Docket #0125 Date Filed: 8/21/2023

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' JOINDER IN M2 LOANCO LLC, LEXINGTON INSURANCE COMPANY, AND WEXFORD HEALTH SOURCES, INC.'S RESPONSES IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT (DOC. 96)

Defendants Struck Love Bojanowski and Acedo, PLC,[1] Daniel P. Struck, Michael Gottfried, Betty Ulibarri, and Diane Bohuszewicz[2] (collectively, "State of Arizona Defendants") file this joinder to the responses in opposition to Plaintiff's Motion for Leave to File Second Amended Complaint (Doc. 96) filed by Defendants M2 LoanCo LLC (Doc. 118), Lexington Insurance Company (Doc. 120), and Wexford Health Sources, Inc. (Doc. 121). The State of Arizona Defendants join in and incorporate by reference these responses in opposition to Plaintiff's Motion for Leave to File a Second Amended Complaint, and request that the Court deny Plaintiff leave to amend based on his inability to cure any prior deficiencies in his First Amended Complaint, and because any requested amendment is futile and unduly prejudicial. *See In re Enron Corp. Sec., Derivative & ERISA Litig.*, 258 F. Supp. 2d 576, 624-25 (S.D. Tex. 2003) (a court

[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."

should deny leave to amend where there is substantial reason, such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party, and futility of amendment).

For the reasons stated by these Defendants, the State of Arizona's motions for screening are awaiting disposition (*see* Doc. 25 and 86), and Plaintiff has otherwise failed to provide any good faith basis to amend his adversary complaint *prior* to the Court's disposition of the numerous screening motions and motions to dismiss that are currently pending. (*See* Doc. 96 at 4-8; Doc. 118 at 5; Doc. 121 at 3-4.) Plaintiff's argument that federal bankruptcy courts do not screen complaints under the Prison Litigation Reform Act and his confusing and vague argument regarding judicial estoppel do not suffice as a basis to amend. (*See* Doc. 96 at 3, 7-8; *see also* Doc. 118 at 1-2, 6-7; Doc. 121 at 1-4.) Plaintiff's contention that Defendants entered into "cooperation agreements" so as to confer jurisdiction over them is so speculative and conclusory and advances a claim that is legally insufficient on its face. (Doc. 96 at 4-5; Doc. 118 at 6.) And Plaintiff's addition of a claim for declaratory relief against "Liability Insurers" is in no way relevant to the State of Arizona Defendants. (Doc. 96 at 8; Doc. 118 at 7.)

Moreover, Plaintiff's Second Amended Complaint violates Rule 8(a) and 9(b) of the Federal Rules of Civil Procedure and fails to cure any of the multitude of deficiencies that plague the First Amended Complaint. (Doc. 118 at 5; Doc. 120 at 5, 7-8; Doc. 121 at 1.) And Plaintiff's claims asserted against the State of Arizona Defendants in the Second Amended Complaint are just as frivolous and legally insufficient as the claims asserted against them in his First Amended Complaint. *See Dawes v. Imperial Sugar Co.*, 975 F. Supp. 2d 666, 686 (S.D. Tex. 2013) ("A plaintiff, however, should be denied leave to amend a complaint if the court determines that the

proposed amendment clearly is frivolous or advances a claim or defense that is legally insufficient on its face."). Granting Plaintiff leave to amend would therefore be futile.

Significantly, the State of Arizona Defendants will suffer undue prejudice if Plaintiff is given leave to file a Second Amended Complaint. To date, Plaintiff has filed numerous pleadings in this adversary action while the State of Arizona's screening motions and other Defendants' motions to dismiss have remained pending. Responding to these filings has resulted in a great deal of time and resources, particularly where, as here, the Court has yet to determine whether Plaintiff has stated any cognizable claims. Allowing Plaintiff to amend his complaint a second time would only prejudice the State of Arizona Defendants and would continue to unnecessarily waste Defendants' and the Court's time and resources.

For the foregoing reasons, the State of Arizona Defendants respectfully join in and incorporate by reference the responses in opposition to Plaintiff's Motion for Leave to File Second Amended Complaint filed by Defendants M2 LoanCo LLC (Doc. 118), Lexington Insurance Company (Doc. 120), and Wexford Health Sources, Inc. (Doc. 121).

Dated this 21st day of August 2023.

Respectfully submitted,

STRUCK LOVE BOJANOWSKI & ACEDO, PLC

s/ Daniel P. Struck

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of August 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:

Anant Kumar Tripati, #102081
ASPC Yuma
P.O. Box 8909
San Luis, AZ 85349

Respectfully submitted,

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