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

In Re: Tehum Care Services, Inc. *Debtor*	Case No.: 23-90086 (CML) CHAPTER 11
Anant Kumar Tripati *Plaintiff*, v. Sarah Tirschwell, et al., *Defendants*.	Adv. Pro. No. 23-03072 (CML)

DEFENDANT SCOTTSDALE INSURANCE COMPANY'S
MOTION TO DISMISS PLAINTIFF'S ADVERSARY COMPLAINT

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDITATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS MOTION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

Defendant Scottsdale Insurance Company ("Scottsdale")[1] respectfully requests that the Court dismiss Plaintiff's Adversary Complaint with prejudice pursuant to Fed. R. Civ. P. 8(a),

[1] By way of this Motion to Dismiss, Scottsdale also adopts and incorporates, as if fully set forth herein, all arguments raised by other defendants that are also applicable to Scottsdale. Because other defendants to this action raise defects in Plaintiff's Adversary Complaint that apply equally

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9(b), and/or 12(b)(6), made applicable to adversary proceedings under the Federal Rules of Bankruptcy Procedure, stating in support as follows:

I. INTRODUCTION

1. *Pro se* Plaintiff Anant Kumar Tripati ("Plaintiff") has filed a prolonged and incomprehensible Verified Adversary Complaint against 44 separate defendants, including Scottsdale (the "Complaint"). [*See* Doc. 1]. To the extent the 139-page Complaint can reasonably be construed, Plaintiff appears to allege that certain defendants spoliated evidence in a plethora of state and federal cases brought by him in recent years, and that other defendants aided that spoilation. Plaintiff, however, has failed to provide Scottsdale with fair notice of his claims. After a careful review of the 458-paragraph-Complaint, it is unclear what illegal acts Scottsdale allegedly committed, the activities that Scottsdale participated in, how Plaintiff was harmed, what damages Plaintiff suffered, or why he is entitled to any relief from Scottsdale. Further, to the extent Plaintiff brings forth claims against Scottsdale pursuant to the Racketeer Influenced and Corrupt Organizations Act ("RICO"), those claims are time-barred as they were not brought within the requisite statutes of limitation. The Complaint, moreover, fails a Rule 12(b)(6) analysis because Plaintiff lacks standing to assert his RICO claims. For these reasons, the Court should dismiss Plaintiff's claims against Scottsdale with prejudice.

II. FACTUAL BACKGROUND

2. Plaintiff initiated this instant action on May 1, 2023 when he filed his 139-page, 458-paragraph Complaint against numerous named defendants, including Scottsdale. *See generally* Complaint, Doc. 1. Despite a careful review of Plaintiff's prolonged pleading,

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to Scottsdale, the Court may dismiss claims against Scottsdale pursuant to those grounds. *See Hiersche v. Brassard (In re Brassard),* 162 B.R. 375 378 (Bankr. D. Maine 1994) ("[I]t may be appropriate for the court to dismiss identical claims against nonmoving defendants after the plaintiff has unsuccessfully argued the merits of its claims against defendants who have filed their motions to dismiss.").

Scottsdale is unable to adequately comprehend what Plaintiff is alleging, how he was purportedly injured, and why he is entitled to any relief from Scottsdale.

3. Plaintiff apparently contends certain "defendants", without more specification, spoliated and hid evidence in various state and federal cases brought by him, and that other "defendants" aided in that spoilation. *See id.*, ¶¶ 11-14, 42-58, and "Prayer for Relief". Plaintiff avers that he "sustained injury" because "as a consequence of the scheme I was unable to have the Third Circuit, Ninth Circuit, District of Arizona, Arizona State courts, review my spoilation claims against Defendants, their agents, employees, and subordinates." *Id.* at ¶ 11. Plaintiff asserts that, had that missing evidence been presented to him, he "would have prevailed in the litigation." *Id.* at ¶ 46.

4. Plaintiff seems to be referencing a small handful of his roughly 211 lawsuits filed since he was incarcerated in 1993, including 156 federal 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, in addition to 65 cases in Arizona State courts. *See* Arizona Defendants' Motion to Screen, Doc. 25, at pp. 5-6.

5. Based on Plaintiff's alleged "spoilation", he brings forth two causes of action under RICO and Arizona's state equivalent ("Arizona RICO"). Plaintiff contends, without any specificity, that "defendants" violated § 1962(c) of RICO and § 13-2314.04 of Arizona RICO. Plaintiff's second cause of action alleges that the "defendants", without specification, conspired to violate these laws.

6. As to Scottsdale, specifically, Plaintiff alleges no factual allegations. Indeed, "Scottsdale" is only mentioned by name once throughout the entire Complaint where Plaintiff identifies Scottsdale as one of 44 other named defendants "who participated in the activities" and

that it is a "liability insurer for Centurion." *Id.* at ¶ 41. The Complaint lumps Scottsdale with other alleged defendant-insurers into an amorphous "Liability Insurers" group. *See id.* at ¶¶ 417-421. Concerning the "Liability Insurers", the Complaint states the following:

> 8. The liability insurers provided Corizon with substantial assistance because they did not follow their policies and industry practices, in dealing with claims, involving Corizon and other Defendants.
>
> 11. . . . The liability insurers by making policy exceptions in prisoner cases, allowed Defendants to engage in the misconduct.
>
> 417. Liability Insurers for Defendants are aware of these practices that I set forth in this complaint, and have failed to take actions, mandated by their policies. They have provided performance bonds and liability insurance, have breached the covenant of good faith and fair dealing fiduciary duty, and engaged in bad faith settlement practices. Liability Insurers have put in place the practice, in violation of law, which forces litigation, in prisoner cases, as in this case.
>
> 418. By omission Liability Insurers have misrepresented facts and policy provisions. They have failed to, as mandated by law, in prisoner cases, to acknowledge and promptly act on all claims. Liability Insurers fail to follow reasonable standards, standards followed by the insurance community in all cases, for investigation of claims. Liability Insurers deny claims without reasonable investigation.
>
> 419. Liability Insurers compel prisoners to litigate issues, and fail to follow their own rules and regulations, internal policies and guidelines.
>
> 420. Liability Insurers are required to investigate facts and the law, as if there were no policy limits.
>
> 421. In prisoner cases, these Liability Insurers aided and abetted in the prefabrication of defenses of bad faith use of procedural devices, as set forth in the complaint.

Complaint, Doc. 1, at ¶¶ 8, 11, 417-21.

7. These vague and conclusory statements provide no factual matter as to the acts or omissions Scottsdale is alleged to have committed to comprise fraud, or the aiding and abetting of fraud. The Complaint is also devoid of any factual allegations as to how Scottsdale fits into

the alleged "RICO enterprise" or how Plaintiff is entitled to any relief whatsoever from Scottsdale.

8. On May 15, 2023, Plaintiff filed a motion for leave to amend the Complaint, which attaches a revised adversary complaint now spanning 182 pages in length (and 523 paragraphs). *See* Plaintiff's Proposed Amended Complaint, Doc. 4. The proposed amended complaint adds a third cause of action for declaratory relief. *See generally id.* However, the proposed amended complaint suffers from the same procedural and substantive deficiencies as the original Complaint, and Plaintiff, therefore, cannot prevail under either pleading. *See Orix Credit Alliance, Inc. v. Wolfe*, 212 F.3d 891, 896 (5th Cir. 2000) (noting that a declaratory action is ripe for adjudication where an "actual controversy" is present).

III. STANDARD OF REVIEW

9. Fed. R. Civ. P. 12(b)(6) is made applicable to bankruptcy court adversary pleadings by the Federal Rules of Bankruptcy Procedure. *See* Fed. R. Bankr. P. 7012. To survive dismissal under Fed. R. Civ. 12(b)(6), a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 67 (2009). While the Court must liberally construe a plaintiff's complaint in light most favorable to him, *see Twombly*, 550 U.S. at 570, "to the extent that the [p]laintiff's claims set forth conclusory allegations or unwarranted deductions of fact, the court is not obliged to accept such allegations or deductions as true." *Official Unsecured Creditors Comm. v. Bank of Am. N.A. (In re Daisytek, Inc.)*, No. 03-34762 HDH-11, 2003 Bankr. LEXIS

1793, at *11 (Bankr. N.D. Tex. Dec. 29, 2003) (citing *Cambell v. Wells Fargo Bank*, 781 F.2d 440, 442 (5th Cir. 1986)).

A. The Complaint Fails To Allege Facts Supporting A Claim For Relief

i. The Complaint violates the pleading requirements of Rule 8(a).

10. Though a *pro se* party to this proceeding, Plaintiff "still must comply with the Federal Rules of Civil Procedure, and conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent the motion to dismiss." *Adams v. Indivior, Inc.*, No. 1:21-CV-00203, 2022 U.S. Dist. LEXIS 180696, at **5-6 (S.D. Tex. Sep. 13, 2022) (quoting *Christian Leadership Conference v. Supreme Court of State of La.*, 252 F.3d 781, 786 (5th Cir. 1001) (internal quotations omitted)); *see also* Fed. R. Bankr. P. 7008 (applying Fed. R. Civ. P. 8 to adversary proceedings).[2]

11. Pursuant to Fed. R. Civ. P. 8(a)(2), a pleading that states a claim for relief must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." The purpose of Fed. R. Civ. P. 8 is to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Sanchez Oil & Gas Corp. v. Crescent Drilling & Prod., Inc.*, 7 F.4th 301, 309 (5th Cir. 2021).

12. Plaintiff's Complaint does not provide a short and plain statement of any claim demonstrating why he is entitled to relief against Scottsdale. Instead, the Complaint is soaked with historical reports, conclusory allegations, and bare conclusions, and absent are any particular allegations evidencing Scottsdale's involvement in the purported scheme to defraud or

[2] While Plaintiff is indeed a *pro se* party to this case, he is in no way unfamiliar with the litigation process. *See Tripati v. Corizon Inc.*, No CV 16-00282-TUC-DCB, 2017 WL 11482284, at *22 (D. Ariz. Mar. 7, 2017) ("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 to justify revising 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.").

conspire. The Complaint is likewise devoid of any references to what Scottsdale is alleged to have done and why Plaintiff is entitled to any relief from Scottsdale.[3]

13. The nature of Plaintiff's conclusory and scattershot statements of immaterial information makes it virtually impossible for Scottsdale to discern any relevant facts that may or may not connect Scottsdale to his causes of action. *See Johnson v. Atkins*, 999 F.2d 99, 100 (5th Cir. 1993) ("Even a liberally construed *pro se* . . . complaint . . . must set forth facts giving rise to a claim on which relief may be granted."). The Complaint is far from brief, and nowhere in the 458 paragraphs are any precise allegations or legal theories as to Scottsdale or the other 40-plus named defendants. *See Gordon v.* Green, 602 F.2d 743, 746 (5th Cir. 1979) (noting that Fed. R. Civ. P. 8 is intended to "[e]liminate prolixity in pleading and to achieve brevity, simplicity, and clarity.").

14. For these reasons alone, the Complaint should be dismissed. *See e.g.*, *Hamilton v. U.S.*, No. 4:16-CV-00964, 2017 U.S. Dis. LEXIS 145229 (S.D. Tex. Mar. 31, 2017) (dismissing *pro se* plaintiff's 693-page complaint because it was impossible to ascertain a plausible claim for relief and that it would be virtually impossible for defendants to respond to it).

ii. <u>The Complaint also violates Rule 9(b)'s heightened pleading standard</u>.

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[3] The Western District of Pennsylvania dismissed a similar complaint brought by Plaintiff and wrote the following:

> The first fifty-nine pages of the [Complaint] 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 [Plaintiff]'s prior prisoner cases and prevail in litigation. [Plaintiff] 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.

Tripati v. Wexford Health Sources, Inc., No. 2:20-CV-00427, 2022 U.S. Dist. LEXIS 25908, at *2 (W.D. Pa. Feb. 14, 2022), *aff'd* No. 22-1861, 2022 U.S. App. LEXIS 34617 (3d Cir. Dec. 15, 2022).

15. Fed. R. Civ. P. 9(b), made applicable to adversary proceedings by the Federal Rules of Bankruptcy Procedure, *see* Fed. R. Bankr. P. 7009, requires that a pleading party who alleges fraud or mistake "must state with particularity the circumstances constituting fraud or mistake." Plaintiff's Complaint is subjected to this standard because, although not stated with any particularity, Plaintiff uses the terms "fraud", "defraud", and "fraudulent activity" throughout his Complaint. *See e.g.*, Complaint, at ¶¶ 18-19 ("The activities of the Defendants in the formation and execution of the scheme to defraud [h]ad a pervasive, debilitating, ultimately fatal impact on Corizon's effort to function as a prison healthcare provider, as well as my litigation against Defendants, due to spoilation."); *id.* at ¶ 56 ("Defendants . . . used the corporate structure as a mere instrumentality for fraud and wrongs against me . . . ."); *id.* at ¶ 57 ("The corporate structures is a mere instrumentality by Defendants at all times, to perpetuate fraud and engage in racketeering.").

16. Because Plaintiff asserts causes of action under RICO, Scottsdale presumes Plaintiff uses fraud as a predicate act to support his RICO causes of action. *See State Farm Mut. Auto Ins. Co. v. Misra*, No. SA-22-CV-806-JKP-HJB, 2023 U.S. Dist. LEXIS 30778, at *14 (W.D. Tex. Feb. 24, 2023) ("Consistent with Fed. R. Civ. P. 9(b), a RICO plaintiff alleging predicate acts of fraud must plead the circumstances of that fraud with particularity.").

17. Pleading fraud with "particularity" means that the complaint "specifies the who, what, where, when, and how of the alleged fraud." *Colonial Oaks Assisted Living Lafayette, LLC v. Hannie Dev., Inc.*, 972 F.3d 684, 689 (5th Cir. 2020). Importantly, "Fed. R. Civ. P. 9(b) requirements must be met as to each defendant." *In re Parkcentral Glob. Litig.*, 884 F. Supp. 2d 464, 470-471 (N.D. Tex. 2012) (citing *Unimobil 84, Inc. v. Spurney*, 797 F.2d 214, 217 (5th Cir. 1986) (emphasis added). More specifically, "[i]t is impermissible to make general allegations

that lump all defendants together; rather, the complaint must segregate the alleged wrongdoing of one from another." *Id.*

18. Plaintiff's conclusory allegations that the "Defendants" merely committed fraud is plainly insufficient to satisfy the heightened pleading standards under Fed. R. Civ. P. 9(b). Not only does the Complaint fail to connect "Scottsdale" to any purported fraudulent conduct, but the Complaint also lacks any factual allegations concerning "what", "where", "when" and "how" Scottsdale apparently committed fraud. *See Unimobil 84*, 797 F.2d at 217. In other words, Plaintiff's "bald assertions lack substance and are not supported by averments of fact." *Tripati*, 2022 U.S. Dist. LEXIS 25908, at *35. Because the Complaint fails to meet the heightened pleading standards of Fed. R. Civ. P. 9(b), the Complaint should be dismissed.

B. Plaintiff Lacks Standing To Assert RICO Claims

19. Notwithstanding that the Complaint does not meet the pleading requirements of Fed. R. Civ. P. 8 and 9(b), Plaintiff also lacks standing to assert both state and federal RICO claims. *See* Tripati, 2022 U.S. Dist. LEXIS 25908, at *36-37 (dismissing Plaintiff's racketeering claim in a prior, similar lawsuit under A.R.S. § 13-2314.04 for Plaintiff's failure to meet Fed. R. Civ. P. 9(b) heightened pleading standards). To establish a claim for racketeering under federal and Arizona law, a plaintiff must have standing to sue, which requires a showing of injury to a plaintiff's business or property caused by the defendant's purported RICO violation. *Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 606 (5th Cir. 1998); A.R.S. § 13-2314.04(A). In other words, "a RICO plaintiff [must] show a conclusive financial loss and not harm to mere expectancy or intangible interests." *Gil Ramirez Grp., LLC v. Houston Indep. Sch. Dist.*, 786 F.3d 400, 408 (5th Cir. 2015) (quoting *id.* at 607) (internal quotations omitted)).

20. Plaintiff's Complaint is devoid of any factual allegations concerning concrete injury to his person, business, or property caused by purported racketeering activity. Plaintiff instead identifies his injury as his failure to prevail in certain litigation against Corizon and other medical providers because he "would have prevailed" in those lawsuits but for the "spoilation" of evidence by "defendants". Complaint, Doc. 1, at ¶¶ 11, 46. Plaintiff alleges, in a conclusory manner, that he "has sustained reasonably foreseeable injury to his person, property by pattern of racketeering activities or ats by violation of ARS 13-2312 involving a pattern of racketeering or unlawful activities." *Id.* at ¶ 441. This type of purported injury is plainly deficient to confer Plaintiff RICO standing under both federal and Arizona law. *See Jackson v. NAACP*, 546 Fed. Appx. 438, 442 (5th Cir. 2013) ("Injury to mere expectancy interests or to an intangible property interest is not sufficient to confer RICO standing."); A.R.S. § 13-2314.04(T)(3) (defining what constitutes a "pattern of racketeering activity").

21. Moreover, the Complaint fails to demonstrate a type of alleged "racketeering activity" that "defendants" allegedly performed, and "spoilation" is not one of the several "racketeering activities" recognized by RICO. *See* 18 U.S.C. § 1961(1); *Tripati v. Corizon*, No. CV 16-00282-TUC-DCB, 2018 U.S. Dist. LEXIS 10532, at *60-61 ("[T]his Court has found no authority under federal or Arizona state law to support the existence of a tort for spoilation."). Thus, because Plaintiff has failed to allege an injury to his person, business, or property by a recognized racketeering activity under RICO, Plaintiff lacks standing to bring forth RICO claims, and the Complaint should be dismissed accordingly.

C. The Complaint Is Time-Barred

22. Even if Plaintiff has RICO standing, which Scottsdale does not concede, Plaintiff's claims are nonetheless time-barred under both federal and state law. Federal RICO

claims must be brought within four years of the date on which the plaintiff knew or should have known of his injury. *See Rotella v. Wood*, 147 F.3d 438, 440 (5th Cir. 1998). Arizona RICO claims must be brought within three years from when the injury was discovered. *See* A.R.S. § 13-2314.04(f); *Coulter v. Grant Thornton, LLP*, 241 Ariz. 440, 444 (Ariz. Ct. App. 2017).

23. As expressly stated in his Complaint, Plaintiff alleges "[t]he relevant times are March 19, 2019 to date." Complaint, Doc. 1, at ¶ 45. He further asserts that, "[i]n May 2018, I received CDS/DVDS from counsel and this is the first time that I saw documents that reflect the concealment of evidence." *Id.* (emphases added).

24. Based on his own allegations, Plaintiff discovered the grounds giving rise to his purported injury in May 2018. Under federal law, Plaintiff's RICO claims therefore expired in May 2022, four years after he allegedly discovered evidence forming the basis of his claims. *See Rosella*, 147 F.3d at 440. Plaintiff's Arizona RICO claims, based on Plaintiff's own allegations, expired in May 2021. *See* A.R.S. § 13.2314.04(F).

25. Even concluding that Plaintiff's "relevant times" for this RICO claims began on May 19, 2019, his claims remain time-barred under both federal and Arizona law. Because Plaintiff's claims in this suit are precluded under the applicable statutes of limitation, the Complaint should be dismissed.

V. CONCLUSION & PRAYER FOR RELIEF

26. For the reasons set forth above, Defendant Scottsdale Insurance Company respectfully prays that the Court grant this Motion to Dismiss with prejudice as to all claims asserted against Scottsdale Insurance Company, and for all such other relief to which it may show itself justly to be entitled.

Respectfully submitted,

/s/ Patrick M. Kemp
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served electronically via CM/ECF and mailed this the 27th day of September, 2023 to:

Anant K. Tripati 102081
ASPC Yuma, Cibola Unit
P.O. Box 8909
Yuma, AZ 85349
United States

#9414 7266 9904 2178 2261 19

/s/ Patrick M. Kemp
Patrick M. Kemp

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FOR THE SOUTHERN DISTRICT OF TEXAS
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Anant Kumar Tripati *Plaintiff*, v. Sarah Tirschwell, et al., *Defendants*.	Adv. Pro. No. 23-03072 (CML)

ORDER GRANTING SCOTTSDALE INSURANCE COMPANY'S MOTION TO DISMISS

ON THIS DAY came to be heard Defendant Scottsdale Insurance Company's Motion to Dismiss. After considering the Motion, any responses and applicable law, the Court finds that the Motion is well taken, and should be and is GRANTED.

It is, therefore, ORDERED that all of Plaintiff's claims against Defendant Scottsdale Insurance Company are DISMISSED with prejudice.

Signed:

Hon. Christopher Lopez
United States Bankruptcy Judge