Docket #0169 Date Filed: 10/26/2023

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

IN RE:	§	**CHAPTER 11**
	§	
TEHUM CARE SERVICES, INC,	§	**CASE NO. 23-90086 (CML)**
DEBTOR.	§	
ANANT KUMAR TRIPATI	§	
PLAINTIFF,	§	
	§	
v.	§	**ADVERSARY NO. 23-03072**
	§	
SARAH TIRSCHWELL, ET AL.	§	
DEFENDANTS.	§	

COLUMBIA CASUALTY COMPANY'S MOTION TO DIMISS PLAINTIFF'S ADVERSARY COMPLAINT
[RELATED TO DKT. NOS. 4 & 86]

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.

Columbia Casualty Company ("Columbia") respectfully requests that the Court dismiss Plaintiff's Amended Complaint with prejudice pursuant to Fed. R. Civ. P. 8(a), 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. PRELIMINARY STATEMENT

1. Plaintiff's Amended Complaint is fatally flawed because he fails to assert any

cognizable claim against Columbia and therefore the Amended Complaint must be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6). Moreover, Plaintiff's Amended Complaint fails to meet the heightened pleading standard when a plaintiff alleges a claim is rooted in fraud. Bankruptcy Rule 7009(b) states that "[i]n alleging fraud or mistake, a party must state with particularity circumstances constituting fraud or mistake." Fed. R. Bankr. P. 7009(b).

2. Plaintiff filed his Verified Adversary Complaint (the "Complaint") on May 1, 2023, his First Amended Complaint on May 15, 2023 (the "Amended Complaint"), and his Motion for Leave to File his Second Amended Complaint on July 31, 2023 [Dkt. 96]. The proposed Second Amended Complaint suffers from the same factual and legal deficiencies as the Amended Complaint and Columbia seeks dismissal of the Amended Complaint and denial of leave to amend.

II. FACTUAL BACKGROUND AND PLEADED FACTS

3. This Court is aware that the Plaintiff's has a long history of litigation and is recognized as a "serial litigant."[1] The Amended Complaint is 182 pages and over 523 paragraphs.[2] Columbia is a named defendant based upon a single allegation, namely that Columbia "… is a liability Insurer for Centurion."[3]

4. Nearly all the Plaintiff's factual allegations in the Amended Complaint focus on allegations against Corizon and its officers, directors, or agents.[4] The Amended Complaint is devoid of any specific allegation of any act taken by Columbia that injured the Plaintiff, or why the Plaintiff would be entitled to any relief from Columbia.

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[1] See Dkt No.'s 27, 47, and 153. Columbia adopts and incorporates, as if fully set forth herein, all arguments raised by other defendants that are also applicable to Columbia. This Court may dismiss claims against Columbia because another defendant's motion to dismiss raises defects that apply equally to Columbia. *See Hiersche v. Brassard (In re Brassard)*, 162 B.R. 375, 378 Bankr. D. Maine 1994); *Tredennick v. Bone*, 647 F. Supp. 2d 495, 501 and n.3 (W.D. Pa. 2007).

[2] See Dkt 4-1, Pgs 1-182

[3] See Dkt 4-1, Amended Complaint, ¶55.

[4] See Dkt 4-1, Amended Complaint, ¶¶ 67-473

5. Although difficult to navigate, Plaintiff alleges that some of the approximate 36 named defendants spoliated and hid evidence in various federal and state cases brought by him, and that other defendants knew about or assisted in that spoliation. *See generally* Amended Complaint ¶¶ 3-5 and Prayer for Relief. Mr. Tripati alleges that he "sustained injury" because "[a]s a consequence of the scheme I was unable to have the Third Circuit, Ninth Circuit, District of Arizona, Arizona State courts, review my spoliation claims against Defendants, their agents, employees, and subordinates." *Id.* ¶ 19. Had that missing evidence "been presented, I [Tripati] would have prevailed in the litigation[s]." *Id.* ¶153.

6. 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.

7. As to Columbia, Plaintiff alleges no factual allegations. Rather, Plaintiff simply lumps Columbia with other "liability insurers."[5] There are no assertions of purported fact in the Amended Complaint showing what exactly Columbia is alleged to have done that comprised a fraud or aided and abetted a fraud, or how Columbia fits into the RICO enterprise, or how Columbia caused Plaintiff's (unspecified) claimed injury.

8. Plaintiff's allegations against the "liability insurers" are entirely conclusory and devoid of facts. As to the "liability insurers" the Amended Complaint states as follows:

[5] See Dkt 4-1 ⁋⁋ 474-478.

145. 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.

474. 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.

475. 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.

476. Liability Insurers compel prisoners to litigate issues, and fail to follow their own rules and regulations, internal policies and guidelines.

477. Liability Insurers are required to investigate facts and the law, as if there were no policy limits.

478. In prisoner cases, , these Liability Insurers aided and abetted in the prefabrication of defenses and bad faith use of procedural devices, as set forth in the complaint.

See Dkt 4-1, Amended Complaint, ¶¶ 145, 474-478

III. LEGAL STANDARD

9. This Court has authority to dismiss a suit or individual cause of action under Rule 12(b)(6) when a complaint fails to state a claim upon which relief can be granted. *See Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). To survive a Rule 12(b)(6) motion, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Although courts accept well-pleaded facts as true and construe them in favor of the plaintiff, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Iqbal*, 556 U.S. at 663. "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id*.

10. To survive a Rule 12(b)(6) motion, the complaint must provide "more than labels and conclusions, and a formulaic recitation of a cause of action's elements." *Funk v. Stryker Corp*., 673 F. Supp. 2d 522, 525 (S.D. Tex. 2009), *aff'd* 631 F.3d 777 (5th Cir. 2011) (citing *Twombly*, 550 U.S. at 555). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. A court is not required to accept mere legal conclusions as true, instead, a complaint "must be supported by factual allegations." *Id*.

11. Complaints that allege fraud must also meet a higher standard of pleading. Fed. R. Civ. P. 9(b). Rule 9(b) requires complaints asserting fraud to set forth the facts with sufficient particularity so as to "provide defendants adequate notice of the nature and grounds of the claim." *Floyd v. CIBC World Mkts., Inc.*, 426 B.R. 622, 652 (S.D. Tex. 2009) (citing *Hart v. Bayer Corp.*, 199 F.3d 239, 248 n.6 (5th Cir. 2000)); *In re NE 40 Partners, Ltd. P'ship*, 440 B.R. 124, 129 (Bankr. S.D. Tex. 2010).

IV. ARGUMENT AND AUTHORITIES

A. The Complaint Fails to State a Plausible Cause for Relief as required by Rule 12(b)(6).

12. To 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." *Ashcroft v. Iqbal*, 556 U.S 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). While the Court must accept as true all *facts* alleged in the Complaint, and draw all reasonable inferences in Plaintiff's favor, he cannot just offer "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 557 (stating that a complaint must do more than tender "naked assertion[s]" devoid of "further factual enhancement"). Factual allegations that raise "the mere possibility of misconduct" by a defendant are not plausible. *Iqbal*, 556 U.S. at 679. Instead, "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." *Id.* at 678. The Court should grant Columbia's motion to dismiss because the Amended Complaint fails to plead sufficient facts to make out "plausible" RICO claims as to Columbia.

i. The Amended Complaint fails to properly allege a distinct RICO enterprise.

13. A RICO "enterprise" must have an ascertainable structure that is "separate and apart from the pattern of activity in which it engages," *Turkette,* 452 U.S. at 583, and the RICO

person or persons alleged to be conducting its affairs, *Cedric Kushner Promotions, Ltd. v. King,* 533 U.S. 158, 161 (2001). *See also United States v. Korando*, 29 F.3d 1114, 1117 (7th Cir. 1994) (stating that "the hallmark of an enterprise is a structure"). To try to meet this statutory requirement, Tripati pleads an association-in-fact enterprises which he dubs undefined of "the Correctional Health enterprise." Amended Complaint ¶¶ 11, 389, 438. The alleged scheme purportedly involves Corizon's misuse of "[b]illions of dollars" that were allocated during COVID by giving management bonuses from such funds and depriving the prison staff from seeing that money. *See* Amended Complaint ¶¶ 139-140. The Amended Complaint does not define "the Correctional Health enterprise"; it merely asserts that defendants were "employed by or associated with an enterprise, the Correctional Health enterprise"; and were involved in the scheme devised by the enterprise "through a pattern of unlawful racketeering activity…" Amended Complaint ¶ 491. There is no allegation describing what the enterprise is or how it works, except for stating it is an enterprise "engaged in and the activities of which affect interstate commerce." Amended Complaint ¶ 504.

14. As demonstrated, Plaintiff fails to plead sufficient facts showing that this enterprise has the separate and distinct structure required. *See Boyle v. United States*, 556 U.S. 938, 946, 129 S. Ct. 2237, 2244, 173 L. Ed. 2d 1265 (2009) (an association-in-fact enterprise must have at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose.) The list of supposed participants includes a collection of companies whose function is to provide correctional health services. It is noteworthy that Columbia is only mentioned once by name as an insurer for Centurion, no Columbia conduct is alleged, and there is no information as to who operated the alleged enterprise, nor any reference to any "person" at Columbia who used the

enterprise to conduct unlawful acts. It is apparent that Plaintiff is unable to explain the control of a separate and distinct structure. *See Turkette,* 452 U.S. at 583. Among other things, Plaintiff does not plausibly allege facts showing that (i) the members of the alleged enterprise "function as a continuing unit…" *Landry v. Airline Pilots Assoc. Int'l AFL-CIO*, 901 F.2d 404, 433 (5th Cir. 1990*), cert. denied*, 498 U.S. 895 (1990); (ii) the enterprise has "a common or shared purpose and continuity of structure and personnel," *Shaffer v. Williams*, 794 F.2d 1030, 1032 (5th Cir. 1986); and (iii) there is "systemic linkage, such as overlapping leadership, structural or financial ties, or continuing coordination" among the various individuals and subgroups that comprise the approximate 36 defendants sued under the Amended Complaint, *United States v. Owens*, 167 F.3d 739, 751(1st Cir. 1999) (quoting *Libertad v. Welch*, 53 F.3d 428, 433 (1st Cir. 1995)). This is particularly true as to Columbia, where Mr. Tripati alleges no facts showing what Columbia (or any person employed by Columbia) did to contribute to or be a part of his alleged correctional health enterprise. *See* Amended Complaint [ECF Docket No.4-1] ¶¶ 19, 145, 474-478. Because nearly all the factual allegations in the Amended Complaint focus on the supposed actions of Corizon ("liability insurers provided Corizon with substantial assistance"), and Columbia has never been the liability insurer for Corizon, there is no link or any demonstration of how Columbia is part of the continuing unit or how it shares in the possible structure or personnel. *See* Amended Complaint ⁋ 145. Accordingly, the Amended Complaint must be dismissed as to Columbia.

ii. Plaintiff has not plausibly pled facts to show that Columbia participated in the enterprise.

15. Section 1962(c) imposes liability on those who "conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity." 18 U.S.C. § 1962(c). The Supreme Court interprets this language narrowly, holding that only those individuals who "participate in the operation or management of the enterprise itself" and have

some part in "directing the enterprise's affairs" may be liable under RICO. *Reves v. Ernst & Young*, 507 U.S. 170, 179, 184-185 (1993). As relevant to Columbia, who never provided Corizon with insurance services, and merely provided insurance services to Centurion, it is well-settled that "providing important services to a racketeering enterprise is not the same as directing the affairs of the enterprise." *Amsterdam Tobacco, Inc. v. Philip Morris, Inc.*, 107 F.Supp.2d 210, 217 (S.D.N.Y. 2000) (allegation that Philip Morris continued to provide its product knowing it was going to illegal smugglers insufficient under § 1962(c); "simply because one provides goods or services that ultimately benefit the enterprise does not mean that one becomes liable under RICO as a result"). *See also Succession of Wardlaw v. Whitney Nat'l Bank*, No. 94-2026, 1994 U.S. Dist. LEXIS 15215, *15 (E.D. La. 1994) (dismissing RICO claims against bank who processed the deposits and withdrawals at issue; "even if [the bank] did so with the knowledge that these deposits and withdrawals were fraudulent, such guilty knowledge is not enough to convert it into an active participant in the management of the criminal enterprise."); *In re Taxable Municipal Bond Securities Litigation*, MDL No. 863, No. 90-4714, No. 90-4718,1993 U.S. Dist. LEXIS 17978, *14 (E.D. La. 1993) (even assuming attorney had substantial persuasive power over the enterprise, the "performance of legal services that facilitate operation of an enterprise does not represent participation in the 'operation or management' of the enterprise"); *Bowdoin Construction Corp. v. Rhode Island Hospital Trust National Bank, N.A.*, 869 F. Supp. 1004, 1009 (D. Mass. 1994) (allegation that law firms, with full knowledge of the fraud being perpetrated, counseled their clients to continue to participate in the fraudulent transactions insufficient as a matter of law under *Reves*); *Univ. of Maryland at Baltimore v. Peat, Marwick, Main & Company*, 996 F.2d 1534, 1539 (3rd Cir. 1993) (allegations that auditor performed deficient audits, attended meetings of the Board of Directors of the enterprise, computerized the enterprise's accounting records, and purchased an

interest in a building occupied by the enterprise, insufficient to make auditor liable under RICO).

16. Here, all that the liability insurers, including Columbia, are alleged to have done is provide insurance services to certain members of the purported correctional health enterprise. Under *Reves* and its progeny, this is not enough as a matter of law. *See*, cases, *supra*; *see also Wilson v. Arch-Air Freight, Inc.*, No. 93-4222, 1997 U.S. Dist. LEXIS 827, *9-11 (E.D. La. Jan. 29, 1997) (no liability when allegations solely accused defendant of conducting its own affairs, not those of the enterprise); *Goren v. New Vision Int'l*, 156 F.3d 721 (7th Cir. 1998), holding modified by *Brouwer v. Raffensperger, Hughes & Co.*, 199 F.3d 961 (7th Cir. 2000) (dismissing a complaint that alleged that a multi-level marketing company and several individual defendants were operating an illegal pyramid scheme where plaintiff failed to plead sufficient facts to demonstrate the individual defendants operated or managed the affairs of the enterprise). For this reason, the Court should dismiss the complaint as to Columbia.

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

17. While Plaintiff may be granted additional latitude as a *pro se* plaintiff in fashioning his Amended Complaint, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), he is still required to know and comply with the pleading requirements of the FRCP. *Thrasher v. City of Amarillo*, 709 F.3d 509, 512 (5th Cir. 2013). Because the Amended Complaint violates those pleading requirements as to Columbia, it should be dismissed.

18. Fed. R. Civ. P. 8(a) is made applicable to adversary proceedings by the Federal Rules of Bankruptcy Procedure, *see* Fed. R. Bankr. P. 7008. The Amended Complaint violates FRCP 8(a) in two ways. *First*, Rule 8(a) is intended to "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing to Rule 8(a)(2) and *Conley* v. *Gibson*, 355 U.S. 41, 47 (1957)). Here, the Amended

Complaint does not give Columbia fair notice of what it is that Columbia is alleged to have done, and why Tripati would be entitled to relief against Columbia. There is no clarity as to what specific "activities" Columbia allegedly "participated in" that causes Columbia to be liable. *See Amended* Complaint ¶¶ 19, 145, 474-478. Given that there are no facts that shed light as to Columbia's alleged involvement, or how Columbia allegedly harmed Plaintiff, the Amended Complaint fails to comply with the liberal notice pleading standard of Rule 8(a).

19. *Second*, Rule 8(a) requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P., Rule 8(a)(2). The Rule is intended to "[e]liminate prolixity in pleading and to achieve brevity, simplicity, and clarity." *Gordon v. Green*, 602 F.2d 743, 746 (5th Cir. 1979). Here, the Amended Complaint is neither short nor plain, and lacks the clarity necessary to properly shape and guide the rest of this adversary proceeding. For each of these two reasons, the Amended Complaint should be dismissed. *See, e.g., Hamilton v. United States*, No. 4:16-cv- 00964, 2017 U.S. Dist. LEXIS 145229 (S.D. Tex., March 31, 2017) (dismissing *pro se* 693-page complaint because it was impossible to ascertain a plausible claim or theory of relief from its contents); *Stephanatos v. Cohen*, 236 Fed. Appx. 785 (3rd Cir. 2007) (affirming dismissal of 550- page complaint that was unwieldy and largely unintelligible).

C. The Complaint violates Rule 9(b)'s heightened pleading standard.

20. 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 Amended Complaint. *See e.g.*, Amended Complaint, at ¶¶ 5, 7, 10, 479, 482, 483, 487, 519

("conspired to defraud me") ("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 ¶ 10 ("Defendants . . . used the corporate structure as a mere instrumentality for fraud and wrongs against me . . . ."); *id.* at ¶ 7 ("The corporate structures is a mere instrumentality by Defendants at all times, to perpetuate fraud and engage in racketeering.").

21. Because Plaintiff asserts causes of action under RICO, Columbia 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.").

22. 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.*

23. 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 Amended Complaint fail to connect Columbia to any purported fraudulent conduct, but the Amended Complaint also lacks any factual allegations concerning "what", "where",

"when" and "how" Columbia 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 Amended Complaint fails to meet the heightened pleading standards of Fed. R. Civ. P. 9(b), the Amended Complaint should be dismissed.

D. Plaintiff Lacks Standing to Assert RICO Claims.

24. 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).

25. RICO is an exacting statute that "makes it criminal 'to conduct' an 'enterprise's affairs through a pattern of racketeering activity,' . . . defined as behavior that violates certain other laws, either enumerated federal statutes or state laws addressing specified topics and bearing specified penalties." *Rotella*, 528 U.S. at 552 (quoting 18 U.S.C. § 1962(c) and citing *id.* § 1961(1)). "Any person injured in his business or property" by a RICO violation may bring a civil RICO action. *Id.* (quoting 18 U.S.C. § 1964(c)). Tripati's RICO and Arizona RICO claims fail to

meet many of the legal requirements required of such claims, and those material failures cannot be remedied or corrected by granting Plaintiff leave to amend.

26. Plaintiff's Amended 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". Amended Complaint, Doc. 4-1, at ¶¶ 13- 21. Plaintiff alleges, in a conclusory manner, that he has "been injured in an as yet undetermined amount, believed to be not less than $30,000,000…" and 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 ¶ 492 & 498. 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").

27. Moreover, the Amended 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 Amended Complaint should be dismissed accordingly.

E. The Amended Complaint is Time Barred

28. Plaintiff commenced this adversary proceeding on May 1, 2023. *See* Complaint [ECF Docket No. 1]. There is a four-year limitations period for civil RICO claims, *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 U.S. 143, 156 (1987), which accrues from when a plaintiff knew or should have known of his injury. *Rotella v. Wood*, 147 F.3d 438, 440 (5th Cir. 1998), *aff'd*, 528 U.S. 549 (2000); *Festinger v. Snitow, Kaminetsky Rosner & Snitow, LLP*, 20 Civ. 9784 (PGG)(JW), 2022 U.S. Dist. LEXIS 55881, *43 (S.D.N.Y. March 28, 2022) (dismissing civil RICO claims as untimely under RICO's four-year statute of limitations). In turn, "a three-year statute of limitations applies to claims brought under Arizona's racketeering statute" and "accrual of these claims is governed by the discovery rule." *Coulter v. Grant Thornton, LLP*, 241 Ariz. 440, 444 (App. 2017) (citing A.R.S. § 13-2314.04 (F)).

29. Plaintiff expressly alleges that "[t]he relevant times are March 19, 2019 to date," and that "[i]n May 2018 I received CDS/DVDS from counsel and … saw documents that reflect the concealment of evidence." These allegations are conclusive and require dismissal of the Complaint on statute of limitation grounds. Per the Plaintiff's own admission, he discovered the alleged spoliation at issue in May 2018, starting the applicable four-year (federal RICO claims) and three-year (Arizona RICO claims) statute of limitations within which he needed to commence his lawsuit. Accordingly, his federal RICO claims became time-barred in May 2022, and his Arizona RICO claims became time-barred in May 2021. Even giving Plaintiff the benefit of every doubt and accepting, for the moment, his allegation that the "relevant times" for his claims began on the later date of March 19, 2019, Plaintiff's claims are still time barred. Under that calculation, his RICO claims are barred as of March 20, 2023, and his Arizona RICO claims are barred as of

March 20, 2022.[6]

V. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, this Court should dismiss the Amended Complaint with prejudice; and grant Columbia Casualty Company such other and further relief as the Court deems just and proper.

Dated: October 26, 2023

Respectfully submitted,

ANDREWS MYERS P.C.

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COUNSEL FOR COLUMBIA CASUALTY COMPANY

[6] While the Court could provide the Plaintiff with the benefit of the doubt, the Plaintiff is a serial litigant, and the Court should not allow such benefit of the doubt under these circumstances. In other cases, the Plaintiff has had prior fact-free claims of spoliation and fraud on the court rejected and dismissed, without leave to further amend. *See Tripati v. Corizon*, No. CV 16-00282-TUC-DCB, 2018 U.S. Dist. LEXIS 10532 (D. Ariz. Jan 23, 2018) (dismissing complaint without further leave to amend).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 26, 2023, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties requesting notice and by U.S. Mail on Plaintiff at the address listed below.

Anant Kumar Tripati
Inmate #102081
P.O. Box 8909
Yuma, AZ 85349

/s/T. Josh Judd
T. JOSH JUDD

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
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ORDER GRANTING COLUMBIA CASUALTY COMPANY'S MOTION TO DISMISS WITH PREJUDICE

CAME FOR CONSIDERATION, Defendant Columbia Casualty Company's Motion to Dismiss for failure to state a claim (the "Motion"). After reviewing the Motion and the response filed, the Court finds that the Motion should be granted. It is therefore

ORDERED, ADJUDGED AND DECREED that Plaintiff's Amended Complaint against Columbia Casualty Company.is dismissed with prejudice and Plaintiff's leave to file a second amended complaint is denied.

Signed:

_____
UNITED STATES BANKRUPTCY JUDGE

Entry Requested By:

ANDREWS MYERS, PC

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