Docket #0030 Date Filed: 6/5/2023

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.	:	

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)

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), file the following Brief in Support of its Motion to Dismiss:

I. OVERVIEW

Plaintiff Anant Kumar 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"). Tripati has filed

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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]

This action is yet another improper attempt by Tripati to re-litigate issues that have been previously ruled upon or otherwise disposed of by Courts in other jurisdictions and to further harass Defendants through never-ending litigation. As to JSH in particular, Tripati's rambling, vague and difficult to follow pleading cannot survive either procedurally or substantively. As a procedural matter, not only did Tripati fail to properly serve JSH with process, this Honorable Court lacks personal jurisdiction over the law firm. Substantively, Tripati's 523-paragraph Corrected Verified Adversary Complaint, in which he references JSH in just four paragraphs, fails to assert any facts upon which the law firm could be held liable on any claim and otherwise fails to state any claim upon which relief could be granted. Thus, dismissal of this adversary proceeding against JSH, with prejudice, is appropriate.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Tripati is a state prisoner committed to the custody of ADOC currently confined at the Arizona State Prison Complex, Yuma, Arizona.[2] On May 1, 2023, Tripati initiated this action by filing his Verified Adversary Complaint in which he named 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). Therein, Tripati asserted claims for (1) Violation of 18 U.S.C. 1962(c); ARS 13-2314.04 and (2) Violation

[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.); Tripati v. Beaman, 878 F.2d 351 (10th Cir. 1989).

[2] On November 1993, Plaintiff was convicted in Maricopa County, Arizona of charges for fraudulent schemes, attempted fraudulent schemes and false swearing and sentenced to an aggregate prison sentence of 52 – ½ years without the possibility of parole. *See* State v. Tripati, 2018 Ariz. App. Unpub. LEXIS 1285, 2018 WL 4145069 (Ct. of App. Ariz, Div. 2, 2018).

of 18 U.S.C. 1962(d); ARS 13-2314.04 by Conspiracy to Violate 18 USC 1962(c) and ARS 13-2314.04.

On May 15, 2023, Tripati filed a Motion to Amend along with his Corrected Verified Adversary Complaint (ECF Doc. No. 4).[3] Tripati's amended pleading is virtually identical to his original pleading but includes a third claim for relief in the nature of a declaratory judgment. (*See* ECF Doc. No. 4-1, ¶¶516-523.)

Much of Tripati's Complaint appears to be devoted to a historical perspective of the provision of healthcare services to various correctional facilities and prison systems across the country by Corizon Health, Inc. and others as well as litigation by Tripati and other prisoners against it arising from those services.[4] Tripati further makes bald, sweeping accusations that unidentified defendants engineered a scheme to deploy prefabricated defenses in prisoner litigation by suing permissible procedural devises in bad faith and rigging the game from inception. (ECF Doc. No. 4-1, ¶3.) As against JSH, however, Tripati references the law firm in only four of the 523 paragraphs contained in his Corrected Verified Adversary Complaint. 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 email to Skelton Hochuli that training given to staff are to be released to inmates in discovery.

[3] 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.

[4] Tripati asserts that the current action is a core proceeding. (ECF Doc. No. 4-1, ¶6.) It is not. A proceeding that involves rights created by bankruptcy law, or that could arise only in a bankruptcy case, is a core proceeding. *See* 28 U.S.C. § 157; Matter of Wood, 825 F.2d 90, 97 (5th Cir.1987). Tripati's purported claims here involve neither rights created by bankruptcy law nor rights that could arise only in a bankruptcy case.

> 426. January 14, 2013 Weber Gallagher sent a email to Skelton Hochuli that no policies by Wexford are to be released to inmates in discovery.
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> 429. September 9, 2012 Weber Gallagher sent a email to Skelton Hochuli that no documents adverse to Wexford are to be released to inmates in discovery.

(ECF Doc. No. 4-1).

Notably, the subject matter of this adversary action, as purportedly alleged against JSH, as attorneys, was already the subject of litigation against JSH, certain of its attorneys, and many of the same defendants named herein occurred in the United States District Court for the Western District of Pennsylvania and the United States Court of Appeals for the Third Circuit in Tripati v. Wexford Health Sources, et al., Case No. 20-cv-00427 (W.D.Pa.)

A. Tripati's Pennsylvania Litigation

On March 27, 2020, Tripati, proceeding *pro se*, initiated an action in the United States District Court for the Western District of Pennsylvania, by filing a motion for leave to proceed *in forma pauperis* and attaching a purported civil rights complaint in which Tripati named 42 defendants – many of the same Defendants named herein. Following denial of his Motion and dismissal of the case, without prejudice pursuant to 28 U.S.C. §1915(g),[5] Tripati filed his Complaint on May 27, 2020. On June 22, 2020, Tripati filed his First Amended Verified Complaint against the various defendants. The virtually indecipherable pleading alleged a nationwide conspiracy in which healthcare providers and their counsel concealed evidence in prisoner litigation.

[5] In her Report and Recommendation recommending denial of Tripati's Motion for Leave to Proceed *in forma pauperis*, the Honorable Cynthia Reed Eddy, United States Magistrate Judge, addressed Tripati's litigious behavior and filing of numerous lawsuits which qualified as strikes under 28 U.S.C. §1915. *See* Tripati v. Wexford Health Servs., 2020 U.S. Dist. Lexis 63430, 2020 WL 1976315.

As against JSH and its employees, Tripati's claims derived solely out of those defendants' representation of Wexford Health Sources, Inc. in litigation previously filed by Tripati in the United States District Court for the District of Arizona, specifically, Tripati v. Hale, C.A. No. 15-0140-DB (U.S.D.C. Arizona)(Doc. No. 14, ¶24). Like in this case, Tripati made bald, sweeping accusations alleging various claims for Racketeering and other violations of federal and Arizona state law against defendants arising from purportedly manufactured and concealed evidence and assembled template documents that contained false or misleading information regarding the practices of Wexford in the course of their representation of Wexford in prisoner litigation in Arizona and engaged in systematic fraud upon the judicial process. Contradicting his own claims, Tripati asserted that JSH and its attorneys did so all while using "permissible procedural devices".

On February 14, 2022, Magistrate Judge Cynthia Ree Eddy issued a thorough and well-reasoned Report and Recommendation recommending dismissal of Tripati's action. Tripati v. Wexford Health Sources, 2022 U.S. Dist. Lexis 25908, 2022 WL 1516780 (W.D. Pa., Feb. 14, 2022), wherein she stated:

> The first fifty-nine pages of the 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. (SAC, ¶¶ 90, 95-111). 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. (*Id.*, ¶131, 189-197). He also claims that the Weber Gallagher Defendants designed this "scheme" and that the other Defendants have continued it. (*Id.*, ¶139) 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. (*Id.*, ¶¶5, 6).

Id. at 7-8.

Adopting Magistrate Judge Eddy's Report and Recommendation, the District Court overruled Tripati's objections and dismissed his Complaint, with prejudice and without an opportunity to amend. Tripati v. Wexford Health Sources, 2022 U.S. Dist. Lexis 63606 (W.D. Pa., Apr. 5, 2022).

Tripati filed an appeal to the United States Court of Appeals for the Third Circuit, however, the Third Circuit affirmed the District Court, holding:

> Like the SAC, Tripati's appellate briefing is not a model of clarity. One of the seven appellee briefs filed in this case argues that Tripati has forfeited certain issues on appeal. We need not decide the question of forfeiture because it is clear that, even if Tripati has preserved all issues relevant to this appeal, there is no reason to disturb the District Court's judgment. For substantially the reasons set forth in the Magistrate Judge's thorough and cogent report, which the District Court adopted, we agree with the District Court's determination that personal jurisdiction is lacking as to most of the defendants and that Tripati's various claims against the remaining defendants fail to state a viable cause of action under Rule 12(b)(6). Furthermore, we see no abuse of discretion in the District Court's denying further leave to amend, see LaSpina v. SEIU Pa. State Council, 985 F.3d 278, 291 (3d Cir. 2021) (explaining that "leave to amend need not be granted if amendment would be futile or inequitable" (internal quotation marks omitted)), or its declining [*8] to transfer this case to another court.

2022 U.S. Dist. Lexis 24617 at *7, 2022 WL 17690156 (3d Cir. Dec. 15, 2022).

JSH's Contacts with Texas

Jones, Skelton & Hochuli, P.LC. is an Arizona Professional LLC organized under the laws of Arizona with a registered address of 40 N Central Ave, #2700, Phoenix, AZ 85004. *See*

Declaration of James J. Osborne attached to JSH's Motion to Dismiss as Ex. A. The Law Firm has three office locations - Phoenix, Arizona, Albuquerque, New Mexico and Salt Lake City, Utah. *See* Ex. A. JSH does not own or lease any office or other property in Texas. *See* Ex. A. Only one of the Firm's over 100 attorneys is licensed in Texas and his license is currently on inactive/non-practicing status and has been on inactive/non-practicing status since he joined the law firm seven years ago. *See* Ex. A. No member of the Firm has entered an appearance in a case pending in Texas in the past five years. *See* Ex. A. Further, the Firm does not advertise in Texas. *See* Ex. A.

Tripati does not plead, nor does JSH or its lawyers practice law in Texas. *See* Id. To the contrary, the entirety of Tripati's allegations against JSH appear to revolve around the fact that JSH represented its client, Wexford Health Sources, Inc. with respect to prisoner litigation in the courts of Arizona. *See e.g.*, (ECF Doc. No. 4-1.) Tripati does not plead nor did JSH do any work with respect to prisoner litigation in Texas. To the contrary, the entirety of JSH's representation of its client Wexford relating to matters involving Tripati occurred in Arizona. *See* Ex. A.

Further, while Tripati baldly alleges in his Corrected Verified Adversary Complaint, that "[b]y filing protection under Chapter 11, Defendants waived jurisdiction of this court" (ECF Doc. No. 4-1, ¶7), JSH has not made any such filing nor has it filed a claim in the instant bankruptcy matter or otherwise participated in any way. *See* In re: Tehum Care Services, Inc., Case No. 23-90086.

III. STANDARD

Federal Rule of Civil Procedure 12(b)(2) mandates a court to dismiss a claim if the court lacks personal jurisdiction over the defendant. FRCP 12(b)(2). After a non-resident defendant

files a motion to dismiss for lack of personal jurisdiction, the party seeking to invoke the court's jurisdiction must "present sufficient facts as to make out only a prima facie case supporting jurisdiction." Alpine View Co. v. Atlas Copco AB, 205 F.3d 208, 215 (5th Cir. 2000). When considering the motion to dismiss, the court must accept as true the plaintiff's uncontroverted allegations and resolve factual conflicts in favor of the plaintiff. Id.

A federal court may exercise personal jurisdiction over a nonresident defendant if (1) the forum state's long-arm statute confers personal jurisdiction over that defendant, and (2) the exercise of personal jurisdiction comports with the due process clause of the Fourteenth Amendment. Int'l Energy Ventures Mgmt., L.L.C. v. United Energy Grp., Ltd., 818 F.3d 193, 212 (5th Cir. 2016). The Texas long-arm statute extends as far as constitutional due process permits, thus a court only needs to determine whether a suit in Texas is consistent with the due process clause of the Fourteenth Amendment. Id. The due process clause requires that a court exercise personal jurisdiction over a nonresident defendant only if the defendant has "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." Id. (*citing* Int'l Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945)). Minimum contacts with a forum state can be satisfied by contacts that give rise to either general jurisdiction or specific jurisdiction. Wilson v. Belin, 20 F.3d 644, 647 (5th Cir. 1994).

Rules 12(b)(5) provides a defense for insufficiency of service of process. FRCP 12(b)(5). In addition to constituting grounds for dismissal, insufficient service of process also implicate a court's authority to exercise personal jurisdiction over a defendant. Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350, 119 S.Ct. 1322, 1327, 143 L.Ed.2d 448 (1999) ("Before a … court may exercise personal jurisdiction over a defendant, the procedural

requirement of service of summons must be satisfied."). Therefore, if a defendant here was not properly served with process, this Court cannot exercise jurisdiction over a defendant or this matter.

A court has "broad discretion to dismiss an action for ineffective service of process." Kreimerman v. Casa Veerkamp, S.A. de C.V., 22 F.3d 634, 645 (5th Cir. 1994). While Federal Rule of Bankruptcy Procedure 7004(b) provides for service within the United States by first class mail postage prepaid, certain requirements must be met. Specifically, FRBP 7004(b) requires:

> (3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

FRBP 7004(b)(3).

Finally, as to Rule 12(b)(6), the Federal Rules of Civil Procedure require that each claim in a complaint include a "short and plain statement . . . showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Each claim must include enough factual allegations "to raise a right to relief above the speculative level." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007).

A Rule 12(b)(6) motion allows a party to move for dismissal of an action when the complaint fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). When considering a motion to dismiss under Rule 12(b)(6), the Court must accept as true all well-pleaded facts in the plaintiff's complaint and view those facts in the light most favorable to the plaintiff. Bowlby v. City of Aberdeen, 681 F.3d 215, 219 (5th Cir. 2012). The Court may consider "the complaint, any documents attached to the complaint, and any documents attached

to the motion to dismiss that are central to the claim and referenced by the complaint." Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC, 594 F.3d 383, 387 (5th Cir. 2010). The Court must then determine whether the complaint states a claim for relief that is plausible on its face. "A claim has facial plausibility when the plaintiff pleads factual content that allows the [C]ourt to draw the reasonable inference that the defendant is liable for the misconduct alleged." Gonzalez v. Kay, 577 F.3d 600, 603 (5th Cir. 2009) (*quoting* Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)). "But where the well-pleaded facts do not permit the [C]ourt to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'". Iqbal, 556 U.S. at 679 (*quoting* Fed. R. Civ. P. 8(a)(2)).

In Iqbal, the Supreme Court established a two-step approach for assessing the sufficiency of a complaint in the context of a Rule 12(b)(6) motion. First, the Court should identify and disregard conclusory allegations, for they are "not entitled to the assumption of truth." Iqbal, 556 U.S. at 664. Second, the Court "consider[s] the factual allegations in [the complaint] to determine if they plausibly suggest an entitlement to relief." Id. "This standard 'simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary claims or elements.'" Morgan v. Hubert, 335 F. App'x 466, 470 (5th Cir. 2009) (citation omitted). This evaluation will "be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Iqbal, 556 U.S. at 679.

Thus, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Id. at 678 (quoting Twombly, 550 U.S. at 570).

IV. ARGUMENT

A. THE COURT HAS NO PERSONAL JURISDICTION OVER JSH.

JSH moves to dismiss this case pursuant to Rule 12(b)(2) because the Court does not have personal jurisdiction over it, an Arizona law firm organized as an Arizona professional LLC pursuant to Arizona law whose attorneys represented a client against a lawsuit filed in Arizona. There are no facts to support either general or specific jurisdiction over JSH in Texas. Nowhere in his Corrected Verified Adversary Complaint does Tripati allege any meaningful contacts between JSH and Texas nor will any amount of discovery demonstrate any such contacts. Thus, dismissal of JSH, with prejudice, is appropriate.

Tripati does not allege that JSH is a resident of Texas nor is there any dispute that JSH is not a resident of Texas. Instead, Tripati's sole allegation as to the jurisdiction of this Honorable Court is his bald allegation "[b]y filing protection under Chapter 11, Defendants waived jurisdiction of this court" (ECF Doc. No. 4-1, ¶7). JSH has not made any such filing nor has it filed a claim in the instant bankruptcy matter or otherwise participated in any way. *See* In re: Tehum Care Services, Inc., Case No. 23-90086. In fact, JSH is not a party to any bankruptcy proceeding before this Court. Thus, there is no personal jurisdiction over JSH as a result.

"A federal district court may assert personal jurisdiction over a nonresident of the state in which the court sits if: (1) the long-arm statute of the forum state confers personal jurisdiction over that defendant and (2) exercise of such jurisdiction by the forum state is consistent with due process under the United States Constitution. Ainsworth v. Moffett Engineering, Ltd., 716 F.3d 174, 177 (5th Cir. 2013). For personal jurisdiction to "comport with due process, the plaintiff must show that": (1) "the defendant purposefully availed itself of the benefits and protections of the forum state by establishing 'minimum contacts' with that state such that it would reasonably

anticipate being haled into court there"; and (2) "exercising jurisdiction over the defendant would not offend traditional notions of fair play and substantial justice." Id. (*citing* Jones v. Petty-Ray Geophysical, Geosource, Inc., 954 F.2d 1061, 1068 (5th Cir. 1992). "The 'minimum contacts' prong of the due process analysis can be met through contacts giving rise to either specific or general jurisdiction." Id. (*citing* Gundle Lining Constr. Corp. v. Adams Cty. Asphalt, Inc., 85 F.3d 201, 205 (5th Cir. 1996)). General jurisdiction arises "when the nonresident defendant's contacts with the forum state, even if unrelated to the cause of action, are continuous, systematic, and substantial"; whereas specific jurisdiction "is established through the defendant's contacts with the forum state arising from, or related to, the cause of action." Id. (quotation and citation omitted).

Consistent with the requirements of due process, a Court must ensure that a defendant is subjected to personal jurisdiction only where that "nonresident Defendant has 'certain minimum contacts [with the forum State] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice'". Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984) (quoting International Shoe, *supra*. 326 U.S. at 316). Accordingly, the jurisdictional analysis begins with Texas' long-arm statute. "Because the Texas long-arm statute extends to the limits of federal due process, the two-step inquiry collapses into one federal due process analysis." Sangha v. Navig8 ShipManagement Priv. LTD, 882 F.3d 96, 101 (5th Circ. 2018). General personal jurisdiction arises from a defendant's contacts with the forum that are unrelated to the cause of action being litigated. Goodyear Dunlap Tires Operations, S.A. v. Brown, 564 U.S. 915, 919, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011). Due process for general personal jurisdiction requires a showing that the defendant has had continuous and systematic contacts with the forum state as to render them

essentially at home. Helicopteros, *supra*., 466 U.S. at 412-13, 414 n. 8 & 9. Thus, Tripati must establish "continuous, systematic, and substantial" contacts by JSH to Texas in order to establish general personal jurisdiction. This, he cannot do.

As explained in the factual background above, JSH has not engaged in any business or transactions within Texas. *See* Ex. A. JSH and its attorneys do not practice in Texas or advertise in Texas.[6] *See* Ex. A. JSH does not have an office in Texas or own or lease any property in Texas. *See* Ex. A. None of JSH's employees reside or work from Texas. *See* Ex. A. There simply is no relationship between JSH and Texas such that general personal jurisdiction may be exercised. *See* Companion Prop. & Cas. Ins. Co. v. Palermo, 723 F.3d 557 (5th Cir. 2013).

Nor can specific jurisdiction be established. Claim-specific jurisdiction may only arise from the defendant's forum ties that relate to the plaintiff's claim. Johnson v. TheHuffingtonpos.com, Inc., 21 F.4th 314 (5th Cir. 2021). The focus is placed on "'the relationship among the defendant, the forum, and the litigation.'" Rush v. Savchuk, 444 U.S. 320, 327, 100 S. Ct. 571, 62 L. Ed. 2d 516 (1980) (quoting, Shaffer v.Heitner, 433 U.S. 186, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977)).

With respect to this case, JSH provided legal services to Wexford Health Sources, Inc. in Arizona. Specifically, JSH represented Wexford in a lawsuit filed by Tripati which proceeding before the United States District Court for the District of Arizona arising from services provided by Wexford to the ADOC for medical services provided to prisons operating within ADOC. *See* Tripati v. Hale, C.A. No. 15-0140-DB (U.S.D.C. Arizona). Any alleged tortious conduct occurred in Arizona, where the lawsuits were being handled by JSH. All legal services provided to it by JSH was done so from Arizona and within the courts of Arizona. All actions by the JSH

[6] While one attorney at JSH is licensed to practice law in Texas, his license has been on in and his license is currently on inactive/non-practicing status and has been on inactive/non-practicing status since he joined the law firm seven years ago. *See* Ex. A.

of which Tripati now complains arose within the Arizona litigation and occurred within that forum.

Quite simply, JSH's litigation of Arizona cases in Arizona on behalf of a client that is a Pennsylvania resident does not give rise to personal jurisdiction over the law firm in Texas. Thus, dismissal of JSH for lack of personal jurisdiction, with prejudice is appropriate.

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

Federal Rule of Civil Procedure 12(b)(5) authorizes dismissal of a complaint for "insufficient service of process." Pursuant to the Federal Rules of Bankruptcy Procedure, service of process in an adversary proceeding may be effectuated within the United States by first class mail postage prepaid. Specifically, FRBP 7004(b) provides, in part:

> **(b) Service by first class mail.** Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)–(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:
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> ***
>
> (3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

FRBP 7004(b)(3).

Per the Certificate of Service filed by Tripati in this matter (ECF Doc. No. 13), he attempted to serve JSH with the summons and copy of the complaint by sending it via mail service to 1 N. Central #900, Phoenix, AZ 85004. The address used by Tripati is not the correct

address for JSH. To the contrary, as noted on its website, the address for JSH is 40 N Central Avenue, Suite 2700, Phoenix, AZ 85004. *See* Ex. A.

Further, Tripati did not mail the summons and complaint to the attention of an officer, a managing or general agent or to any agent authorized to receive service. As evidenced by the copy of the envelope in which Tripati mailed the summons and complaint, it was mailed only to JSH with no reference to whom it should be directed as authorized by FRBP 7004(b)(3).[7] Because Tripati failed to effectuate proper service of process pursuant to FRBP 7004 or FRCP 4, his Complaint against JSH should be dismissed.

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

On May 15, 2023, Tripati filed his Corrected Verified Adversary Complaint. Despite his 523-paragraph filing, Tripati references JSH in only four paragraphs. 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.
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> 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). 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

[7] While the envelope is marked James Osborne, such marking was made by JSH's internal mail room. *See* Ex. A. Further, Mr. Osborne is not an officer, managing or general agent or other agent authorized by law to accept the service under FRBP 7004(b)(3). Id.

could conceivably be made. *See*, Iqbal, 556 U.S. at 664. Not only does Tripati fail to suggest what type of claim is being made against JSH, he likewise fails to assert any actions or conduct by JSH that could expose it to any claim under the law. Id. Thus, Tripati's Complaint against JSH should be dismissed, with prejudice.

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

Tripati has fully litigated the issues he raises against JSH twice. First, in the Arizona Litigation through the action against Wexford in which JSH represented its client and before the federal courts in Pennsylvania within the Pennsylvania Litigation in which direct claims were made against JSH and some of its attorneys. 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. *See*, Miller v. Meinhard-Commerical Corp., 462 F.2d 358, 360 (5th Cir. 1972).

In Miller, the Court noted that "[e]ven 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. 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.)

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. Indeed, Tripati did just that, without success.

In the course of the Arizona litigation, Tripati filed various Motions relating to alleged discovery violations by Wexford and JSH. (*See* Tripati v. Hale, 15-cv-140 (D. Ariz. ECF Doc. Nos. 69, 94, 118, 195 and 207.) The Motions sought not only responses to Tripati's discovery requests but also requested sanctions against Wexford and JSH, including Tripati's Motion for Terminating Sanction for Material Fraud Upon the Court. (Tripati v. Hale, 15-cv-140 (D. Ariz. ECF Doc. No. 195). With each filing by Tripati, the Court disposed of Tripati's allegations and at all times denied sanctions against Wexford and/or JSH.

Tripati then attempted to seek recourse against JSH and various other parties before the federal Courts in Pennsylvania. 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. Tripati's claims were considered and disposed of before the United States District Court for the Western District of Pennsylvania. Tripati v. Wexford Health Sources, 2022 U.S. Dist. Lexis 63606 (W.D. Pa., Apr. 5, 2022).

Tripati then appealed to the United States Court of Appeals for the Third Circuit which affirmed the District Court and denied reconsideration. 2022 U.S. Dist. Lexis 24617 at *7, 2022 WL 17690156 (3d Cir. Dec. 15, 2022). 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. Accordingly, Tripati's claims against JSH should be dismissed in their entirety and with prejudice.

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

Tripati's Corrected Verified Adversary Complaint violates Rule 8(a)(2) of the Federal Rules of Civil Procedure which requires a short and plain statement supporting the plaintiff's request for relief. "Rule 8(a)(2) requires a pleading to contain a short and plain statement of the claim showing that the pleader is entitled to relief. The purpose of this requirement is to give the defendant fair notice of what the claim is and the grounds upon which it rests." Wooten v. McDonald Transit Assocs., 788 F.3d 490, 498 (5th Cir. 2015) (internal citations and alterations omitted). "Rule 8(a) requires parties to make their pleadings straight forward, so that judges and adverse parties need not try to fish a gold coin from a bucket of mud." Hall v. Civil Air Patrol, Inc., 193 Fed. Appx. 298 (5th Cir. 2006)(*quoting*, United States, ex rel. Garst v. Lockheed-Martin Corp., 328 F.3d 374, 378 (7th Cir. 2003). Tripati's Corrected Verified Adversary Complaint, like his initial Verified Adversary Complaint, filed in this action is virtually indecipherable and nonsensically cites to various cases the purpose of which Tripati fails to explain. Further, Tripati fails to identify specific conduct by any Defendant, much less JSH.

Courts have held that the "underlying purpose of Rule 8" is to "[e]liminate prolixity in pleading and to achieve brevity, simplicity, and clarity." Gordon v. Green, 602 F.2d 743, 746 (5th Cir. 1979) (*quoting* Knox v. First Sec. Bank of Utah, 196 F.2d 112, 117 (10th Cir. 1952)). Accordingly, 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)). Courts within this Circuit have deemed the complaint's dismissal under Rule 8 appropriate. *See, e.g.*, Rogers v. Penland, No. 9:03-CV-160, 2004 U.S. Dist. LEXIS 33879, 2004 WL 7330261, at *13 (E.D. Tex. Jul. 28, 2004) (dismissing an eighty-page counterclaim for violating Rule 8); Jaser v. AT&T Servs. Inc., No. 3:18-CV-3429, 2020 U.S. Dist. LEXIS 49341, 2020 WL 1329151, at *5 (N.D. Tex. Mar. 23, 2020) (dismissing a 180-page complaint because it was excessively lengthy and repetitious and thus in violation of Rule 8); Kulksdahl v. Loyola Univ. New Orleans, No. 16-2990, 2016 U.S. Dist. LEXIS 106901, 2016 WL 4261732, *1-2 (E.D. La. Aug. 12, 2016) (dismissing a 130-page complaint because it was comprised of "rambling, scattered arguments and factual allegations which unquestionably" violated Rule 8 (*citing* Gordon, 602 F.2d at 745-76)).

While the complaint of a pro se litigant is held to "less stringent standards than formal pleadings drafted by lawyers," Johnson v. Dodson, No. 2:14-CV-00059, 2014 U.S. Dist. LEXIS 127807, 2014 WL 4513380, at *3 (N.D. Tex. Sept. 12, 2014) (*quoting* Taylor v. Books A Million, Inc., 296 F.3d 376, 378 (5th Cir. 2002)), "[a] litigant's pro se status" does not excuse him or her "for lack of knowledge of the Rules of Civil Procedure." Thrasher v. City of Amarillo, 709 F.3d 509, 512 (5th Cir. 2013) (internal citations omitted).

Further, while a Rule 8 dismissal is normally without prejudice, Bennett-Nelson v. La. Bd. of Regents, 431 F.3d 448, 450 n.1 (5th Cir. 2005), "a dismissal with prejudice [is] warranted" where the Complaint is "of an unwieldy length" and "largely unintelligible." *See*, Stephanatos, supra. at 787; *see also* 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1217, at 34 (3d ed. 2004) (citing U.S. ex rel. Garst v. Lockheed-Martin Corp., 328 F.3d 374, 376-77 (7th Cir. 2003) (Easterbrook, J.), *cert. denied*, 540 U.S. 968, 124 S.Ct. 450,

157 L.Ed.2d 313 (2003) (after three amended complaints plus one "more definite statement," none of which satisfied Rule 8(a) or 9(b), dismissal with prejudice was warranted)

In this case, Tripati's Corrected Verified Adversary Complaint is a hodgepodge of legal labels, rambling legal argument and societal commentary. JSH should not be made to answer for such nonsense. The most JSH can glean from this action is that Tripati is again challenging the same conduct as alleged against it in both the Arizona Courts and the Pennsylvania Courts with respect to treatment he has received as a prisoner within the custody of the ADOC and previous decisions of courts from a variety of jurisdictions around the country—these are the same general complaints voiced in prior litigation as well as through the administrative process administered by the ADOC to address prisoner complaints. For these reasons, JSH should not be required to reply to Tripati's Verified Adversary Complaint or Corrected Verified Adversary Complaint. Such Complaints should be dismissed as against JSH, with prejudice, and, for the reasons otherwise stated herein, Tripati should not be given leave to amend.

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

For the sake of efficiency and to avoid duplication, JSH incorporates herein the arguments of the other Defendants as may be applicable to them. A court is authorized to dismiss claims against a defendant because another defendant's motion raised defects that applied equally to all claims. *See* Tredennick v. Bone, 2007 U.S. Dist. Lexis 87941 (W.D.Pa. 2007).

V. CONCLUSION

For the foregoing reasons, Plaintiff Anant Kumar Tripati's Verified Adversary Complaint and Corrected Verified Adversary Complaint fail to state a claim against Jones Skelton & Hochuli, P.L.C. nor does this Honorable Court have jurisdiction over Jones Skelton & Hochuli, P.L.C., and, thus, Jones Skelton & Hochuli, P.L.C. respectfully requests that this Court grant its Motion and dismiss Plaintiff Anant Kumar Tripati's Verified Adversary Complaint and Corrected Verified Adversary Complaint as against it, with prejudice.

Respectfully submitted,

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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 Brief in Support of 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:

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