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.	:	

REPLY 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, Holly M. Whalen, Esquire of DiBella Weinheimer, admitted *Pro Hac Vice*, files the following Reply Brief in Support of its Motion to Dismiss (ECF Doc. 28):

I. OVERVIEW

On August 14, Plaintiff Anant Kumar Tripati filed an "Omnibus Response to ECF 28, 30, 45, 69, 85, 86, 89". (*See*, ECF Doc. 115).[1] While his 89-page filing, like most of Tripati's

[1] Previously on July 11, 2023, Tripati filed his "Omnibus Response to ECF 25, 33, 46 and Lexington Motion to Dismiss." (*See*, ECF Doc. 66). Although he made reference to JSH within that filing on a few occasions, Plaintiff did not address any of the arguments raised by JSH in support of its Motion to Dismiss pursuant to Federal Rule of Bankruptcy Procedure 7012 and Federal Rules of Civil Procedure 12(b)(2), (5) and (6) filed on June 5, 2023 (ECF Doc. 28). Further, Tripati also filed various other "Responses" as indicated on the docket at ECF Nos. 40, 48, 51

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previous filings, is rambling, vague and difficult to follow, it appears his primary argument in response to JSH's Motion to Dismiss is that his so-called "spoliation" claims he asserts in this action have never been decided by another court, and, thus, are appropriate here. In doing so, he asserts that the various defendants (and their counsel) have acted in bad faith in this action by failing to identify where the United States District Court for the Western District of Pennsylvania and the United States Court of Appeals for the Third Circuit ever decided such issues. Despite Tripati's extraordinarily lengthy response to the Motion to Dismiss, he fails to identify any facts or law which could possibly support a claim against JSH. Thus, Tripati's Complaint and any and all purported claims against JSH in this action should be dismissed, with prejudice.

II. FACTUAL BACKGROUND

In his Omnibus Response, Tripati simply repeats his bald, sweeping accusations as against the various Defendants. Tripati alleges no new facts against JSH. Thus, JSH will not repeat such facts, but instead, incorporates herein the Factual Background as set forth in its Motion to Dismiss (ECF Doc. 28), Exhibits thereto and Brief in Support therof (ECF Doc. 30) filed in this action.

III. ARGUMENT[2]

A. TRIPATI'S CLAIMS HAVE PREVIOUSLY BEEN DECIDED BY OTHER COURTS AND CANNOT BE RELITIGATED HERE.

The bulk of Tripati's argument in his Omnibus Response (ECF Doc. 115) appears dedicated to his argument that his so-called "spoliation" claims have never been decided by

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and 58 before filing his Omnibus Response. While none of those Responses purport to address JSH, many of the purported arguments by Tripati are the same.

[2] JSH incorporates herein the arguments set forth in its Motion to Dismiss Pursuant to Federal Rule of Bankruptcy Procedure 7012 and Federal Rules of Civil Procedure 12(b)(2), (5) and (6) (ECF Doc. 28), Exhibits thereto and Brief in Support thereof (ECF Doc. 30). JSH further incorporates herein the arguments set forth in the Motions to Dismiss (ECF Docs. 27, 32, 34 and 47; Motions to Screen (ECF Docs. 25, 33, 39, 43, 45, 46, 69, 86, 89, 111 and 112) and any Briefs in Support thereof of the other Defendants as may be applicable to it. *See e.g.*, Tredennick v. Bone, 647 F.Supp. 2d 495, 501, ft. 3 (W.D.Pa. 2007).

another court, and, thus, are appropriate here. Tripati further asserts that the various defendants (and their counsel) have acted in bad faith in this action by failing to identify where the United States District Court for the Western District of Pennsylvania and the United States Court of Appeals for the Third Circuit ever decided such issues. Contrary to Tripati's arguments, his purported "spoliation" claims have been decided and while it is not JSH's (or its counsel's) duty to do so, reference to the Courts' determinations on that issue were provided as set forth in JSH's Motion to Dismiss (ECF Doc. 28) and Brief in Support (ECF Doc. 30) filed in this Honorable Court.

Even a cursory review of the pleadings, motions, briefs, Orders and Opinions and other filings made within the proceedings before the Court of Appeals for the Third Circuit in the action captioned Anant Kumar Tripati, Appellant v. Wexford Health Sources, Inc. et al., Appellees, No. 22-1861 and the United States District Court for the Western District of Pennsylvania in the action captioned Anant Kumar Tripati, Plaintiff v. Wexford Health Sources, Inc. et al., Defendants, Civl Action No. 2:20-cv-0427, wholly belies Tripati's argument and any purported right to relief here. The action filed in the federal courts of Pennsylvania by Tripati sought to recover against Defendants for the precise alleged actions and conduct that Tripati claims here.

Specifically, on March 29, 2021, Tripati filed in the United States District Court for the Western District of Pennsylvania his Verified Second Amended Complaint (W.D.Pa. ECF No. 141), along with his Brief in Support Thereof (W.D.Pa. ECF No. 142). Therein, Tripati made the same claims against the various defendants as he does here – that Defendants have entered into "cooperation agreements" and engaged in "litigation misconduct" and "concealed

inculpatory evidence" for the purpose of "rigging the game" to frustrate prisoner litigation. (*See* W.D.Pa. ECF No. 142.)

On February 14, 2022, Magistrate Judge Cynthia Reed 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).

Following the District Court's dismissal of Tripati's Second Amended Complaint as to all claims and entry of judgment in favor of all Defendants on April 5, 2022. (W.D.Pa. ECF Nos.

251 and 252.), Tripati filed an appeal to the United States Court of Appeals for the Third Circuit. On August 17, 2022, Tripati filed his Brief (3d Cir. ECF No. 33) in which almost the entirety of said Brief addressed Tripati's claims that the various Defendants engaged in concealment of material inculpatory evidence. (3d Cir. ECF 33 at 38.) In doing so, Tripati relied primarily upon the Third Circuit's decision in Williams v. BASF Catalysts, 765 F.3d 306 (3d Cir. 2014), the same case he relies upon here.

On December 15, 2022, the Third Circuit issued its Non Precedential Per Curiam Opinion and accompanying Judgment affirming the District Court. In doing so, the Court noted that its review of the District Court's judgment was plenary (with the exception of the District Court's denial of further leave to amend and to not transfer the case pursuant to § 1406(a)) and identified the claims before it for consideration, stating:

> Tripati is a convicted fraudster who over the past few decades, has inundated the federal courts with scores of lawsuits. He has brought most of his cases in the United States District Court for the District of Arizona. But in 2020, he changed course and filed a pro se complaint in the United States District Court for the Western District of Pennsylvania (hereinafter, "the District Court"). After paying the filing fee, but before serving any defendant, Tripati filed an amended complaint. When the defendants moved to dismiss the amended complaint, Tripati filed a second amended complaint ("the SAC"). 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." (Mag. J. Report entered Feb 14, 2022, at 3 [hereinafter Mag. J. Report].) 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'" (Id. at 4.) "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.) 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." (Id. at 5.) In light of Tripati's allegations, he sought, inter alia, $5 million in damages against each defendant.

Tripati v. Wexford Health Sources, 2022 U.S. App. Lexis 34617 at *5-6, 2022 WL 17690156 (3d Cir. Dec. 15, 2022)(footnotes omitted.) Following consideration of the matter, including each of Tripati's claims raised below, the Third Circuit concluded that "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)" and affirmed the District Court's dismissal of Tripati's Second Amended Complaint as well as its denial of further leave to amend or declining to transfer the case to another court. Id. at *7.

On January 3, 2023, Tripati filed a motion requesting an extension of time in which to file a petition for rehearing which was granted. (3d Cir. ECF Doc. 70 and 71.) Tripati subsequently petitioned for Rehearing En Banc and before Original Panel on January 11, 2023. (3d Cir. ECF Doc. 72.) By Order dated February 1, 2023, the Third Circuit denied the request for rehearing. (3d Cir. ECF Doc. 73.) The Court issued its mandate on February 9, 2023. (3d Cir. ECF Doc. 74.)

On February 14, 2023, Tripati inexplicably filed with the Third Circuit a Motion to Abate Time to File for Certiorari. (3d Cir. ECF Doc. 75.) Tripati also filed a document entitled Motion for a Procedural Order as to Certiorari. (3d Cir. ECF Doc. 76.) By Order dated February 17, 2023, the Third Circuit advised that:

> No action will be taken on Appellant's motions as it is noted that the case is closed. As to the motion for Procedural order

> Ordinarily, the Court does not intervene in the day-to-day operations of a prison. Appellants should contact prison administrators with your concerns and for information on prison grievance procedures. Any inquiry regarding a writ for certiorari should be directed to the United States Supreme Court at the following address: Public Information Center, One First Street, NE, Washington, D.C. 20543-001.

February 17, 2023 Order. (3d Cir. ECF Doc. 77.)

On February 17, 2023, Appellee Corizon, Inc. filed a Suggestion of Bankruptcy. (3d Cir. ECF Doc. 78.) At the time of Corizon's filing, there was no matter pending before the Third Circuit and the case had been closed. As acknowledged by Tripati, the time in which he could file a Petition for Writ of Certiorari to the United States Supreme Court had begun to run.

As demonstrated on the face of the filings within the United States District Court for the Western District of Pennsylvania and the United States Court of Appeals for the Third Circuit, it is indisputable that the precise claims asserted by Tripati now before this Honorable Court have been fully litigated up through and including his appeal to the Third Circuit. Tripati's sole course of relief with respect to those claims is to pursue a Petition for Writ of Certiorari to the United States Supreme Court. Thus, he cannot now seek relief through this Honorable Court and his Complaint and all claims against JSH should be dismissed, with prejudice.

B. THE COURT HAS NO PERSONAL JURISDICTION OVER JSH.

Nowhere in his Omnibus Response does Tripati offer any basis upon which this Court could exercise personal jurisdiction over JSH. Tripati points to no allegations in his Verified Adversary Complaint (ECF Doc. 1) or his Corrected Verified Adversary Complaint (ECF Doc. 4-1) which suggest any connection between JSH and Texas. Further, Tripati does not, and cannot, dispute the lack of contacts between JSH and Texas to establish general personal jurisdiction. *See generally*, Omnibus Response (ECF Doc. 115).

While Tripati, in a bald, conclusory manner, asserts that JSH was "involved" in a purported cooperation agreement by its client, Wexford, Tripati offers no factual or legal support that even if any such "cooperation agreement" or purported involvement by JSH therein existed that could possibly subject the Arizona law firm to personal jurisdiction by the Court. *See e.g.*, Omnibus Response (ECF Doc. 115) at 17. To the contrary, Tripati fails to set forth any basis upon which personal jurisdiction may rest.

Further, Tripati's reliance on the United States Supreme Court's holding in Ins. Corp.of Ir. V. Compagnie Des Bauxites De Guinee, 456 U.S. 694, 102 S. Ct. 2099, 72 L.Ed.2 492 (1982) is misplaced. In that case, the Court affirmed the trial court's exercise of personal jurisdiction over the insurance company defendant as a result of the defendant's failure to respond to discovery on the issue of jurisdiction as ordered by the trial court. Based on the defendant's failure to comply with the discovery order, the court imposed jurisdiction as a sanction. Such facts do not exist here. Tripati does not and cannot dispute any of the facts upon which JSH relies for its personal jurisdiction argument nor will any amount of discovery demonstrate sufficient facts upon which personal jurisdiction over JSH could be based in this action. Thus, Tripati's Complaint and all claims against JSH should be dismissed, with prejudice.

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

Nowhere in his Omnibus Response does Tripati respond to JSH's argument that it was not properly served with the Summons and Complaint in this action. Thus, this Court should treat JSH's Motion to Dismiss as unopposed as to the service issue and dismiss all claims against JSH.

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

As to any claim against JSH, Tripati's Omnibus Response does nothing but reiterate the same allegations contained in his Verified Adversary Complaint (ECF Doc. 1) and Corrected Verified Adversary Complaint (ECF Doc. 4-1). In all, Tripati references four allegations against JSH. Specifically, as to JSH, Tripati alleges:

> ¶January 30, 2013 Mark Hale, the CEO of Wexford signed a contract in Pittsburgh, agreeing to cooperate with Corizon Health. This contract was scanned and signed on the same date by Denel Pickering for the ADCRR in Phoenix. Weber Gallagher, Jones Skelton, Struck and Gottfried were involved.

Omnibus Response (ECF Doc. 115) at 23 and 27-28. As in his prior filings, he alleges:

- July 16, 2013 Weber Gallagher sent an email to Skelton Hochuli that training given to staff are not to be released to inmates in discovery.

- January 14, 2013 Weber Gallagher sent a email to Skelton Hochuli that no policies by Wexford are to be released to inmates in discovery. (SAC@ 156)

- 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. (SAC@ 159)

Omnibus Response (ECF Doc. 115) at 23 and 27-28.

Tripati references no factual or legal basis upon which those allegations could possibly support any claim against JSH. They cannot. Thus, Tripati's Complaint and all claims against JSH should be dismissed, with prejudice.

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

Finally, while Tripati suggests that he is responding to Motions to Dismiss based upon FRCP 8(a)(2) (as it was adopted in bankruptcy adversary proceedings by Rule 7008), he has

really offered no response. Instead, he simply restates approximately 14 pages of allegations which he acknowledges were set forth in his Verified Adversary Complaint (ECF Doc. 1) and Corrected Verified Adversary Complaint (ECF Doc. 4-1). Tripati has failed to meet the requirements of the Rule.

Based upon Tripati's failure to properly plead any claims against JSH despite having now submitted three iterations of his Complaint for consideration by this Honorable Court, he should not be permitted any leave to further amend his pleading. *See*, Stephanatos v. Cohen, 236 F.App'x 785, 787 (3d Cir. 2007); *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). Thus, Tripati's Complaint and all claims against JSH should be dismissed, with prejudice.

IV. 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 to Dismiss Pursuant to Federal Rule of Bankruptcy Procedure 7012 and Federal Rule of Civil Procedure 12(b)(2),12(b)(5) and 12(b)(6) and dismiss Plaintiff Anant Kumar Tripati's Verified Adversary Complaint and Corrected Verified Adversary Complaint and any and all claims against it, with prejudice.

Respectfully submitted,

DIBELLA WEINHEIMER

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing Reply Brief in Support of Motion to Dismiss was served upon all counsel of record this 25th day of August, 2023, via the Court's ECF and by mailing the same via U.S. Mail, first-class, postage pre-paid to:

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