No. _____

In The

Supreme Court of the United States

JOSEPH C. ANORUO,

Petitioner,

v.

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

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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Pro Se Petitioner

January 09, 2015

QUESTIONS PRESENTED

The respondent violated the Department of Veterans Affairs (DVA), Education Debt Reduction Program (EDRP) codified in Title 38, United States Code (U.S.C.), Sections 7681 to 7683.

On May 25, 2004, petitioner's EDRP application was erroneously denied (App. 15).

On January 28, 2009, after diligent effort, respondent instituted the review of all previous and new applicants who were denied EDRP (App. 23-24).

On January 16, 2009 AND March, 23, 2009, the respondent agreed to pay the EDRP award using local fund (App. 19, 21 & 23).

On June 24, 2010, during a settlement meeting proposed by the respondent, the program director refused to pay petitioner's EDRP award using local fund and stated that "he has no check book to write him a check" and the facility director when contacted stated that it was a human resources issue. On July 30, 2010, petitioner contacted EEOC counselor and filed a complaint.

Following petitioner's request for independent review of his denied EDRP on November 16, 2006, on May 18, 2007 and September 19, 2007, the petitioner's Clinic was slated to be put on hold and was placed on hold respectively pending availability of proper staffing. On May 18, 2009, petitioner received a letter for non-selection for the position of Supervisory Pharmacist which he applied for and was qualified for but was not interviewed. Upon being made aware

QUESTIONS PRESENTED – Continued

of improper selection, he requested rationale for non-selection and was advised by the HR specialist that the selection was under review, but only to realize on September 20, 2010 during mediation that the selection was not being reviewed. Following this, petitioner requested status update on the issue and ID clinic which was placed on hold. Contrary to the reasons presented on September 19, 2007 (not included here), on September 21, 2010 the selecting Official for the position, presented other misleading, erroneous and inconsistent reasons and misrepresented the petitioner's qualifications and experience. As a result of the above, petitioner contacted EEOC counselor on October 18, 2010 and filed additional complaint.

1. Did the Ninth Circuit Court of Appeals err by affirming a district order obtained by misrepresentation of material facts of this case?

2. Did the Ninth Circuit Court of Appeals, District Court and EEOC correctly determine that petitioner's contact with EEOC on July 30, 2010 did not meet EEOC's 45 days of exhaustion of administrative remedies requirement? See (App. 19, 21 & 23).

3. Did the Ninth Circuit Court of Appeals, District Court and EEOC correctly determine that petitioner is not entitled to equitable relief based on estoppel/fraudulent concealment and misrepresentation on the erroneous denial of EDRP on May 25, 2004?

QUESTIONS PRESENTED – Continued

4. Did the Ninth Circuit Court of Appeals and District Court correctly determine that breach of contract claim is time barred and District Court has no jurisdiction in the alleged claim?

5. Did the Court of Appeals and the District Court correctly determine that amending petitioner's complaint would be futile?

6. Did the Court of Appeals and the District Court correctly determine that petitioner is not entitled to equitable relief when petitioner contacted EEOC counselor on October 18, 2010, 27 days after respondent presented misleading, contradictory and inconsistent reasons for the closure of ID clinic, misrepresented petitioner's qualifications and experience and lied about the selection process review?

PARTIES TO THE PROCEEDINGS

Robert A. McDonald was confirmed by the United States Senate on July 29, 2014 as the Secretary of the Veterans Affairs. Pursuant to Fed. R. Civ. P. 25(d), Secretary McDonald is automatically substituted for the previous Secretary as defendant.

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PETITION FOR A WRIT OF CERTIORARI

Joseph Anoruo hereby petitions for writ of certiorari to the United States Supreme Court to review the Court panel's order of October 15, 2014 (App. 13) denying petitioner's Motion for Rehearing, rehearing en banc; April 14, 2014 (App. 1-3) affirming District Court order of August 23, 2012 (App. 4-12) on appeal so far as the Order denies plaintiff's prayer for reversal of District Court order on motion to dismiss and second amended complaint (SAC) based on erroneous letter of May 25, 2004 (App. 15).

OPINIONS BELOW

The Court of Appeals opinion on appeal is not reported, but can be found at App. 1-3.

The District Court opinion is not reported, but can be found at App. 4-12, and the opinion of the Court of Appeals on petition for rehearing and rehearing en banc is not reported but can be found at App. 13-14.

STATEMENT OF JURISDICTION

The Court of Appeals denied a petition for rehearing and rehearing en banc on October 15, 2014 (App. 13). The Court of Appeals vacated petitioner's appeal and affirmed the District Court order to deny second amended complaint for futility and to dismiss the case with prejudice on April 14, 2014 (App. 1-3).

The District Court vacated petitioner's complaint on August 23, 2012 (App. 4-12). This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1) and pursuant to 28 U.S.C. § 1253 (providing for direct appeal from interlocutory decision of three-judge panel court or en banc court).

CONSTITUTIONAL AND STATUTORY PROVISIONS

38 United States Code (U.S.C.), Sections 7681 to 7683

38 United States Code (U.S.C.), Section 7681. Authority for program

(a) In General. – (1) As part of the Educational Assistance Program, the Secretary may carry out an education debt reduction program under this subchapter. The program shall be known as the Department of Veterans Affairs Education Debt Reduction Program (hereinafter in this subchapter referred to as the "Education Debt Reduction Program"). (2) The purpose of the Education Debt Reduction Program is to assist in the recruitment and retention of qualified health care professionals for positions in the Veterans Health Administration for which recruitment or retention of an adequate supply of qualified personnel is difficult.

(b) Relationship to Educational Assistance Program. – Education debt reduction payments under the Education Debt Reduction Program may be in

addition to other assistance available to individuals under the Educational Assistance Program.

38 United States Code (U.S.C.),
Section 7682. Eligibility

(a) Eligibility. An individual is eligible to participate in the Education Debt Reduction Program if the individual – (1) is an employee in the Veterans Health Administration serving in a position (as determined by the Secretary) providing direct-patient care services or services incident to direct-patient care services for which recruitment or retention of qualified health-care personnel (as so determined) is difficult; and (2) owes any amount of principal or interest under a loan, the proceeds of which were used by or on behalf of that individual to pay costs relating to a course of education or training which led to a degree that qualified the individual for the position referred to in paragraph (1).

(b) Covered Costs. – For purposes of subsection (a)(2), costs relating to a course of education or training include – (1) tuition expenses; (2) all other reasonable educational expenses, including expenses for fees, books, and laboratory expenses; and (3) reasonable living expenses.

38 United States Code (U.S.C.),
Section 7683. Education debt reduction

(a) In General. – Education debt reduction payments under the Education Debt Reduction Program shall consist of payments to individuals selected to participate in the program of amounts to reimburse such individuals for payments by such individuals of principal and interest on loans described in section 7682(a)(2) of this title.

(b) Frequency of Payment. – (1) The Secretary may make education debt reduction payments to any given participant in the Education Debt Reduction Program on a monthly or annual basis, as determined by the Secretary. (2) The Secretary shall make such payments at the end of the period determined by the Secretary under paragraph (1).

(c) Performance Requirement. – The Secretary may make education debt reduction payments to a participant in the Education Debt Reduction Program for a period only if the Secretary determines that the individual maintained an acceptable level of performance in the position or positions served by the participant during the period.

(d) Maximum Annual Amount. – (1) Subject to paragraph (2), the amount of education debt reduction payments made to a participant under the Education Debt Reduction Program may not exceed $60,000 over a total of five years of participation in the Program, of which not more than $12,000 of such payments may be made in each of the fourth and fifth

years of participation in the Program. (2) The total amount payable to a participant in such Program for any year may not exceed the amount of the principal and interest on loans referred to in subsection (a) that is paid by the individual during such year. (3)(A) The Secretary may waive the limitations under paragraphs (1) and (2) in the case of a participant described in subparagraph (B). In the case of such a waiver, the total amount of education debt repayments payable to that participant is the total amount of the principal and the interest on the participant's loans referred to in subsection (a).

5 U.S.C. § 5379 –
STUDENT LOAN REPAYMENT PROGRAM

The program implements 5 U.S.C. § 5379 which authorizes agencies to set up their own student loan repayment programs to attract or retain highly qualified employees. The federal student loan repayment program (SLRP) permits agencies to repay federally insured student loans as a recruitment or retention incentive for candidates or current employees of the agency. These awards are guided by Office of Personnel Management (OPM) regulations, 5 C.F.R. part 537.

VHA HANDBOOK 1201.01: RESPONSIBILITY OF THE HEALTHCARE RETENTION AND RECRUITMENT OFFICE (HRRO), April 25, 2008.

"(2) Ensuring that VISNs or facilities that fail to properly administer the EDRP in accordance with the EDRP directive and handbook are held financially responsible for the payment of any EDRP award that would have been approved by HRRO, but for such failure, e.g., untimely submission of EDRP applications, failure to include EDRP award offer in vacancy announcement, etc. In making determination that such failure occurred, HRRO has the authority to obtain and review all relevant documents and information. If it is determined that the facility is financially responsible, VISN's or facilities must enter into a memorandum of understanding (MOU) with HRRO (see sample MOU, App. E), which must be prepared by HRRO." VHA Handbook 1201.1 of 2002 was rescinded.

INTRODUCTION

Petitioner is a Clinical Pharmacist and employee of the Department of Veterans Affairs. He was temporarily appointed on May 04, 2003, boarded and converted to permanent position on October 08, 2003 with effective date of October 19, 2003, signed and turned in his application for EDRP to local EDRP director on February 16, 2004 with supporting documents on March 01, 2004. *The program requires that*

applicants turn in their signed application within 6 months of permanent employment. The application was signed by the facility director on May 24, 2004 about 6 weeks after the deadline of April 18, 2004. The respondent on May 25, 2004 knew the facts, concealed the evidence and presented an erroneous denial letter. The concealed evidence was revealed seven years later on July 21, 2011 (App. 16-17) and *after the EEOC has denied the complaint*. With diligent pursuit, on January 16, 2009, the facility director agreed to pay the petitioner's EDRP award using local fund, "*I will use local fund to the extent possible to offset your debt*" (App. 19). On January 28, 2009, the facility director initiated a general review of all the applicants that had previously applied for the program, received the award or not (App. 23-24). By the end of the review, all the people who were previously denied the EDRP award were approved except the petitioner and Dr. Tunrarebi. Later, the facility director referred petitioner to the chief of human resources and the coordinator of the EDRP program to finalize the petitioner's refund. Petitioner was reluctant to accept his proposal to meet with the chief of human resources who is at the root of all the problems, however, on March 16, 2009 (App. 23) the director assured petitioner and stated, "*If you have a problem with him, I will intercede. I'm trying to make this right for you*" (App. 21). On or around April 28, 2009, Dr. Tunrarebi and petitioner met with the chief of HR and presented their student loan statements. Few months later, a service agreement for student loan repayment program (SLRP) was put forward contrary to the facility director's promise and the

guidance in VHA HANDBOOK 1201.01 page 5(5)2) (see page 4). Petitioner was never late in the payment and fulfilled all his EDRP award terms and obligations between *May 04, 2004 and May 04, 2008* and was entitled to full refund. However, the respondent at a June 24, 2014 settlement meeting arranged by the respondent, ignored the terms of reference as proscribed (see page 4) and refused to pay petitioner's EDRP award using local fund and stated that he does not have a check book to write him a check. Similarly, the director who promised to intercede if petitioner had a problem told him that, it was a human resources issue. On July 30, 2010, 34 days after the respondent's denial to pay the EDRP award using local fund, petitioner contacted the EEOC counselor and filed a complaint.

Furthermore, following the petitioner's request for independent review of the denial of EDRP on November 16, 2006; on May 18, 2007 the chief of primary care line advised that the pharmacy infectious disease clinic managed by petitioner would be put on hold and on September 19, 2007 during the pharmacy meeting, the respondent formally put the clinic on hold pending availability of proper staffing. On May 18, 2009, petitioner received a letter for non-selection for the position of Supervisory Pharmacist position which he applied for and was qualified for but was not interviewed. When he became aware of improper selection, petitioner requested the rationale for non-selection and was informed by the human resources specialist for the position that the matter is under review, but only to realize on September 20, 2010

during mediation that the selection was not being reviewed. Following this, petitioner requested status update on the ID clinic which was placed on hold. Contrary to the reason presented on September 19, 2007 (not included here), on September 21, 2010, the selecting Official for the position, stated that the Pain clinic and ID Clinic were closed because "They were not approved by the VA." See exhibit 16 on FAC (not included here); and in the non-selection, he also misrepresented petitioner's qualifications and experience and stated that petitioner had no supervisory experience and limited inpatient experience and that the inpatient experience was not at the VA. Diligent inquiries revealed that the selected candidate *had no impatient experience* and *was interviewed*. VA guidance and merit system promotion principle states that "*if interviews are used, all candidates must be interviewed if reasonably available, in person or by telephone where circumstances warrant*." Also, contrary to the selecting official's presentation, petitioner has current ongoing eight to nine years of inpatient experience and about five to six years of intravenous (IV) admixture and chemotherapy experience in the VA. Following the above misrepresentation which was not disclosed to petitioner until September 21, 2010, on October 18, 2010, petitioner contacted EEOC and added the non-selection and closure of ID Clinic claims to the July 30, 2010 complaint.

After about seven years of stonewalling and broken promises, several communications including two letters to the Secretary of the VA, letters to the

VISN 22 network director and contact with EEOC and mediations failed to resolve the issues, petitioner instituted this Title VII claim against respondent on December 22, 2011 with first amended complaint (FAC) filed on January 09, 2012. On May 16, 2012, defendant moved for order to stay discovery so that defendant misrepresentation will not be revealed and got judgment without a response from the petitioner. On July 13, 2012, Early Neutral Evaluation (ENE) was scheduled. Respondent moved a motion to skuttle it like they did with discovery, but was unsuccessful, and came unprepared for ENE session. Later, the respondent walked out on the petitioner and his legal representative and thereafter moved for motion to dismiss the case without discovery and trial. On August 23, 2012, the District Court denied petitioner's motion for second amended Complaint (SAC) because the amendment would be futile based on misrepresentation and erroneously disposed the case for not exhausting administrative remedies. On April 14, 2014, the Ninth Circuit panel of three judges in a de novo trial affirmed the District Court order (App. 1-3) and cited *Lukovsky v. City of San Francisco,* 535 F.3d 1051 (9th Cir. 2008) for detail on equitable tolling but overlooked *exhibit 14 of FAC (not included here)* that detailed the EDRP encounter. On October 15, 2014, the petitioner's panel rehearing and petition for rehearing en banc were also voted down (App. 13) without any iota of justification.

STATEMENT OF THE CASE

This case seeks relief for: thousands of dollars petitioner paid to service his student's loan that would have been awarded by EDRP if his application for the EDRP was not erroneously denied by the respondent on May 25, 2004; professional neglect; emotional distress, pain and suffering, non-selection and promotion problems and is entitled to a GS-13 infectious disease pharmacy program manager position and GS-13 supervisory pharmacist position at the Mike O'Callaghan Federal Hospital with back pay, compensation and training. Respondent subjected petitioner to the above mentioned disparate treatment on the basis of his national origin in violation of Title VII of Civil Rights Act of 1964 as amended. Petitioner complied with all the administrative prerequisites for action under Section 706 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e-5 prior to instituting this Civil Action as demonstrated below:

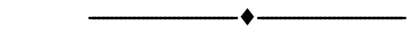
On February 16, 2004, petitioner signed and submitted his EDRP application to the program director with supporting documents from lending institution on March 01, 2004. On May 25, 2004, the local EDRP program director issued misrepresented denial letter and blamed petitioner for non-compliance (App. 15). Petitioner requested reconsideration based on the respondent's misrepresentation. On September 01, 2004, the VHA Healthcare retention and recruitment office (HRRO) formally denied the petitioner's application and reconsideration (App. 25), *however, HRRO*

confirmed in the denial letter that the application should be turned in within 6 months of ***permanent employment***.

On July 30, 2010, petitioner timely filed a formal charge of discrimination with the Equal Employment Opportunity Commission (the EEOC) when the respondent failed to pay the petitioner's Education debt reduction program using local fund on June 24, 2010 and on October 18, 2010, after discovery of evidence of misrepresentation and concealment regarding ID clinic closure and non-selection in the supervisory position, contacted EEOC counselor and added both alleged claims in the July 30, 2010 complaint.

The respondent maligned the argument and misrepresented why the petitioner contacted EEOC on July 30, 2010, deceived the petitioner, other candidates and the court to believe on their intentional misrepresentation which was revealed in Appendix 16-17. As noted in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), ". . . . The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud. . . . Misrepresentation is ground for equitable relief." See *CIGNA Corp. v. Amara*, No. 09-804, 2011 U.S. LEXIS 3540 (May 16, 2011). Similarly, the respondent in continuation of the above practice presented inconsistent reasons for the purported closure of pharmacy infections disease clinic managed by petitioner and misrepresented his qualifications and experience in the non-selection. This court should not allow fraudulently

begotten judgment to stand irrespective of who is affected. The District Court and Ninth Circuit's holding in this case raises issues of great practical importance and constitutional significance meriting this Court's intervention.



REASONS FOR GRANTING THE PETITION

According to VHA Handbook 1201.01 (see page 4), (HRRO) violated EDRP statute, the local EDRP coordinator concealed and misrepresented the terms of EDRP and material facts of the case as evident in (App. 16-17) and App. 25 but instead accused the petitioner for noncompliance. Petitioner detrimentally relied on the letter of May 25, 2004. If this letter was unintentional error, it would have been corrected with a stroke of the pen after HRRO clarification on September 01, 2004 (App. 25).

Title VII is a broad remedial measure, designed "to assure equality of employment opportunities." *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 800 (1973). The Act was designed to bar not only overt employment discrimination, "but also practices that are fair in form, but discriminatory in operation." *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971). "Thus, the Court has repeatedly held that a prima facie Title VII violation may be established by policies or practices that are neutral on their face and in intent but that nonetheless discriminate in effect against a particular group." *Teamsters v. United States*, 431 U.S. 324, 349 (1977) (hereinafter *Teamsters*). In the VA, petitioner's encounter with the directors of

the EDRP managers collaborated by other VA hierarchy is well articulated in the above opinions; neutral in outlook, but discriminatory in operation. Petitioner was treated unlike all other applicants for the program. This petition should be granted because the Ninth Circuit Court of Appeals panel decision and District Court judgment were based on erroneous letter of May 25, 2004 and misrepresented material facts including but not limited to when petitioner became permanently employed, when and why petitioner contacted EEOC on July 30, 2010, futility in second amended complaint (SAC) order and timing of breach of contract claim and district court jurisdiction. *The Supreme Court noted in CIGNA Corp. v. Amara, 29 U.S.C. § 1332(a)(3), § 502(a)(3),* Pp. 16-22. *(U.S. May 16, 2011) act that whether the erroneous information provided to the employees occurred by mistake or with bad intent, may well provide money damages and equitable relief to the participant of the plan. It is an abuse of judicial discretion for both courts to undermine the misrepresentation and facts of this case and grant judgment for the respondent*. Without equivocation, I believe, the Ninth Circuit Court of Appeals and District Court erred.

I. JUDGMENT WAS BEGOTTEN BY MISREPRESENTATION

The letter of May 25, 2004 is a calculated misrepresentation as demonstrated in App. 16-18. There is no doubt that the respondent knew on September 01, 2003 (App. 25) that petitioner turned in his application timely. Even with the knowledge App. 25, on November 16, 2006, petitioner requested independent

review for the denied EDRP; the respondent still concealed the evidence and refused to grant the request. They also misrepresented why petitioner contacted EEOC on July 30, 2010. However it may be looked at, equitable relief is appropriate with EDRP denial for the same reason set forth above. The Ninth Circuit panel of three judges erred by affirming order that was fraudulently begotten. Affirming the order is affirming fraud. To set aside these fraudulently begotten orders, I crave the indulgence of this court to invoke Federal Rule of Civil Procedure (Rule) 60b.

Rule 60b:

The court can invoke Rule 60b at any time of the trial that fraud is discovered (citation omitted). Protecting against fraud is an inherent power of the court: *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991) (citing *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944)); see also *United States v. Buck*, 281 F.3d 1336, 1339 (10th Cir. 2002). Rule 60(b)(3) codifies an " 'historic power of equity to set aside fraudulently begotten judgments' . . . [which] is necessary to [uphold] the integrity of the courts. . . . (citation omitted)." The court has power to raise the above rules sua sponte to correct injustice. As well, this court could invoke Rule 60(b), and make an independent determination of the allegations of discrimination and remand the case for further trial. "*If in the opinion of a court, a judgment was obtained through the utilization of false records and documents*

of which a party was justifiably unaware, then the judgment should be set aside, regardless of the fact that the fraud was intrinsic (quotation omitted). The District Court order was obtained based by false record and as stated above should be set aside and this petition granted."

II. CONFLICT IN COURT HOLDINGS AND MATERIAL FACTS

There is conflict as to why petitioner contacted EEOC on July 30, 2014 and October 18, 2010, when breach of contract occurred and whether petitioner is entitled to equitable relief. Respondent admitted in their reply to petitioner appeal brief of *January 10, 2013, page 4, paragraph 3* that the District Court decision was based on erroneous letter of May 25, 2004. Similarly, on September 01, 2004 (App. 25), HRRO clearly noted that applications should be turned in within *6 months from the date of permanent appointment. The Court of Appeals ignored this material fact and affirmed order based on misrepresentation.* See *CIGNA Corp. v. Amara*, No. 09-804, 2011 U.S. LEXIS 3540 (May 16, 2011). Like in *CIGNA*, 29 U.S.C. § 1332(a)(3), § 502(a)(3), the respondent did not only misrepresent the terms of the EDRP which is a benefit for permanently employed VA professionals, the respondent went steps further to conceal the evidence. The court's decisions were not based on all of the facts. See *Drake v. Dennis*, 209 B.R. 20, 28 (S.D. Ga. 1996). I believe this petition for writ of certiorari should be granted.

A. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Filing a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court. *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393, 102 S. Ct. 1127, 71 L. Ed. 2d 234 (1982); rather, the requirement is like a statute of limitations and is subject to waiver, estoppel and equitable tolling. Id. Though Petitioner's EDRP was erroneously denied, the defendant took steps to remedy the situation, agreed to settle the EDRP with local fund, but failed to do so on June 24, 2014. See equitable tolling on the basis of fraudulent concealment. *King v. State of California*, 784 F.2d 910, 913 (9th Cir. 1986). Petitioner believes he exhausted his administrative remedies in the in the following alleged claims:

1. EDUCATION DEBT REDUCTION PROGRAM (EDRP)
2. STUDENT'S LOAN REPAYMENT PROGRAM (SLRP)
3. NON-SELECTION FOR PHARMACY SUPERVISORY POSITION AND CLOSURE OF PHARMACY INFECTIOUS DISEASE CLINIC

1. EDUCATION DEBT REDUCTION PROGRAM (EDRP)

The Ninth Circuit Court of Appeals and District Court overlooked (App. 16-18) and exhibit 14 on FAC (not included), which shows that the respondent

deliberately misrepresented the EDRP terms in the letter of May 25, 2004 and made conscious effort to hide it and petitioner detrimentally relied on it. HRRO was also misled by the same letter and failed to follow the guidance in page 4. In *CIGNA Corp. v. Amara*, No. 09-804, 2011 U.S. LEXIS 3540 (May 16, 2011), the Supreme Court noted that "appropriate equitable relief" for fiduciary misrepresentations may be available under § 502(a)(3). See *Varity Corp. v. Howe*, 516 U.S. 489 (1996). It further states that estoppel and injunctive relief might be "appropriate equitable relief" as a remedy when a plan fiduciary provides false or misleading information about plan benefits. Here, the administrators of EDRP presented false misleading statements (App. 15 and App. 25) with which the denial of the petitioner's EDRP application was based on and therefore belief equitable relief is appropriate and this petition for writ of certiorari granted.

2. STUDENT'S LOAN REPAYMENT PROGRAM (SLRP)

SLRP was undertaken by the respondent to pay for the erroneous denial of petitioner's EDRP award which would have been awarded if not for the misrepresentation of the May 25, 2004 letter. The "continuing violation" doctrine allows a plaintiff in a discrimination lawsuit to admit evidence of similar wrongful acts occurring outside the period of limitation for liability and damage purposes if: (a) there is at least one similar wrongful act within the statute, and (b)

the other acts are similar in nature so as to show a pattern or policy of discrimination. *Richards v. CH2M Hill, Inc.*, 79 Cal.App.4th 570 (2000). The doctrine relieves a plaintiff of a limitations bar if he/she can show a series of related acts to him/her, one or more of which falls within the limitations period. *Pegram v. Honeywell, Inc.*, 361 F.3d 272, 279 (5th Cir. 2004). Petitioner contacted EEOC on July 30, 2010 when the respondent denied the payment of the amount EDRP would have awarded during the settlement meeting arranged by the defendant on June 24, 2010 and therefore limitation bar should be lifted.

3. NON-SELECTION FOR PHARMACY SUPERVISORY POSITION AND CLOSURE OF PHARMACY INFECTIOUS DISEASE CLINIC

A party presents a justiciable defense of estoppel if he or she shows a misrepresentation of a material fact upon which the party asserting estoppel detrimentally relied. *Langford v. Ferrera*, 823 So.2d 795 (Fla. 1st DCA 2001). As noted above, the court erred by not applying equitable relief when the respondent misrepresented petitioner's qualification and experience for the position and by affirming inconsistent statement about the closure of pharmacy ID clinic as presented on September 21, 2010. See Exhibit 15 on FAC. In both alleged claims, *the respondent misrepresented the material facts, presented inconsistent reasons the petitioner was unaware of; and the petitioner and the courts relied on those misrepresentations*

to the detriment of the petitioner. The doctrine of equitable estoppel precludes a person from maintaining inconsistent positions to the detriment of another and therefore both alleged claims should be estopped and equitable relief granted.

B. EQUITABLE REMEDIES: NINTH CIRCUIT AND DISTRICT COURT ERRED

Equitable estoppel or fraudulent concealment entitles petitioner to equitable relief. The letter of May 25, 2010 fraudulently concealed the terms of the EDRP, detrimentally deceived and lured petitioner, HRRO to believe that his application was untimely submitted. Petitioner's letter for reconsideration was based on that. Another pharmacist of Nigerian origin's EDRP denial was based on that. HRRO failure to follow the established protocol as noted on (page 4) was based on that same misrepresentation, the nonpayment of EDRP award; thousands of dollars spent to service the student's loan was based on that same erroneous letter. Other prospective applicants were also deceived from applying for the program based on the same misrepresentation. See *Terrell v. United States Pipe & Foundry Co.*, 696 F.2d 1132 (5th Cir. 1983); *Cada v. Baxter Healthcare Corp*., 920 F.2d 446, 450-51 (7th Cir. 1990). Between 2004 and 2011, the defendant knew petitioner applied for EDRP on time as was revealed after 7 years on July 21, 2011 (App. 16-18) but chose to conceal that material fact and prevented discovery at which this misrepresentation would have been uncovered. Similarly,

the reason for suspending ID Clinic and non-selection until September 21, 2010 was also misrepresented. Therefore, this action is grounds for relief from judgment under equitable relief or both under Rule 60(b)(3) and 60(b)(6).

C. BREACH OF CONTRACT

There is also a conflict on when the breach of contract occurred and whether the District Court had jurisdiction. See District Court order (App. 11). Breach of contract occurred on June 24, 2010 not on May 25, 2004 (App. 15) or September 01, 2004 (App. 25).

District Court noted that "the court does not have jurisdiction over proposed breach of contract claim; this is because the court of federal claims has jurisdiction over claims against the United States for more than $10,000." The court avoided mentioning the SLRP and refusal of the respondent to pay petitioner's EDRP award using local fund on June 24, 2010. While under Tucker Act, the court of Federal claims have jurisdiction over contract claims against the United States for more than $10,000, in late 2011, Congress passed and President Obama signed into law, The Federal Courts Jurisdiction and Venue Clarification Act of 2011 ("the Act"). Section 101 of the Act amended 28 U.S.C. § 1332(a)(2). *The statute now provides, in pertinent part, "The district courts shall have* ***original jurisdiction of all civil actions*** *where the matter in controversy exceeds the sum or value of $75,000." Breach of contract is also a civil*

action. Both courts also erred and therefore believe this petition should be granted.

III. MOTION FOR SECOND AMENDED COMPLAINT (SAC) IS NOT FUTILE

Amending the complaint would not be futile because the refusal of the respondent to pay the amount EDRP would have awarded on June 24, 2014 during the settlement meeting is less than 45 days when petitioner contacted EEOC on July 30, 2014 and therefore not time barred. The breach of contract occurred on June 24, 2014, not May 25, 2004 or September 01, 2004.

Furthermore, even if the petitioner has no recourse after May 25, 2004 erroneous denial letter and doctrine of equitable tolling and estoppel is advanced, the case is still within statute of limitation. Fed. R. Civ. P. 15(a) requires that leave to amend shall be "freely given when justice so requires." Moreover, courts have granted case in part and denied some in part and have ordered amendment to conform to courts order unlike what happened in this case and therefore believe that this petition for certiorari should be granted.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests that the petition for a writ of certiorari be granted.

Respectfully submitted this 9th day of January 2015

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH CHIDI ANORUO, Plaintiff-Appellant, v. ERIC K. SHINSEKI, Secretary of Veteran Affairs, Defendant-Appellee.	No. 12-17130 D.C. No. 2:11-cv-02070-MMD-CWH MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Miranda Du, District Judge, Presiding

Submitted April 7, 2014**

Before: TASHIMA, GRABER, and IKUTA, Circuit Judges.

Joseph Chidi Anoruo appeals pro se from the district court's judgment dismissing his employment action against the Department of Veterans Affairs alleging national origin discrimination in violation of Title VII. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's determination

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

that a plaintiff failed to exhaust his administrative remedies, and for an abuse of discretion its decision whether to apply equitable tolling or estoppel. *Leong v. Potter,* 347 F.3d 1117, 1121 (9th Cir. 2003). We affirm.

The district court properly dismissed Anoruo's Title VII action because Anoruo failed to allege facts showing that he complied with the administrative exhaustion requirement of timely contacting an Equal Employment Opportunity ("EEO") counselor. *See Kraus v. Presidio Trust Facilities Div./Residential Mgmt. Branch,* 572 F.3d 1039, 1043 (9th Cir. 2009) (federal employee must initiate contact with an EEO counselor within forty-five days of the alleged discriminatory act, and failure to do so is "'fatal to a federal employee's discrimination claim' in federal court" absent waiver, estoppel, or equitable tolling (citation omitted)); *see also Lukovsky v. City & County of San Francisco,* 535 F.3d 1044, 1049 (9th Cir. 2008) (federal employment discrimination claim "accrues upon awareness of the actual injury, i.e., the adverse employment action, and not when the plaintiff suspects a legal wrong"). Moreover, the district court did not abuse its discretion by determining that Anoruo was not entitled to equitable relief. *See Lukovsky,* 535 F.3d at 1051 (discussing equitable tolling and estoppel).

The district court did not abuse its discretion by denying Anoruo's motion for leave to file a second amended complaint because amendment would have been futile. *See Hartmann v. Cal. Dep't of Corr. &*

Rehab., 707 F.3d 1114, 1129-30 (9th Cir. 2013) (setting forth standard of review and explaining that leave to amend may be denied if amendment would be futile); *see also Munoz v. Mabus,* 630 F.3d 856, 863-64 (9th Cir. 2010) (under the Tucker Act, the Court of Federal Claims has jurisdiction over contract claims against the United States for more than $10,000).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright,* 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

Anoruo's motion to consolidate, filed on December 10, 2012, is denied.

AFFIRMED.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

JOSEPH CHIDI ANORUO, Plaintiff, v. ERIC K. SHINSEKI, Secretary of Veteran Affairs, Defendant.	Case No. 2:11-cv-02070-MMD-CWH ORDER (Filed Aug. 23, 2012) (Def.'s Motion to Dismiss – dkt. no. 9) (Plf.'s Motion for Leave to File a Second Amended Complaint – dkt. no. 12)

I. SUMMARY

Before the Court is Defendant Shinseki's Motion to Dismiss (dkt. no. 9), and Plaintiffs Motion for Leave to File a Second Amended Complaint (dkt. no. 12). For reasons discussed below, Defendant's Motion is granted with prejudice and Plaintiff's Motion is denied.

II. BACKGROUND

Pro se Plaintiff Joseph Anoruo is a pharmacist and employee[1] of the Department of Veteran Affairs ("DVA"). On December 22, 2011, Plaintiff filed a

[1] It is unclear from the facts provided in the Complaint whether Plaintiff is a current or former employee of the DVA.

Complaint alleging that Defendant discriminated against him on the basis of national origin in violation of Title VII of the Civil Rights Act of 1964. (Dkt. no. 1.) Plaintiff alleges that while employed with the DVA, he experienced three instances of discrimination: (1) the DVA denied his application for the Education Department Reduction Program; (2) Plaintiff was not selected for a pharmacy supervisory position at the Mike O'Callaghan Federal Hospital; and (3) Plaintiff experienced discrimination when authorities at the DVA closed down Plaintiff's pharmacy infectious disease clinic. Plaintiff alleges that these actions amount to disparate treatment and retaliation under Title VII.

On March 30, 2012, Defendant filed a Motion to Dismiss, claiming that all of Plaintiff's allegations must be dismissed because Plaintiff has not exhausted his administrative remedies. Plaintiff filed a hybrid Response and Motion for Leave to File a Second Amended Complaint (dkt. no. 12). In his Motion, Plaintiff states that he intends to "reformulate the content and form" of his First Amended Complaint ("FAC"). (Dkt. no. 12 at 7.) Defendant counters by arguing that Plaintiff's proposed Second Amended Complaint ("SAC") contains two time-barred claims and two additional claims that are also without merit.

III. DISCUSSION

A. Legal Standard

A court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands more than "labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal,* 556 US 662, 678 (2009) (citing *Papasan v. Allain,* 478 U.S. 265, 286 (1986)). "Factual allegations must be enough to rise above the speculative level." *Twombly,* 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its face." *Iqbal,* 556 U.S. at 678 (internal citation omitted).

In *Iqbal,* the Supreme Court clarified the two-step approach district courts are to apply when considering motions to dismiss. First, a district court must accept as true all well-pled factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth. *Id.* at 679. Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice. *Id.* at 678. Second, a district court must consider whether the factual allegations in the complaint allege a

plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff's complaint alleges facts that allow a court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 678. Where the complaint does not permit the court to infer more than the mere possibility of misconduct, the complaint has "alleged – but not shown – that the pleader is entitled to relief." *Id.* at 679 (internal quotation marks omitted). When the claims in a complaint have not crossed the line from conceivable to plausible, the complaint must be dismissed. *Twombly,* 550 U.S. at 570.

A complaint must contain either direct or inferential allegations concerning "all the material elements necessary to sustain recovery under *some* viable legal theory." *Twombly,* 550 U.S. at 562 (quoting *Car Carriers, Inc. v. Ford Motor* Co., 745 F.2d 1101, 1106 (7th Cir. 1989) (emphasis in original)).

B. Plaintiff Has Failed to Exhaust his Administrative Remedies

"To establish federal subject matter jurisdiction, a plaintiff is required to exhaust his or her administrative remedies before seeking adjudication of a Title VII claim." *Lyons v. England,* 307 F.3d 1092, 1103 (9th Cir. 2002). "Exhaustion of administrative remedies under Title VII requires that the complainant file a timely charge with the EEOC, thereby allowing the agency time to investigate the charge." *Id.*

In order to exhaust administrative remedies, federal employees like Plaintiff must first consult with an Equal Employment Opportunity ("EEO") counselor within forty-five (45) days of the alleged discriminatory incident(s). If the matter is not resolved, a plaintiff must file a formal administrative complaint with the agency that allegedly discriminated against him within fifteen (15) days of receiving notice from the EEO counselor. *See* 29 C.F.R. § 1614.105(a), (d); 29 C.F.R. § 1614.106(a), (b). Failure to comply with these requirements is "fatal to a federal employee's discrimination claim." *Lyons,* 307 F.3d at 1105 (citation omitted).

The three allegedly discriminatory events described in Plaintiff's FAC occurred on May 24, 2004 (denial of Plaintiffs application for the Education Department Reduction Program), September 9, 2007 (closure of a pharmacy infectious disease clinic), and May 18, 2009 (non-selection for a pharmacy supervisory position at the Mike O'Callaghan Federal Hospital). All parties agree that Plaintiff did not contact an EEO officer until July 30, 2010, well outside the forty-five day required timeframe. *See* 29 C.F.R. § 1614.105(a)(1). Plaintiff argues that the 45-day window to consult with an EEO officer should be measured from the date that the DVA cut off all communications with him, which was June 24, 2010. However, the timeframe for corresponding with the EEO runs from the date of the allegedly discriminatory act, not the last date of communication with the allegedly discriminatory person or agency. *See id.*

Nor is Plaintiff entitled to equitable tolling of his claims. Plaintiff argues that he is entitled to equitable tolling because the DVA actively misled him regarding whether it would provide him an internal remedy. (Dkt. no. 12 at 5.) The Ninth Circuit recognizes equitable tolling when (1) the defendant has engaged in wrongful conduct; or (2) extraordinary circumstances make it impossible for the plaintiff to timely assert a claim. *Torres v. County of Lyon,* No. 3:07-cv-538, 2009 WL 905046, at *5-6 (D. Nev. March 31, 2009). "'Wrongful conduct' consists of a defendant's fraudulent concealment of relevant facts without any fault or lack of due diligence by the plaintiff." *Id.* at 5 (citation omitted). Plaintiff fails to plead any facts giving rise to an inference that the DVA fraudulently concealed whether it would provide him with an internal remedy. Further, Plaintiff's decision not to contact an EEO officer until 2010 demonstrates a lack of due diligence on his part. The allegations in the FAC demonstrate that Plaintiff had been in discussion with various officials at DVA for 7-8 years before bringing this lawsuit. Despite this, Plaintiff did not contact an EEO counselor until June 2010.

For these reasons, Plaintiff's Title VII claims against Defendant are dismissed with prejudice.

C. Allowing Plaintiff to file a SAC Would be Futile

In his proposed SAC, Plaintiff alleges what are essentially the same two Title VII causes of action as

he alleged in his FAC. (Dkt. no. 12 at 14.) As such, allowing Plaintiff to allege the two Title VII causes of action included in his proposed SAC would be futile. Although leave to amend a complaint is liberally granted under Fed. R. Civ. P. 15, "leave to amend need not be granted if the proposed amended complaint would subject to dismissal." *Bellanger v. Health Plan of Nev., Inc.,* 814 F. Supp. 914, 916 (D. Nev. 1992) (citing *United Union of Roofers, Waterproofers, and Allied Trades No. 40 v. Insurance Corp. of Am.,* 919 F.2d 1398 (9th Cir.1990); *see also Johnson v. Am. Airlines,* 834 F.2d 721 (9th Cir. 1987) (stating that "courts have discretion to deny leave to amend a complaint for 'futility', and futility includes the inevitability of a claim's defeat on summary judgment.")

In his proposed SAC, Plaintiff adds two additional causes of action: (1) breach of employment contract between Plaintiff and the United States amounting to $62,518.94 in damages; and (2) a common law theory of unjust enrichment.

The unjust enrichment claim is futile because the United States has not waived its sovereign immunity for quasi-contractual claims such as unjust enrichment. *See Am. Cargo Transport, Inc. v. United States,* No. CO5-393, 2007 WL 3171423, at *4 (W.D. Wash. Oct. 26, 2007) (citing as grounds for dismissal of a plaintiff's unjust enrichment claim the fact that "the government has not waived its sovereign immunity as to causes of action based on contracts implied by law, i.e., quasi-contract. . . .").

The Court does not have jurisdiction over the proposed breach of contract claim. This is because the Court of Federal Claims has jurisdiction over claims against the United States for more than $10,000. *Munoz v. Mabus,* 630 F.3d 856, 864 (9th Cir. 2010). It is true that Plaintiff may have a colorable breach of contract claim. Defendant argues that this cause of action is time-barred. Breach of contract claims against the United States are governed by a six year statute of limitations. 28 U.S.C. § 2501 ("[e]very claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.") Plaintiff alleges that the breach of contract occurred in 2010. (Dkt. no. 12 at ¶ 50.) Defendant argues that this was clearly not the case based on Plaintiff's Complaint. On review, the Court disagrees. It is unclear from the Complaint when the date of the alleged breach of contract occurred. However, it would be improper for Plaintiff to bring such a claim in this Court. The proper venue for this claim is the Court of Federal Claims.

For these reasons, it would be futile for Plaintiff to file any of the causes of actions alleged in his proposed SAC in this Court. The Motion is accordingly denied.

III. [sic] CONCLUSION

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss (dkt. no. 9) is GRANTED with prejudice.

IT IS FURTHER ORDERED that Plaintiff's Motion for Leave to File a SAC (dkt. no. 12) is DENIED.

The Clerk of the Court is directed to close this matter.

DATED THIS 23rd day of August 2012.

/s/ Miranda Du
UNITED STATES
DISTRICT JUDGE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH CHIDI ANORUO, Plaintiff-Appellant, v. ROBERT A. McDONALD*, Secretary of Veteran Affairs, Defendant-Appellee.	No. 12-17130 D.C. No. 2:11-cv-02070-MMD-CWH District of Nevada, Las Vegas ORDER (Filed Oct. 15, 2014)

Before: TASHIMA, GRABER, and IKUTA, Circuit Judges.

Anoruo's motion to recall the mandate is denied as moot because the mandate has been recalled as issued in error.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Anoruo's petition for panel rehearing and petition for rehearing en banc are denied.

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* Robert A. McDonald has been substituted for his predecessor, Eric K. Shinseki, as Secretary of Veteran Affairs under Fed. R. App. P. 43(c)(2).

No further filings will be entertained in this closed case.

Anoruo, Josesh C

From: Zurfluh, Donald J Jr.
Sent: Tuesday, May 25, 2004 11:09 AM
To: Anoruo, Joseph C
Subject: EDRP Application

Mr. Anoruo, I regret to inform you that your EDRP application was not accepted due to the fact that you exceeded the 6 month time limit for applying. Your entrance on duty date was May 4, 2003. Your application was not submitted until 2/16/04, therefore, exceeding the 6 months. The program officials in New Orleans are quite strict about this.

If I can answer any questions, please let me know.

[SEAL]

DEPARTMENT OF VETERANS AFFAIRS
Healthcare Retention and Recruitment Office
1555 Poydras Street
Suite 1971
New Orleans, LA 70112

JUL 21, 2011

In Reply Refer To: 10A2A7

Guinness Ohazuruike, Esq.
Guinness Law Firm
611 S. Sixth Street
Suite 120
Las Vegas, Nevada 89101

Dear Mr. Ohazuruike:

Your letter to the Department of Veterans Affairs (VA) regarding the Education Debt Reduction Program (EDRP) was referred to me for reply. In reviewing documents in the case file it is clear that Dr. Anoruo applied for an Education Debt Reduction Award within his window of eligibility following permanent appointment on October 8, 2003. The 6-month timeline for processing and approval of the award began on October 8, 2003, and expired on April 8, 2004. The approval process required that EDRP awards be signed by all parties within the 6-month statutory window of eligibility. The date the application was signed by Dr. Anoruo was February 16, 2004, with supporting loan verification documents signed by lenders on March 1, 2004 and March 4, 2004. The Medical Center Director signed the application on

May 24, 2004, which was approximately 6 weeks after the deadline. That application was not forwarded to the National EDRP Manager until June 4, 2004. Consequently when the application was received in the national program office it was deemed untimely and the award was denied. This was then the standard of practice and untimely awards were not processed if they were submitted beyond the 6-month deadline.

Subsequently, the facility Director made an offer to resolve the situation by offering Dr. Anoruo retention incentive under the Student Loan Repayment Program (SLRP). These awards are guided by Office of Personnel Management (OPM) regulations, 5 CFR part 537. Awards under SLRP are different than EDRP awards as they (SLRP awards) are authorized by a separate and unrelated legal authority. The offer for SLRP was made in June 2009, as a retention incentive. The offer, $13,330, was the maximum allowable under Federal regulations as the debt repayment could be no more than the outstanding loan balance. Dr. Anoruo chose not to accept the provisions of that loan repayment offer.

Absent outstanding student loans, there is no statutory vehicle available to retroactively reimburse

Dr. Anoruo for the student loan debt that has been retired.

Sincerely,

/s/ Marisa Palkuti
Marisa Palkuti
Director, VHA Healthcare
Retention & Recruitment Office

Anoruo, Josesh C

From: Bright, John B
Sent: Friday, January 16, 2009 8:04 AM
To: Anoruo, Joseph C
Subject: RE: LETTER TO NETWORK DIRECTOR (MR NORBY) FOR EDIT/ADVISE

I will use local funds to the extent possible to offset your debt. I'll work on this next week. I'll be in touch. Please wait for me.

John B. Bright
Director
VA Southern Nevada Healthcare System
702-636-3010

From: Anoruo, Joseph C
Sent: Thursday, January 15, 2009 3:32 PM
To: Bright, John B
Subject: RE: LETTER TO NETWORK DIRECTOR (MR NORBY) FOR EDIT/ADVISE

Sir:

Are you aware of this letter I received this afternoon that was signed by Ann Marie Feistman concerning this matter. The tone of it was beyond my widest imagination based on our last discussion we had and what we have gone through since 4 years on this matter.

Sorry for the inconveniences.

Joseph Anoruo, Pharm.D

From: Bright, John B
Sent: Friday, October 14, 2008 8:49 AM
To: Anoruo, Joseph C
Subject: RE: LETTER TO NETWORK DIRECTOR (MR NORBY) FOR EDIT/ADVISE

Looks ok to me.

From: Anoruo, Joseph C
Sent: Tuesday, October 14, 2008 8:40 AM
To: Bright, John B
Subject: LETTER TO NETWORK DIRECTOR (MR NORBY) FOR EDIT/ADVISE

Sir:

Attached is the letter I intend to send to Mr. Norby and the respected people I may copy.

A per our earlier discussion, please, edit and advise me as you may think appropriate.

Your support is paramount in resolving this matter.

Thanks for your co-operation.

Anoruo, Josesh C

From: Bright, John B (SES)
Sent: Monday, March 23, 2009 10:45 AM
To: Anoruo, Joseph C
Subject: RE: Follow up:

If you have any problems with him, I will intercede. I'm trying to make this right for you.

John B. Bright
Director
VA Southern Nevada Healthcare System
702-636-3010

From: Anoruo, Joseph C
Sent: Monday, March 23, 2009 10:39 AM
To: Bright, John B (SES)
Subject: RE: Follow up:

Sir:

I am sorry for not replying promptly. I was on family care since 03/12/09 for the birth of my first baby ***Chiamaka Precious Anoruo***

Actually, I read Mr. Zurfluh's email regarding this, but did not act on it because, per your last e-mail of 01/16/09/ you told me to wait for you and that you will be in touch with me, but I did not here [sic] from you.

Mr. Zurfluh is the chief of human resources, if you have delegated him to assist us once more, I will abide by it, but would not like to be misrepresented again.

Thanks for your candid assistance

Joseph Anoruo, Pharm.D
ID clinical pharmacist Specialist

From: Bright, John B (SES)
Sent: Monday, March 16, 2009 10:20 AM
To: Anoruo, Joseph C
Subject: RE: Follow up:

I have instructed Mr. Zurfluh to assist you in making application so I can fund locally. I'm trying to help you but you must also assist me. Since I cannot utilize EDRP funding, I will make every effort to remedy your issues locally. If you do not want Mr. Zurfluh's assistance, then I will assign someone else. I cannot do all this personally.

John B. Bright
Director
VA Southern Nevada Healthcare System
702-636-3010

Anoruo, Josesh C

From: Tefferi, Josephine
Sent: Thursday, January 29, 2009 3:25 PM
To: VHALAS PHARM CLIN RPH
Subject: FW: EDRP

FYI. This is what Bryan is looking for.

From: Tarman, Bryan, L.
Sent: Thursday, January 29, 2009 3:08 PM
To: Tefferi, Josephine; Anoruo, Joseph C
Subject: RE: EDRP

I am looking for people who were offered this in their recruitment and received it or did not receive it and why.

Bryan Tarman
Chief Pharmacy Services
VA Southern NV HCS
Tel: (702) 636-3000 ext 6227
Fax: (702) 636-3069

From: Tefferi, Josephine
Sent: Thursday, January 29, 2009 2:20 PM
To: Anoruo, Joseph C
Cc: Tarman, Bryan L.
Subject: RE: EDRP

I will forward to Bryan since he is looking into this.

From: Anoruo, Joseph C
Sent: Thursday, January 29, 2009 2:18 PM
To: Tefferi, Josephine
Subject: RE: EDRP

I guess your inquiry is strictly for new hires, correct?

From: Tefferi, Josephine
Sent: Wednesday, January 28, 2009 12:41 PM
To: VHALAS PHARM CLIN RPH
Subject: EDRP

Hello Clinical Staff!

If you are a relatively new hire, please respond to me if you are still waiting for your EDRP or if you have not yet applied for the EDRP program yet due to advice from HR. Thanks!

Josephine (Joee) Tefferi, Pharm.D.
Associate Chief, Clinical Pharmacy Program
VA Southern Nevada Healthcare System
PO Box 360001
North Las Vegas, NV 89036
Phone: (702) 636-3000 ext. 4145

Anoruo, Joseph C

From: Zurfluh, Donald J Jr.
Sent: Wednesday, September 01, 2004 1:55 PM
To: Anoruo, Joseph C; Tunrarebi, Rachel A
Subject: FW: EDRP Applications – Las Vegas, NV

I have received a decision from the Placement Office in New Orleans regarding your EDRP submission and appeal for a waiver. It is as follows:

I have received, reviewed and denied the EDRP applications on Joseph Anoruo and Rachel Turnarebi [sic] for the following reasons.

ANORUO & TURNAREBI [sic] – Both of these applications were received untimely in this office. It is obvious by the date the application was completed by the applicants that they were initiated well beyond 6 months from the date they were permanently appointed.

Further, per our conversation regarding these applicants, both applications are denied.

As you well know – The EDRP is an award program, not an entitlement program. There are no provisions in the EDRP legislation or guidance for waivers, appeals, extensions or any other method of reconsideration.