IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

In re:	:	Case No. 23-90086
TEHUM CARE SERVICES, INC.,	:	Chapter 11
Debtor,	:	
_____	:	
ANANT KUMAR TRIPATI,	:	Adv. Proc. No. 23 AP 3072
Plaintiff,	:	
v.	:	
SARA TIRSCHWELL, et al,	:	
Defendants.	:	

MOTION TO DISMISS OF JONES, SKELTON & HOCHULI, P.L.C. PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 7012 AND FRCP 12(B)(2), 12(B)(5) AND 12(B)(6)

Defendant Jones, Skelton & Hochuli, P.L.C. ("JSH") by and through its attorneys, Zandra Foley, Esquire of Thompson Coe and Holly M. Whalen, Esquire of DiBella Weinheimer (*Pro Hac Vice* Motion pending), respectfully moves to dismiss this action pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure incorporated Federal Rules of Civil Procedure 12(B)(2), 12(B)(5) and 12(b)(6). In support of this Motion, JSH states as follows:

1. On or about May 1, 2023, Plaintiff Anant Kumar Tripati initiated this non-core Adversary Proceeding by filing his Verified Adversary Complaint against 42 defendants, including various prison healthcare contractors as well as certain of their employees, certain attorneys and law firms alleged to have represented the contractors in prior litigation, as well as attorneys with the Arizona Office of Attorney General and various ADOC personnel. (ECF Doc. No. 1).

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2. Tripati is a known habitual litigant who has filed the same or similar unsuccessful claims against various parties purportedly arising from his treatment as a prisoner in the custody of the Arizona Department of Corrections ("ADOC").

3. Tripati has filed many lawsuits in multiple jurisdictions across the United States, even having been barred from filing noncriminal actions or subjected to pre-filing review in certain courts.[1]

4. On May 15, 2023, Tripati filed a Motion to Amend along with his Corrected Verified Adversary Complaint (ECF Doc. No. 4).[2]

5. Tripati's amended pleading, which is virtually identical to his original pleading, includes claims for (1) Violation of 18 U.S.C. 1962(c); ARS 13-2314.04 and (2) Violation of 18 U.S.C. 1962(d); ARS 13-2314.04 by Conspiracy to Violate 18 USC 1962(c) and ARS 13-2314.04; and (3) Declaratory Judgment and Other Relief. (*See* ECF Doc. No. 4-1.)

6. As against JSH, Tripati, alleges only:

> 31. Jones Skelton Hochuli Attorney 1 N Central # 900, Phoenix, AZ 85004 sued individually and officially
>
> 423. July 16, 2013 Weber Gallagher sent a [sic] email to Skelton Hochuli that training given to staff are to be released to inmates in discovery.
>
> 426. January 14, 2013 Weber Gallagher sent a [sic] email to Skelton Hochuli that no policies by Wexford are to be released to inmates in discovery.

[1] *See* In re Tripati, 891 F.2d 296, n.1 (9th Cir. 1989)(table), 1989 WL 150100, 1989 U.S. App. LEXIS 23409 and Tripati v. Schiro, 541 U.S. 1039 (2004)(mem.).

[2] As Tripati is permitted to amend his pleading once as a matter of course and without leave of Court within 21 days after serving the initial pleading, *see* FRBP 7015 and FRCP 15, to the extent JSH cites to allegations made within Tripati's pleadings, the citations reflect reference to the amended pleading.

> 429. September 9, 2012 Weber Gallagher sent a [sic] email to Skelton Hochuli that no documents adverse to Wexford are to be released to inmates in discovery.

(ECF Doc. No. 4-1).

7. Tripati's rambling, vague and difficult to follow pleading cannot survive either procedurally or substantively.

8. Because (1) this Honorable Court lacks personal jurisdiction over JSH as a non-resident law firm; (2) Tripati failed to properly serve JSH and (3) any claim by Tripati against JSH is not supported by law or fact, this adversary proceeding against JSH should be dismissed, with prejudice.

9. JSH incorporates herein as if set forth in full its Brief in Support of Motion to Dismiss of Jones Skelton & Hochuli, P.L.C. pursuant to Federal Rule of Bankruptcy Procedure 7012 and FRCP 12(b)(2), 12(b)(5) and 12(b)(6).

10. JSH consents to this Honorable Court's entry of a final order in this matter.

A. THE COURT HAS NO PERSONAL JURISDICTION OVER JSH.

11. JSH moves to dismiss this adversary proceeding pursuant to Federal Rule of Civil Procedure 12(b)(6) as incorporated by Federal Rule of Bankruptcy Procedure 7012 because the Court does not have personal jurisdiction over it, an Arizona law firm organized as an Arizona professional LLC pursuant to Arizona law, which represented a client against a lawsuit filed in Arizona.

12. Attached hereto as Exhibit A is a Declaration on behalf of JSH setting forth facts relevant to this Court's analysis of jurisdiction. A more detailed statement of facts is provided in JSH's Brief in Support of its Motion to Dismiss, which is filed contemporaneously herewith and incorporated herein.

13. There are no facts to support either general or specific personal jurisdiction over JSH in Texas.

14. Nowhere in his Complaint does Tripati allege any meaningful contacts between JSH and Texas nor will any amount of discovery demonstrate any such contacts.

15. JSH's litigation of an Arizona case on behalf of a Pennsylvania resident does not give rise to personal jurisdiction over JSH in Texas.

16. Thus, dismissal of JSH, with prejudice, is appropriate.

WHEREFORE, JSH moves for the dismissal of this action, with prejudice.

B. TRIPATI FAILED TO PROPERLY SERVE THE SUMMONS AND COMPLAINT UPON JSH.

17. Pursuant to Federal Rule of Civil Procedure 12(b)(5), as incorporated by Federal Rule of Bankruptcy Procedure 7012, provides for dismissal of a complaint for "insufficient service of process."

18. While Federal Rule of Bankruptcy Procedure 7004(c) provides that service of process in an adversary proceeding may be effectuated within the United States by first class mail postage prepaid, Tripati failed to serve the Summons and Complaint upon JSH at its registered and principal place of business and failed to serve a person authorized to accept service on behalf of the law firm. *See*, Ex. A.

19. Thus, dismissal of JSH is appropriate.

WHEREFORE, JSH moves for the dismissal of this action, with prejudice.

C. TRIPATI FAILS TO PLEAD ANY FACTS AGAINST JSH UPON WHICH A CLAIM FOR RELIEF EXISTS.

20. Despite his 523-paragraph filing, Tripati references JSH in only four paragraphs.

21. Specifically, Tripati alleges only:

> 31. Jones Skelton Hochuli Attorney 1 N Central # 900, Phoenix, AZ 85004 sued individually and officially
>
> 423. July 16, 2013 Weber Gallagher sent a [sic] email to Skelton Hochuli that training given to staff are to be released to inmates in discovery.
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> 426. January 14, 2013 Weber Gallagher sent a [sic] email to Skelton Hochuli that no policies by Wexford are to be released to inmates in discovery.
>
> 429. September 9, 2012 Weber Gallagher sent a [sic] email to Skelton Hochuli that no documents adverse to Wexford are to be released to inmates in discovery

(ECF Doc. No. 4-1).

22. Even a cursory review of those paragraphs demonstrate that such allegations regarding JSH are wholly devoid of any facts upon which any claim against JSH could conceivably be made. *See*, Iqbal, 556 U.S. at 664.

23. Thus, Tripati's Complaint against JSH should be dismissed, with prejudice.

WHEREFORE, JSH moves for the dismissal of this action, with prejudice.

D. TRIPATI CANNOT USE THIS ACTION TO COLLATERALLY ATTACK A PRIOR JUDGMENT IN A DIFFERENT JURISDICTION

23. Tripati has fully litigated the issues he raises against JSH twice before.

24. As set forth in more detail in JSH's Brief in Support of Motion to Dismiss, Tripati first pursued JSH within litigation in which JSH represented its client, Wexford Health Sources, Inc., in the courts of Arizona. *See*, Tripati v. Hale, C.A. No. 15-0140-DB (U.S.D.C. Arizona).

25. He subsequently then filed claims upon the same allegations made here against JSH and many of the other same defendants named herein in the Pennsylvania court. *See*, Tripati v. Wexford Health Sources, et al., Case No. 20-cv-00427 (W.D.Pa.).

26. Thus, his action now filed in this Court appears to make an improper collateral attack on rulings made by the District Court in the Arizona Litigation which were unsuccessfully appealed to the Court of Appeals for the Ninth Circuit as well as the Pennsylvania Litigation which was unsuccessfully appealed to the Court of Appeals for the Third Circuit.

27. "Even though an action has an independent purpose and contemplates some other relief, it is a collateral attack if it must in some fashion overrule a previous judgment. Miller v. Meinhard-Commerical Corp., 462 F.2d 358, 360 (5th Cir. 1972). Id. at 360, citing Mitchell v. Village Creek Drainage Dist., 158 F.2d 475, 478 (8th Cir. 1946). *See also*, 1B J. Moore, J. Lucas, T. Currier, Moore's Federal Practice para. 0.407, at 286 (2d ed. 1984)(A lawsuit constitutes a collateral attack if it attempts to avoid, defeat, or evade a previously entered judicial decree -- or otherwise attempts to deny the prior decree's force and effect -- in the context of an incidental proceeding not established by law for the purpose of attacking the decree's validity.)

28. Tripati's only recourse for complaints about JSH's conduct in the Arizona litigation was to proceed within the Arizona action, either before the District Court of Arizona, the Court of Appeals for the Ninth Circuit, or ultimately, the United States Supreme Court.

29. Indeed, Tripati did just that, without success.

30. Tripati then attempted to seek recourse against JSH and various other parties before the federal Courts in Pennsylvania.

31. While Tripati asserts that he was unable to have his claims heard due to "spoliation" by the various Defendants in this action, that is not true.

32. To the contrary, Tripati's claims were considered and disposed of before the United States District Court for the Western District of Pennsylvania. *See*, Tripati v. Wexford Health Sources, et al., Case No. 20-cv-00427, 2022 U.S. Dist. Lexis 63606 (W.D.Pa. Apr. 5, 2022).

33. Tripati then appealed to the United States Court of Appeals for the Third Circuit which affirmed the District Court and denied reconsideration. *See*, Tripati v. Wexford Health Sources, et al., Case No. 22-1861, 2022 U.S. App. Lexis 34617, 2022 WL 17690156 (3d Cir. Dec. 15, 2022).

34. It was only after the Third Circuit's denial of Tripati's appeal that Corizon Health filed notice of bankruptcy imposing a stay on any future proceedings. Tripati's claims here are no more meritorious than they were in the District of Arizona or the Western District of Pennsylvania.

35. Accordingly, Tripati's claims against JSH should be dismissed in their entirety and with prejudice.

WHEREFORE, JSH moves for the dismissal of this action, with prejudice.

E. TRIPATI'S COMPLAINT VIOLATES FRCP 8(a)(2) WHICH REQUIRES A SHORT AND PLAIN STATEMENT.

36. Tripati's Complaint violates Rule 8(a)(2) of the Federal Rules of Civil Procedure which requires a short and plan statement supporting a plaintiff's request for relief.

37. Tripati's Verified Adversary Complaint and Corrected Verified Adversary Complaint filed in this matter are rambling, virtually indecipherable, vague writings which nonsensically cite to various cases the purpose of which Tripati fails to explain.

38. Further, Tripati fails to identify any specific actionable conduct by any Defendant, much less JSH.

39. Dismissal is appropriate when a complaint "is not only of an unwieldy length, but . . . also largely unintelligible," *See*, Fortman v. Nissan Motor Co., No. 1-21-CV-660, 2022 U.S. Dist. Lexis 127983 at *3, 2022 WL 2761372 (W.D. Tex. Mar. 31, 2022), *quoting*, Stephanatos v. Cohen, 236 F.App'x 785, 787 (3d Cir. 2007)).

40. Thus, dismissal of JSH is appropriate.

WHEREFORE, JSH moves for the dismissal of this action, with prejudice.

F. JSH INCORPORATES THE ARGUMENTS OF ALL OTHER DEFENDANTS, AS APPLICABLE TO THEM.

41. For the sake of efficiency and to avoid duplication, JSH incorporates herein the Motions and arguments of the other Defendants as may be applicable to it.

WHEREFORE, JSH moves for the dismissal of this action, with prejudice.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, LLP

/s/ Zandra E. Foley
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State Bar No. #24032085
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Telephone: 713-403-8200

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on June 5, 2023, a true and correct copy of the foregoing Motion to Dismiss was served upon all counsel of record via the Court's ECF and by mailing the same via U.S. Mail, first-class, postage pre-paid to:

ANANT KUMAR TRIPATI
102081
P.O. Box 8909
Yuma, AZ 85349

THOMPSON, COE, COUSINS & IRONS, LLP

/s/ Zandra E. Foley
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Houston, TX 77056
Telephone: 713-403-8200

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

In re:	:	Case No. 23-90086
TEHUM CARE SERVICES, INC.,	:	Chapter 11
Debtor,	:	
ANANT KUMAR TRIPATI,	:	Adv. Proc. No. 23 AP 3072
Plaintiff,	:	
v.	:	
SARA TIRSCHWELL, et al,	:	
Defendants.	:	

DECLARATION OF JAMES J. OSBORNE

I, James J. Osborne, depose and declare as follows:

1. I am an adult individual and licensed to practice law in the State of Arizona.

2. I am currently employed as a Partner and General Counsel with the law firm of Jones, Skelton & Hochuli, P.L.C.

3. I am authorized to provide this Declaration on behalf of Jones, Skelton & Hochuli, P.L.C., a Defendant in this action.

4. Jones Skelton & Hochuli, P.L.C. is a law firm organized as a Domestic Professional LLC under the laws of the State of Arizona.

5. Jones Skelton & Hochuli, P.L.C. maintains three offices, with its principal office located in Phoenix, Arizona at 40 N Central Ave, #2700, Phoenix, AZ 85004.

6. Jones Skelton & Hochuli, P.L.C. also has offices located in Albuquerque, New Mexico and Salt Lake City, Utah.

7. Only one licensed attorney employed by Jones, Skelton & Hochuli, P.L.C., Ravi Patel, Esquire, is licensed to practice law in the State of Texas.

8. Attorney Patel's State Bar of Texas license is currently on non-practicing status and he has not practiced law in the State of Texas since he joined Jones, Skelton & Hochuli, P.L.C. in 2016.

9. None of the licensed attorneys employed by Jones, Skelton & Hochuli have entered an appearance in a Texas court within the last five years.

10. None of the licensed attorneys currently employed by Jones, Skelton & Hochuli, P.L.C. reside in or work remotely from Texas.

11. Jones Skelton & Hochuli, P.L.C. does not own any property in Texas.

12. Jones Skelton & Hochuli, P.L.C. does not hold any assets in Texas.

13. Jones Skelton & Hochuli, P.L.C. does not lease any office of other property in Texas.

14. Jones Skelton & Hochuli, P.L.C. does not advertise in Texas.

15. On May 17, 2023, an envelope addressed to Jones Skelton Hochuli at 1 N Central #900 Phoenix, AZ 85004 was received into the Firm's mailroom.

16. Jones Skelton Hochuli, P.L.C. does not maintain an office or own or lease property at 1 N Central #900 Phoenix, AZ 85004.

17. In processing the envelope, a mailroom employee at Jones Skelton & Hochuli, P.L.C. marked on the envelope "James Osborne". *See* Ex. A attached hereto.

18. I, James. J. Osborne, am not an officer, a managing or general agent, or an agent authorized by appointment or by law to receive service of process on behalf of Jones Skelton & Hochuli, P.L.C.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 5, 2023



James J. Osborne

Inmate A K. Tourtas
ADC # 102087
Arizona State Prison Complex Yuma
Unit Cibola
Box 890
Yuma AZ 85366

NEOPOST FIRST-CLASS MAIL
05/12/2023
US POSTAGE $001.98º
ZIP 85349
041M11460574

James Osborne

Jones Skelton Hochuli
1 N Central #900
Phoenix, AZ 85004

JSH
MAY 17 2023
RECEIVED

LEGAL MAIL

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

In re:	:	Case No. 23-90086
TEHUM CARE SERVICES, INC.,	:	Chapter 11
Debtor,	:	
_____	:	
ANANT KUMAR TRIPATI,	:	Adv. Proc. No. 23 AP 3072
Plaintiff,	:	
v.	:	
SARA TIRSCHWELL, et al,	:	
Defendants.	:	

ORDER

This ___ day of _____, 2023, upon consideration of the Motion to Dismiss of Defendant Jones Skelton & Hochuli, P.L.C., the Motion is hereby GRANTED. It is thus ORDERED that Plaintiff Anant Kumar Tripati's Verified Adversary Complaint (ECF Doc. No. 1) and Corrected Verified Adversary Complaint filed on May 15, 2023 (ECF Doc. No. 4-1) are DISMISSED as to Jones Skelton & Hochuli and that Defendant is DISMISSED as a party to this action, with prejudice.

_____
PRESIDING JUDGE