Docket #0025 Date Filed: 6/5/2023

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

ANANT KUMAR TRIPATI, Plaintiff, v. SARA TIRSCHWELL, et al, Defendants.	Adversary Proceeding # 23-03072 Assigned to: Bankruptcy Judge Christopher M. Lopez

STATE OF ARIZONA DEFENDANTS' MOTION TO SCREEN PLAINTIFF'S PRO SE INMATE ADVERSARY COMPLAINT AND REQUEST FOR AN EXTENSION OF TIME TO FILE A RESPONSIVE PLEADING

Defendants Struck Love Bojanowski and Acedo, PLC,[1] Daniel P. Struck, Michael Gottfried, Betty Ulibarri, and Diane Bohuszewicz[2] (collectively, "State of Arizona Defendants"), through counsel, move the Court to screen Plaintiff Anant Kumar Tripati's pro se inmate Adversary Complaint pursuant to 28 U.S.C. § 1915A.[3] State of Arizona Defendants also request an extension of time until 30 days after the Court issues a screening order to file a responsive pleading if the Adversary Complaint is not dismissed.

[1] The Adversary Complaint incorrectly refers to this Defendant as "Struck Wieneke & Love PLC."

[2] The Adversary Complaint misspells these Defendants' names as "Ullibari" and "Boschuweicz."

[3] By making this special appearance to request screening of the pro se inmate complaint pursuant to § 1915A, counsel for State of Arizona Defendants reserves their right to raise in a responsive pleading all defenses that may apply to claims, if any, that survive a screening order, including but not limited to the defenses available under Federal Rules of Bankruptcy Proceedings 7004 and 70012, and Federal Rules of Civil Procedure 4 and 12(b).

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I. BACKGROUND.

A. Tripati's Convictions for Fraud and Vexatious Litigation History.

Plaintiff Tripati is a pro se inmate currently serving a 52.5-year sentence in Arizona state prison for convictions on multiple counts of fraudulent schemes against the State of Arizona. *See State v. Tripati*, Maricopa County Superior Court Nos. CR 1992-008576-A, CR1992-00960, http://www.superiorcourt.maricopa.gov/docket/CriminalCourtCases/caseSearch.asp (search Last Name: "Tripati"; First Name: "Anant"). He is thus subject to the filing requirements of the Prisoner Litigation Reform Act ("PLRA"), which "was designed to curb frivolous or abusive litigation by prisoners." *Jones v. Escalon*, No. CV M-03-369, 2006 WL 8447817, at *3 (S.D. Tex. May 9, 2006), *report and recommendation adopted*, 2006 WL 8447818 (S.D. Tex. June 19, 2006).[4]

Tripati was initially convicted in the United States District Court for the District of Wyoming on nine counts of federal bank fraud charges and sentenced to a 10-year-prison term in January 1984. *See Tripati v. Henman*, 843 F.2d 1160, 1161 (9th Cir. 1988); *Tripati v. United States Parole Comm'n*, 872 F.2d 328, 329 (9th Cir. 1989). In federal prison, Tripati filed numerous frivolous lawsuits against treasury officials, prosecutors, judges, prison officials, attorneys, and other government officials involved in his conviction and incarceration—alleging they conspired to falsely convict him to cover up government corruption, committed fraud and racketeering,

[4] The PLRA applies to bankruptcy court actions as well. *See Tripati v. U.S. Bankr. Court for E. Dist. of Texas*, 180 B.R. 160, 163 (E.D. Tex. 1995) (holding that 28 U.S.C. § 1915 applies to Tripati's request to proceed in forma pauperis on adversary complaint); *see also In re Star*, No. 06-30571-DOT, 2008 WL 2705092, at *1 n.3 (Bankr. E.D. Va. July 1, 2008) (noting that PLRA three strikes rule applied to pro se inmate debtor's adversary proceedings); *cf. In re Hough*, 239 B.R. 412, 414 (B.A.P. 9th Cir. 1999) (explaining PLRA amended the Bankruptcy Code by adding 11 U.S.C. § 527(17), to make litigations costs awarded against prisoner debtor nondischargeable); *In re Searcy*, 448 B.R. 19, 28 (Bankr. D. Idaho 2011) ("The intent of § 523(a)(17) is to except from discharge fees, costs and expenses imposed on prisoner litigants which serve as economic disincentives to filing frivolous litigation, whether those expenses are imposed under the PLRA, as codified in 28 U.S.C. § 1915, or a similar non-Federal law."), *aff'd*, 463 B.R. 888 (B.A.P. 9th Cir. 2012), *aff'd*, 561 F. App'x 644 (9th Cir. 2014).

and/or racially discriminated against him.[5] On September 6, 1985, the United States District Court for the District of Arizona ordered the clerk of court not to accept for filing any complaint or petition from Tripati except with prior approval of a judge because of his prolific and frivolous filings. *See Tripati v. United States*, 875 F.2d 871, *1 (9th Cir. 1989).

In 1987, Tripati filed a pro se lawsuit in the United States District Court for the District of Columbia against federal prison officials in Arizona. *See Tripati v. Fed. Prison Sys.*, No. CIV.A 87-1288-LFO, 1987 WL 19922, at *1 (D.D.C. Nov. 3, 1987). The court found that Tripati "has filed so many duplicative lawsuits in the District of Arizona that that court has issued an order prohibiting the clerk from accepting any new complaints or petitions from Mr. Tripati until a judge has reviewed them to ascertain their similarity to other actions filed by him." *Id*. It found "no compelling circumstances that require this case to remain in the District of Columbia," lack of jurisdiction over his claims "with respect to civil forfeiture proceedings," and "any complaint by Mr. Tripati with respect to his criminal conviction should be raised in a habeas corpus petition in the judicial district where he is confined." *Id.* It transferred the case to the District of Arizona. *Id.* The D.C. Circuit affirmed the transfer order, also noting that Tripati has been enjoined by the District of Arizona for his vexatious litigation:

> A prolific pro se litigant, Tripati has filed numerous civil actions in the federal district court in Arizona. Because his filings there have been so numerous, that district court ordered its clerk not to accept any complaint or petition from Tripati except pursuant to an order of a judge of the court. This measure was intended to insure that a judicial officer would review Tripati's claims to ascertain whether they duplicated other pending actions filed by him.

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[5] *See*, *e.g.*, *Tripati v. United States Parole Comm'n*, 872 F.2d 328, 329 (9th Cir. 1989); *Tripati v. Henman*, 892 F.2d 1046, *1 (9th Cir. 1989); *Tripati v. Henman*, 843 F.2d 1160, 1161 (9th Cir. 1988); *Tripati v. INS*, 784 F.2d 345, 346–48 (10th Cir. 1986); *Tripati v. Henman*, 857 F.2d 1366, 1367 (9th Cir. 1988); *Tripati v. First Nat. Bank & Trust*, 821 F.2d 1368, 1369–70 (9th Cir. 1987).

In re Tripati, 836 F.2d 1406, 1407 (D.C. Cir. 1988).

In 1988, Tripati filed a lawsuit against the clerk of court for the District of Wyoming, alleging that it was not properly processing his papers. *Tripati v. Beaman*, 8279 F.2dd 351, 352 (10th Cir. 1989). The district court dismissed his complaint and directed the clerk not to file any further complaints or other pleadings from Tripati without leave of court. *Id.* The Tenth Circuit affirmed dismissal of the complaint and recognized the district court's authority to issue an order to prevent litigants from abusing the court system by enjoining their future filings. *Id.* at 352–54.

Tripati was released from federal prison in July 1989. *See* Federal Bureau of Prisons Inmate Search Results at https://www.bop.gov/inmateloc/ (search "Tripati, Anant, Kumar"). Tripati, however, resumed his fraudulent schemes. In 1992, Tripati was arrested for defrauding the State of Arizona in a bail bond scheme to release four drug suspects from the Maricopa County jail on phony bail bonds. *See* https://www.latimes.com/archives/la-xpm-1993-12-03-me-63501-story.html. In 1993, the Arizona prosecutor dismissed three forgery counts, and a jury convicted Tripati of multiple felonies, including false swearing, two attempts to commit fraudulent schemes and artifices, and fraudulent schemes and artifices against the State of Arizona. *See State v. Tripati*, Maricopa County Superior Court Nos. CR 1992-008576-A, CR1992-00960, http://www.superiorcourt.maricopa.gov/docket/CriminalCourtCases/caseSearch.asp. Tripati was sentenced to 52.5 years' imprisonment without the possibility of parole and has been in the custody of the Arizona Department of Corrections, Rehabilitation and Reentry ("ADCRR") since then. *Id*.

In Arizona state prison, Tripati continued his vexatious litigation. He has filed approximately 211 civil cases, including 156 federal court cases in district courts in Arizona, California, District of Columbia, North Dakota, South Dakota, Texas, Oklahoma, Pennsylvania, and Tennessee, and the Third, Fifth, Ninth, Tenth, and D.C. Circuits, *see*

https://pcl.uscourts.gov/pcl/pages/search/findParty.jsf (search Last Name: "Tripati"; First Name: "Anant"), as well as 65 civil cases in Arizona state superior courts, *see* https://www.superiorcourt.maricopa.gov/docket/CivilCourtCases/caseSearch.asp (Search Last Name: "Tripati", First Name: "Anant"); https://www.cosc.pima.gov/PublicDocs/ (Search Last Name: "Tripati", First Name: "Anant"); https://apps.supremecourt.az.gov/publicaccess/caselookup.aspx (Search by Last Name: "Tripati" First Name: "Anant"). These numbers do not include his Arizona state court appeals.

B. Tripati Has Been Sanctioned for Defrauding the Court.

The District of Arizona has even sanctioned Tripati for attempting to defraud the court. In *Tripati v. Corizon, Inc.*, No. CV 13-0615-TUC-DCB, 2015 WL 13827226, at *6 (D. Ariz. Jan. 26, 2015), Tripati moved for appointment of counsel claiming that specialists and prison doctors had diagnosed him as legally blind. *Id.* at *6. Tripati claimed that he is unable to see when he writes, and because the court previously denied his request for a typewriter, he was unable to submit legible documents to the court. *Id.* The court denied his request for counsel, but ordered the defendants to show cause why it should not order prison officials to provide him with a typewriter for his special needs. *Id.* at *6–7. Upon reconsideration, the court held an evidentiary hearing and concluded that Tripati had lied to the court about his blindness, stating:

> Mr. Tripati can clearly see well enough that if he desires to communicate with the court and make filings with this court, he has the physical ability to do so.... I am also going to send a copy of my findings to any other court of record that there is no medical basis nor an empirical objective basis as to why Mr. Tripati cannot submit legible documents to a court.

Id., 2015 WL 13827229, at *1 (D. Ariz. Oct. 27, 2015), *rev'd and remanded on other grounds*, 713 F. App'x 710 (9th Cir. 2018); *see also Tripati v. Corizon Inc.*, No. No. CV 16-00282-TUC-DCB, 2018 WL 513381, at *1, n.1 (D. Ariz. Jan. 23, 2018); (recognizing Tripati's fraud upon the court).

C. Dismissal of a Prior Lawsuit Against the Same Defendants Based on the Same Allegations of Racketeering.

On March 5, 2022, the United States District Court for the Western District of Pennsylvania dismissed a similar complaint that Tripati filed against the same State of Arizona Defendants. As he does here in the Adversary Complaint, Tripati made conclusory allegations that all defendants were alter egos of Corizon (and numerous other named defendants) and participated in a nationwide fraudulent scheme, claiming among other things that they violated the Arizona civil racketeering statute:

> The first fifty-nine pages of the [Second Amended Complaint ("SAC")] contain conclusory allegations that a vast nationwide conspiracy exists in which the corporate health care providers and their counsel have systematically concealed "inculpatory evidence," including documents and information, in order to frustrate Tripati's prior prisoner cases and prevail in litigation. Tripati contends that Defendants engaged in these practices in order to prevail in litigation, to conceal evidence to make a profit, to violate his attorney client privilege, to retaliate against him, to abuse procedural devices, and to deny him access to evidence. He also claims that the Weber Gallagher Defendants designed this "scheme" and that the other Defendants have continued it. For example, he alleges that the named law firms and their attorneys manufactured and concealed evidence and assembled template documents that contained false or misleading information about the practices of the healthcare providers during their representation of Wexford Health, Corizon, or Centurion of Arizona to frustrate prisoner litigation. He maintains that Wexford Health, Corizon, and Centurion, along with their legal counsel, are **alter egos** of each other because they have similar modes of operation and policies.

Tripati v. Wexford Health Sources, Inc., No. 2:20-CV-00427, 2022 WL 1516780, at *2 (W.D. Pa. Feb. 14, 2022) (emphasis added); *see also id.,* at *13–14 (dismissing racketeering claim). The district court dismissed the claims for lack of personal jurisdiction and failure to state a claim, and it denied him leave to amend the complaint. *Id.*, 2022 WL 1013446 *3 (W.D. Pa. Apr. 5, 2022).

The Third Circuit affirmed, finding that "Tripati is a convicted fraudster who, over the past few decades, has inundated the federal courts with scores of lawsuits." *Tripati v. Wexford Health Sources Inc.*, No. 22-1861, 2022 WL 17690156, at *1 (3d Cir. Dec. 15, 2022). It noted that, "in

light of his vexatious litigation history, Tripati has been subject to filing restrictions in the United States District Court for the District of Arizona, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court." *Id.* at n.2 (internal citations omitted). It found that the SAC failed to state a claim:

> The SAC named dozens of defendants, "including third-party healthcare contractors, five law firms and their attorneys alleged to have represented the healthcare contractors in prior litigation[,] attorneys from the Arizona Office of Attorney General, and various Arizona Department of Corrections personnel." Most of the defendants had no ties to the Commonwealth of Pennsylvania.
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> The SAC is, at times, rambling, vague, and difficult to follow. It appears to allege that "a vast nationwide conspiracy exists in which the corporate health care providers and their counsel have systematically concealed 'inculpatory evidence.'" "Tripati contends that Defendants engaged in these practices in order to prevail in litigation, to conceal evidence to make a profit, to violate his attorney[-]client privilege, to retaliate against him, to abuse procedural devices, and to deny him access to evidence." The SAC also alleges, inter alia, that Tripati suffers from various medical conditions, and that "the healthcare providers have 'gone through the motions to treat [him],' but have not provided effective treatment." In light of Tripati's allegations, he sought, inter alia, $5 million in damages against each defendant.

Id. at *1–2 (internal record citations omitted). Tripati filed a petition for writ of certiorari to the United States Supreme Court, but it has not docketed the case. It is unlikely to accept review, having also recognized that Tripati is a known vexatious litigant and imposed its own filing restrictions. *See Tripati v. Schriro*, 541 U.S. 1039, 1039 (2004) (mem.).

II. THIS COURT SHOULD SCREEN TRIPATI'S ADVERSARY COMPLAINT.

The PLRA requires federal courts to screen all prisoner complaints and to dismiss any claims that: (a) are legally frivolous or malicious; (b) fail to state a claim upon which relief may be granted; or (c) seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(a) & (b). A claim is frivolous if "it lacks an arguable basis either in law or fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A claim fails to state a claim upon which relief

may be granted if it does not allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Tripati's Adversary Complaint should be screened pursuant to § 1915A because, as discussed above, federal courts throughout the United States have correctly recognized him as a vexatious litigant, who has had lied to the court to obtain relief. Indeed, Tripati is barred from proceeding in forma pauperis under 28 U.S.C. § 1915(g) because of his vexatious litigation history. *See*, *e.g.*, *Tripati v. Hale*, No. 2:13–cv–830, 2013 WL 4054627, at *1 (W.D. Pa. Aug. 12, 2013) ("There is no question that [Tripati] has accrued at least three strikes under § 1915(g)'s three-strike rule"); *see also*, *e.g.*, *Tripati v. Corizon Inc.*, No. CV 16-00282-TUC-DCB, 2017 WL 11482284 at *1 n.3 (D. Ariz. Mar. 7, 2017); *Tripati v. Pharmacorr*, No. CIV–13–547–R. 2013 WL 5592619, at *3 (W.D. Okla. Oct. 10, 2013).

Moreover, Tripati's Adversary Complaint rehashes the same allegations he made against State of Arizona Defendants in *Wexford*, including his conclusory allegations that they are alter egos of Corizon (and other Defendants who are named or mentioned in the Adversary Complaint) and engaged in an unlawful nationwide scheme to commit fraud and profit against inmates like him in violation of Arizona's civil racketeering statute. Because the district court and Third Circuit in *Wexford* dismissed such allegations for failure to state a claim, this Court should screen the Adversary Complaint to determine whether Tripati has brought the same frivolous claims here before requiring State of Arizona Defendants to file a response. *See*, *e.g.*, *Tripati v. Corizon Inc.*, 2018 WL 513381, at *22 (screening order dismissing without leave to amend, finding: "Plaintiff is and has long been a prodigious litigator, although apparently never a successful one. … Plaintiff continues to attempt to re-litigate claims from closed cases and to justify revisiting those closed cases by asserting that defendants falsified or concealed evidence, committed a fraud on the court,

or by asserting intervening facts that are insufficient to support those claims. … Plaintiff again sues many of the same Defendants that he has repeatedly sued and he attempts to re-litigate claims that were decided against him in the past, while attributing newly perceived wrongs as part of a policy or practice.").

III. CONCLUSION.

For the reasons above, State of Arizona Defendants respectfully request that this Court screen Tripati's pro se inmate Adversary Complaint pursuant to § 1915A. They further request that the Court extend the time period for them to file a response until 30 days after the Court issues a screening order if the Adversary Complaint is not dismissed.

Dated this 5th day of June 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of June 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

On the same date, I served a true copy of the foregoing on Pro Se Plaintiff my first class mail, postage prepaid:

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Respectfully submitted,

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