLAINTIFF'S RACKETEERING CLAIM Plaintiff filed a claim alleging a private civil action pursuant to Arizona's Racketeer Influenced and Corrupt Organization Act, ("RICO").

2 As conceded by Empact in its Reply, the Statute of Limitations as it applies to Marcella is tolled during her minority under A.R.S. §12-502. 3 CV2018-090016, which became CV-18-00414-PHX-JJT, and was then dismissed by the Federal Court on November 6, 2018.

SUPERIOR COURT OF ARIZONA MARICOPA  
COUNTY CV 2020-094244 04/13/2021 Docket Code 019  
Form V000A Page 7 The RICO statute is found within  
Arizona's Criminal Code, but a provision allowing such  
private civil actions is found at A.R.S. §13-2314.04.  
However, subsection (H) of that statute sets forth a  
requirement to be followed prior to the filing of such a  
private action. A.R.S. §13-2314.04 (H) provides as  
follows: A person who files an action under this section  
shall serve notice and one copy of the pleading on the  
attorney general within thirty days after the action is  
filed with the superior court. This requirement is  
jurisdictional. The purpose for this "requirement" is to  
provide the Attorney General with the time and  
opportunity to intervene should he choose to do so.  
Notwithstanding the language in the statute that the  
requirement is "jurisdictional," case law interpreting  
the statute defined it as "procedural," and stated that it  
does not "create or define a substantive right." Encinas  
v. Pompa, 189 Ariz. 157, 159, 939 P.2d 435 (App. 1997).  
The Court stated that by imposing the notice provision  
as a "requirement" that is a prerequisite to a party  
filing a civil action, the legislature impermissibly  
sought to limit the trial court's jurisdiction via  
"rulemaking," which is impermissible, and had it done  
so via the legislative process it would have been  
permissible. While the court is not devoid of power to  
excuse the failure of a party to give notice to the  
attorney general, it does not have the power to  
permanently dismiss the party's claim. Based upon the  
holding in Encinas, THE COURT FINDS that it is  
appropriate to strike Plaintiff's civil RICO claim as

contained within their Complaint. However, Plaintiff may re-file<sup>4</sup> that claim once it has complied with the procedural requirements of A.R.S. §13-2314.04 (H). IT IS THEREFORE ORDERED striking, without prejudice, Count 9 of Plaintiff's Complaint, which is civil RICO claim pursuant to A.R.S. §13-2314.04 (H), as to Defendants Empact and Quail Run.

<sup>4</sup> The ruling on this issue here does not negate the separate dismissal of the entirety of Plaintiff's claims, including the Civil RICO claim, as noted above, based the grounds of res judicata, or claim preclusion. The ruling under this heading only pertains to the issue of the Civil RICO statute, standing alone.

CV 2020-094244 Filed 5/03/2021  
SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY  
CLERK OF THE COURT K. Tiero Deputy  
HONORABLE David J. Palmer

RICHARD DAVID-RYNN, et al.  
v.  
U H S OF PHOENIX L L C, et al.

04/30//2021

MINUTE ENTRY

CV 2020-094244 04/30/2021 Docket Code 079  
MINUTE ENTRY The Court is in receipt of the Answer and Motion to Dismiss filed in this matter by Defendant Devereux. Plaintiffs Richard Rynn and Gelliana David-Rynn, husband and wife, and Mathew Rynn and Marcella Rynn filed a pleading titled "Plaintiffs Objection to Devereux Motion to Dismiss and Plaintiffs Support to Charge Devereux for Damages, Exhibit 5." (sic.) In its Answer and Motion to Dismiss, Devereux states that it received an unsigned, unstamped document titled "Summons," and a document date stamped October 25, 2020, titled "Second Amended Complaint for Damages." Defendant states that the "summons" was not signed, sealed or issued by the Clerk of the Court to the filing party for service in compliance with the applicable Rules of Civil Procedure. The Court also takes judicial notice that the Plaintiff did not file a copy of the issued or served summons with the clerk of the Court. Defendant further argues that the Court had not given leave to the Plaintiff to file this Second Amended Complaint,



nor was there an indication that all of the other parties defendant had given written consent for Plaintiff to file this Second Amended Complaint. Thus, Devereux argues, credibly, that Plaintiff's Second Amended Complaint as to Devereux was not properly filed with the Court in accord with Rule 15, Ariz. R. Civ. P. In its responsive pleading entitled "Plaintiffs Objection to Devereux Motion to Dismiss and Plaintiffs Support to Charge Devereux for Damages, Exhibit 5," Plaintiffs do not address, at all, either of Devereux's concerns regarding the propriety or veracity of service of the summons in compliance with the Arizona Rules of Civil Procedure. The Court has considered Devereux's Motion to Dismiss filed on December 1, 2020. Plaintiff's Response did not address, at all, the points raised in Devereux's Motion to Dismiss, which the Court deems as a consent to the granting of the Motion on those points. Ariz. R. Civ. P. 7.1(b). The Court has reviewed Devereux's Motion to Dismiss and it provides a legal and factual basis for the relief requested pursuant to Rule 12(b)(4) & (5). Therefore, SUPERIOR COURT OF ARIZONA MARICOPA COUNTY CV 2020-094244 04/30/2021 Docket Code 079 Form V000A Page 3 IT IS ORDERED granting Devereux's Motion to Dismiss filed on December 1, 2020. IT IS FURTHER ORDERED dismissing Devereux as a Defendant in this action.

CV 2020-094244 Filed 5/25/2021  
SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY  
CLERK OF THE COURT V. Felix Deputy  
HONORABLE David J. Palmer

RICHARD DAVID-RYNN, et al.  
v.  
U H S OF PHOENIX L L C, et al.

05/19/2021

MINUTE ENTRY

This Court is in receipt of the May 3, 2021 "Motion for Reconsideration Exhibit 15" filed by Plaintiffs Rynn, regarding the Court's April 13, 2021 ruling, which was filed on April 19, 2021. The Court has also read and considered Plaintiffs Rynns' May 9, 2021 "Motion for Reconsideration and Proposed Order and Addendum to Plaintiff's May 3, 2021 Motion for Reconsideration," which was filed on May 11, 2021, as well as "Plaintiff(s) Rynn Second Addendum to Motions for Reconsideration on May 3, 2021 and May 9, 2021," which was filed on May 12, 2021. Defendants have not filed a Response to the Motion, nor will the Court require them to do so pursuant to Rule 7.1(e). Motions for reconsideration are disfavored. See e.g., *Motorola, Inc. v. J.B. Rodgers Mech. Contractors, Inc.*, 215 F.R.D. 581, 582 (D. Ariz. 2003). They are to be granted only in highly unusual circumstances. See e.g., *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). Motions for reconsideration are not to be used to make new arguments or to present new evidence. *Carroll*, 342 F.3d at 945; *Motorola*, 215 F.R.D. at 582; *Brookover v. Roberts Enters., Inc.*, 215 Ariz. 52, 57 n.2, ¶17, 156 P.3d 1157, 1162 n.2 (App.

2007). Nor is a motion for reconsideration to be used to ask the court merely to rethink what it has already thought through, rightly or wrongly. *United States v. Rezzonico*, 32 F.Supp.2d 1112, 1116 (D. Ariz. 1998); *Bryan v. Murphy*, 246 F. Supp. 2d 1256, 1259 (N.D. Ga. 2003) (stating that a motion for reconsideration should not be used “to present the court with arguments already heard and dismissed or to repackage familiar arguments to test whether the court will change its mind”). See also, *Pres. Endangered Areas of Cobb’s History, Inc. v. U.S. Army Corps of Eng’rs*, 916 F. Supp. 1557, 1560 (N.D. Ga. 1995) (recognizing that “[a] motion for reconsideration is not an opportunity for the moving party . . . to instruct the court on how the court ‘could have done it better’ the first time”), *aff’d*, 87 F.3d 1242 (11th Cir. 1996). Based upon the foregoing,

SUPERIOR COURT OF ARIZONA MARICOPA  
COUNTY CV 2020-094244 05/19/2021 Docket Code 019  
Form V000A Page 3 IT IS ORDERED denying “Motion for Reconsideration Exhibit 15” filed by Plaintiffs Rynn, regarding the Court’s April 13, 2021 ruling, which was filed on April 19, 2021. IT IS ALSO ORDERED denying Plaintiffs Rynns’ May 9, 2021 “Motion for Reconsideration and Proposed Order and Addendum to Plaintiff’s May 3, 2021 Motion for Reconsideration,” which was filed on May 11, 2021. IT IS ALSO ORDERED denying “Plaintiff(s) Rynn Second Addendum to Motions for Reconsideration on May 3, 2021 and May 9, 2021,” which was filed on May 12, 2021.

CV 2020-094244          Filed 7/19/2021  
SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY  
CLERK OF THE COURT V. Felix Deputy  
HONORABLE Peter A. Thompson

RICHARD DAVID-RYNN, et al.  
v.  
U H S OF PHOENIX L L C, et al.

7/16/2021 Docket Code 023  
CYNTHIA DAWN STARKEY  
JUDGE THOMPSON  
MINUTE ENTRY

Pending before the Court are Defendants' Motions to Strike Plaintiff's Second and subsequent Amended Complaints, Defendants' Motions to Strike Plaintiffs' Applications For Entry of Default on the Plaintiffs' Second Amended Complaint and Plaintiff's Motion for Leave To File Third Amended Complaint.<sup>1</sup> Each of the pending Motions to Strike raise the same issue, that Plaintiffs did not obtain written permission from all defendants or leave of Court to amend prior to filing their amended complaints. Plaintiffs do not contest those allegations are true. The Court will therefore rule on all pending Motions to Strike Plaintiffs' Amended Complaint as though joined in one motion. The litigation of these matters spans years and involves courts in two different counties, the U.S. District Court for Arizona and the Ninth Circuit Court of Appeals.

The Court adopts, as though fully set forth herein, the Factual Background, Legal Procedural History, Claim Preclusion/Res Judicata, Statutes of Limitations, and Plaintiff's Racketeering Claim analysis as set forth in this Court's Minute Entry of April 13, 2021. After the U.S. District Court dismissed the claims in that case against all defendants with prejudice on November 6, 2018, Plaintiffs filed the same allegations against the same defendants in Maricopa County Superior Court on July 23, 2020. Plaintiffs then filed an amended complaint (hereafter Amended Complaint) on August 4, 2020. Arizona Rule of Civil Procedure 15(a)(1) provides for amendments before trial: (a) Amendments Before Trial. (1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course: (A) no later than 21 days after serving it if the pleading is one to which no responsive pleading is permitted; or 1 The Court is aware and mindful of the State's Motion to Dismiss filed after Plaintiffs' First Amended Complaint and the subsequent surge of filings related to amending Plaintiffs' complaint. The Court cannot rule on that motion until resolution of the pending motions to amend and/or strike. SUPERIOR COURT OF ARIZONA MARICOPA COUNTY CV 2020-094244 07/16/2021 Docket Code 023 Form V000A Page 3 (B) no later than 21 days after a responsive pleading is served if the pleading is one to which a responsive pleading is required or, if a motion under Rule 12(b), (e), or (f) is served, on or before the date on which a response to the motion is due, whichever is earlier. (2) Other Amendments. In all other instances, a party may amend its pleading only with leave of court or with the written consent of all opposing parties who have appeared in the action. Leave to amend must be freely

given when justice requires. Amendments of a complaint thereafter require either the written consent of all opposing parties or leave of the Court. Plaintiffs did not secure either before filing what has been styled by them as their Second Amended Complaint For Damages filed October 25, 2020 and their Second (sic) Amended Complaint For Damages filed January 31, 2021. Neither of those complaints complied with Rule 15(a)(2), Arizona Rules of Civil Procedure. Defendants' Motions To Strike are well taken and should be granted. Therefore, those two complaints must be stricken as well as any Applications For Entry of Default as to those improperly filed Complaints. Therefore, IT IS ORDERED striking Plaintiffs' Second Amended Complaint For Damages filed October 25, 2020; IT IS ALSO ORDERED striking Plaintiffs' Second Amended Complaint For Damages filed January 31, 2021. IT IS FURTHER ORDERED denying any and all pending Applications For Entry of Default filed by Plaintiffs related to the stricken Second Amended Complaints For Damages filed October 25, 2020 and January 31, 2021. Plaintiff's Motion For Leave To File Their Third Amended Complaint The Court has received and fully considered the multiple motions, responses, objections and replies filed herein including but not limited to: Plaintiffs Rynn Motion Seeking Leave To File Supplemental Third Amended Complaint; Plaintiffs Rynn Motion and Proposed Order Seeking Leave To File Second Supplement With New Civil Rights 42 U.S.C. 1983 Claims To Third Amended Complaint, Plaintiffs Rynn Support To Amend And Object To Defendant Aurora Notice And Day Starz Group Home And Tamla Opposition To Plaintiff(s) Seeking Leave To Amend Complaint; Plaintiff(s) Rynn

Motion For Leave To Amend Complaint And Join Additional Parties Exhibit 12, Exhibit 13 Amended Complaint For Damages; Plaintiff(s) Rynn Motion Seeking Leave To File Supplemental Third Amended Complaint; Plaintiff(s); Plaintiff(s) Rynn Support To Amend And Object To Defendant Aurora Notice And Day Starz Group Home And Tamla Opposition To Plaintiff(s) Seeking Leave To Amend Complaint. The Court has also reviewed the Responses, Objections and Replies filed in connection with Plaintiffs' motions. SUPERIOR COURT OF ARIZONA MARICOPA COUNTY CV 2020-094244 07/16/2021 Docket Code 023 Form V000A Page 4 Civil Rule 15(a)(2) states that "a party may amend its pleading only with leave of court or with the written consent of all opposing parties who have appeared in the action. Leave to amend must be freely given when justice requires." IT IS ORDERED granting Plaintiffs' Motion To Allow Plaintiffs To File their Amended Complaint. Plaintiffs have already filed their Third Amended Complaint. THE COURT NOTES this matter has been pending for a year and this is the sixth amendment or attempt to amend the Complaint by Plaintiffs in this action. Amendments to a Complaint are not limitless. Notice and substantial prejudice to the opposing party are critical factors in determining whether an amendment should be granted. To justify denial of the motion, there must be "undue" delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments or undue prejudice to the opposing party. "Prejudice is 'the inconvenience and delay suffered when the amendment raises new issues or inserts new parties into the litigation.'" Owen v. Superior Court, 133 Ariz. 75, 79, 649 P.2d 278, 282 (1982) (citations omitted). IT

IS FURTHER ORDERED that Plaintiffs shall serve the Third Amended Complaint within ten (10) days of the filing date of this minute entry pursuant to Civil Rule 15(a)(5). IT IS ALSO ORDERED that any party with a Motion To Dismiss pending before the date of this order may amend their motion to address any additional claims added by the amendment. If any motion to dismiss is modified, the parties shall have the right to file a Response and Reply within the time specified by the Arizona Rules of Civil Procedure.