UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LEE KENWORTHY, as the administrator of the ESTATE OF SHAYLING KENWORTHY and LEE KENWORTHY, individually, Plaintiff, v. LYNDHURST POLICE DEPARTMENT; et als., Defendants.	Civil Action No: 2:18-cv-12822 (MCA)(JAD) **Civil Action** **MOTION RETURN DATE:** **February 19, 2019** (Document Electronically Filed)

BRIEF OF DEFENDANT HOUSING AUTHORITY OF BERGEN COUNTY IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

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PRELIMINARY STATEMENT

Defendant Housing Authority of Bergen County ("Defendant" or "HABC") submits this Brief In Opposition To Plaintiff Lee Kenworthy's ("Plaintiff") Motion For Leave To File An Amended Complaint (see ECF Nos. 30 and 30-1, hereinafter "Plaintiff's Motion"), purportedly aimed at curing the many deficiencies contained in Plaintiff's August 16, 2018 *pro se* Complaint, filed both in his individual capacity and as administrator *ad prosequendum* on behalf of the estate of his deceased wife, Shayling Kenworthy ("the decedent"), purporting to assert state law claims of negligence and wrongful death against various defendants including HABC.

Plaintiff's Motion is the latest in a long line of underhanded, duplicitous and bad faith attempts to deceive this Court – under the false pretense of attempting to obtain legal counsel – into allowing him more time to salvage what is ultimately a meritless lawsuit for which this Court does not have subject matter jurisdiction and which fails to state a cognizable against HABC (or any other defendant for that matter). Putting aside for the moment that Plaintiff is only now attempting to amend his pleading after the deadlines for him to oppose all defendants' pending motions to dismiss have passed, and even putting aside that Plaintiff's proposed Amended Complaint (as does his original Complaint) pleads the exact same operative facts that Plaintiff previously pled in a state court lawsuit which was

dismissed with prejudice without direct appeal (thus barring this Court from hearing it under Rooker-Feldman), Plaintiff's proposed Amended Complaint fails to allege a single substantive allegation against HABC, fails to allege a single cause of action against HABC, and in fact contains less allegations even referencing HABC than does Plaintiff's original Complaint. Effectively, Plaintiff has eliminated HABC as a party-defendant in his proposed amended pleading, and obviously has failed to cure any of the deficiencies warranting dismissal of his original Complaint raised in HABC's motion to dismiss same. See ECF No. 14-1).

Overall, in his second attempt to plead a coherent lawsuit before this Court, Plaintiff has once again failed to allege facts sufficient to establish a basis for subject matter jurisdiction, failed to allege facts sufficient to state any type of cognizable legal claim against HABC, and has clearly engaged in egregious bad faith in litigating this matter in contravention of Fed. R. Civ. Proc. 15(a)(2) warranting dismissal in the interests of justice. Thus, Plaintiff's proposed Amended Complaint is futile, and for that reason, HABC respectfully requests that the Court end Plaintiff's charade (at least in part) by denying his Motion so that all defendants' pending motions to dismiss may finally be adjudicated.

STATEMENT OF FACTS

For a recitation of the pertinent facts, HABC respectfully refers the Court to (1) Plaintiff's proposed "Amended Complaint" (see ECF No. 30-1); and (2) the

"Statement of Facts" contained in the Brief In Opposition to Plaintiff's Motion For Leave To File An Amended Complaint filed by defendants Robert Martin and Ann Martin ("the Martins") along with defendants Richard Anderson and Lauren Anderson ("the Andersons," collectively with the Martins, "the Martin/Anderson defendants") on February 1, 2019 (see ECF No. 34); both of which HABC hereby incorporates by reference.

LEGAL ARGUMENT

POINT I

THE COURT MUST DENY PLAINTIFF'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT BECAUSE THE PROPOSED AMENDED COMPLAINT IS FUTILE.

A. The Standard Of Review On A Motion For Leave To File An Amended Pleading.

Fed. R. Civ. Proc. 15(a)(2) provides that "a party may amend its pleading only with …the court's leave." Fed. R. Civ. Proc. 15(a)(2). Such determination is left to the Court's discretion in light of the factual situation existing at the time the motion is made. Zenith Radio Corp. v. Hazeltime Research, Inc., 401 U.S. 321, 330 (1970); Massarsky v. General Motors Corp., 706 F.2d 111, 125 (3d Cir. 1983). Generally, leave to amend must be denied where the amendment would be futile. Aruanno v. New Jersey, 2009 WL 114556 at *1 (D.N.J. Jan. 15, 2009) (citing Forman v. Davis, 371 U.S. 178, 182 (1962)).

Despite the liberal standards for amendment of pleadings prescribed by Fed.

R. Civ. Proc. 15, a motion for leave to amend should be denied where, like here, the proposed amendment would not survive a motion to dismiss for failure to state a claim upon which relief may be granted. See Amentler v. 69 Main Street, LLC, 2011 WL 1362594 (D.N.J. Apr. 11, 2011) ("[a] motion to amend is also properly denied where the proposed amendment is futile"); Massarksy, supra, 706 F.2d at 125 ("trial court may properly deny leave to amend where the amendment would not withstand a motion to dismiss"); In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997).

To determine futility, courts resolve "whether the 'amendment is sufficiently well-grounded in fact or law to demonstrate that it is not a frivolous pursuit.'" Phillips v. Borough Of Keyport, 179 F.R.D. 140, 144 (D.N.J. 1998) (quoting Harrison Beverage Co. v. Dribeck Importers, Inc., 133 F.R.D. 463, 468, 469 (D.N.J. 1990)). The futility analysis under Rule 15(a)(2) applies the same standards as a motion to dismiss pursuant to Rule 12(b)(6). See Pension Benefit Guar. Corp. v. White Consol. Indus., 998 F.2d 1192, 1196 (3d Cir. 1993); Medpointe Healthcare, Inc. v. Hi-Tech Pharmacol Co., 380 F. Supp. 2d 457, 462 (D.N.J. 2005). Although a court will accept well-led allegations as true for purposes of the motion, it will not credit "bald assertions" or "legal conclusions." Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). A "plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'

requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do[.]" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007); see also Baraka v. McGreevey, 481 F.3d 187, 195 (3d Cir. 2007) (court does not have to accept "unsupported conclusions," "unwarranted inferences," or legal conclusion that a plaintiff has couched as a factual allegation). Indeed, the facts alleged must be sufficient to "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure is to be granted where, accepting all well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, a court finds that the plaintiff has failed to set forth fair notice of what the claim is and the grounds upon which it rests. Twombly, supra, 550 U.S. at 555 (citing Conley v. Gibson, 355 U.S. 41, 47 (1957)). A complaint will only survive a motion to dismiss if it contains sufficient factual matter to "state a claim to relief that is plausible on its face." Iqbal, supra, 556 U.S. at 678 (citing Twombly, supra, 550 U.S. at 570).

The plausibility standard requires that "the plaintiff plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged" and demands "more than a sheer possibility that a

defendant has acted unlawfully." Ibid. (citing Twombly, supra, 550 U.S. at 556). Although a court must accept as true all factual allegations in a complaint, that tenet is "inapplicable to legal conclusions," and "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" Id. (citing Twombly, supra, 550 U.S. at 555); see also Phillips v. County of Allegheny, 515 F.3d 224, 231-22 (3d Cir. 2008).

In evaluating a motion to dismiss, a court may consider only the complaint, exhibits attached to the complaint, matters of public record, and indisputably authentic documents if the complainants' claims are based upon those documents. See Pension Benefit Guar. Corp. v. White Consol. Indus., 998 F.2d 1192, 1196 (3d Cir. 1993).

In light of Iqbal, district courts should conduct a two-part analysis when evaluating a motion to dismiss for failure to sate a claim:

> First, the factual and legal elements of a claim should be separated. The District Court must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions. Second, a District Court must then determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a "plausible claims for relief." In other words, a complaint must do more than allege the plaintiff's entitlement to relief. A complaint has to "show" such an entitlement with its facts.

Fowler v. UPMC Shadyside, 578 F.3d 203, 210-11 (3d Cir. 2009) (quoting Iqbal, 556 U.S. at 678). If "the well-pleaded facts do not permit the court 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, supra, 556 U.S. at 679 (quoting Fed. R. Civ. Proc. 8(a)(2)).

B. Plaintiff's Proposed Amended Complaint Must Be Dismissed As Futile Because It Fails To Allege Facts Sufficient To Support The Existence Of Subject Matter Jurisdiction As To Any Purported Claim Against HABC.

Here, Plaintiff's Motion must be dismissed because the proposed Amended Complaint is futile since it fails to allege facts sufficient to establish subject matter jurisdiction in this Court insofar as it attempts to assert a claim against HABC.

With respect to federal question jurisdiction, even under the applicable liberal pleading standards, the proposed Amended Complaint cannot be construed to allege a federal question insofar as concerns HABC. Simply put, there are no substantive allegations as to HABC in the proposed Amended Complaint; rather the only paragraphs referencing HABC therein are those which identify HABC generally and state the address of its headquarters (see ECF No. 30-1, ¶ 12); inaccurately and frivolously mischaracterize HABC's purported actions in connection with a prior matter which Plaintiff admits is separate and which has been settled (see ibid., ¶ 20)[1]; and that Plaintiff allegedly disclosed his prior

[1] It should be stressed that the settlement agreement executed by the parties in connection with that case contained "no admission of wrongdoing or liability" and "no disparagement" clauses, both of which Plaintiff has arguably violated by making the allegations he has made in paragraphs 20 and 21 of his Amended

experiences with HABC to the Anderson defendants (see ibid., ¶ 21). Plaintiff has failed to specifically allege that HABC violated any federal statute or governing law, and has failed to assert that any of his purported "causes of actions" or counts are against HABC (reflected by the fact that Plaintiff explicitly named the defendants against whom he is attempting to assert each claim within each count, amongst which HABC is nowhere to be found). Thus, there is no federal question jurisdiction as concerns HABC.

Moreover, Plaintiff has failed to allege facts sufficient to establish diversity jurisdiction over HABC. While Plaintiff has now made the baseless and completely conclusory allegation that the amount in controversy now exceeds $75,000.00, still based on Plaintiff's own allegations (see paragraphs ¶¶ 1-19), Plaintiff and all but one of the defendants (Adapt Pharma) are unambiguously citizens of the State of New Jersey. Because Plaintiff is a citizen of the same state (New Jersey) as all but one of the defendants, complete diversity does not exist. As such, this Court does not have diversity jurisdiction to hear this matter.

Likewise, for the same reasons expressed in Point I, C through E, of HABC's Brief In Support Of Its Motion To Dismiss Plaintiff's Complaint (see ECF No. 14-1), which are hereby incorporated by reference in their entirety, there

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Complaint. Should this Court so request, the undersigned will be happy to submit said settlement agreement *in camera* for review.

is no other basis which exists to establish subject matter jurisdiction in federal court.

Thus, because Plaintiff's proposed Amended Complaint has once again failed to assert facts sufficient to establish subject matter jurisdiction in federal court, the proposed Amended Complaint is futile and Plaintiff's Motion must be dismissed accordingly.

C. Plaintiff's Proposed Amended Complaint Must Be Dismissed As Futile Because It Fails To State A Cognizable Legal Claim Against HABC And Thus Must Be Dismissed Pursuant to Fed. R. Civ. Proc. 12(b)(6).

In addition, Plaintiff's Motion must be dismissed because the proposed Amended Complaint is futile since, like Plaintiff's original Complaint, it fails to allege facts sufficient to state any type of cognizable legal claim against HABC.

To survive a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), a complaint must contain sufficient factual matter, presumptively accepted as true at this stage, to "state a claim to relief that is plausible on its face." Iqbal, supra, 556 U.S. 662, 678 (2009) (quoting Twombly, supra, 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." Ibid. "Factual allegations must be enough to raise a right to relief above the speculative level." Twombly, supra, 550 U.S. at 555.

Reviewing the standard set forth in Iqbal, supra, the Third Circuit noted in Santiago v. Warminster Twp., 629 F.3d 121, 129-30 (3d Cir. 2010) that:

> [T]o determine the sufficiency of a complaint, a court must take three steps: First, the court must "tak[e] note of the elements a plaintiff must plead to state a claim." Iqbal, 129 S. Ct. at 1947. Second, the court should identify allegations that, "because they are no more than conclusions, are not entitled to the assumption of truth." Id. at 1950. Finally, "where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief." Id.

In Phillips, supra, 515 F.3d at 234, the Third Circuit also noted that Twombly "can be summed up thus: stating a claim requires a complaint with enough factual matter (taken as true) to suggest the required element[s]" which "does not impose a probability requirement at the pleading stage, but instead simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary element." Phillips, supra, 515 F.3d at 234 (citing Twombly, supra, 550 U.S. at 555) (emphasis added). A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." Twombly, supra, 550 U.S. at 555. Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." Id. at 557, 127 S. Ct. 1955.

Here, it bears repeating that Plaintiff's proposed Amended Complaint **literally** does not state one single substantive allegation regarding HABC, must

less set forth allegations which even under the most liberal of standards can be interpreted to even suggest some type of cause of action. Again, the only paragraphs referencing HABC therein are those which identify HABC generally and state the address of its headquarters (see ECF No. 30-1, ¶ 12); inaccurately and frivolously mischaracterize HABC's purported actions in connection with a prior matter which Plaintiff admits is separate and which has been settled (see ibid., ¶ 20); and that Plaintiff allegedly disclosed his prior experiences with HABC to the Anderson defendants (see ibid., ¶ 21). In fact, there are less allegations against HABC in Plaintiff's proposed Amended Complaint than there are in his original Complaint. Even construing the allegations in Plaintiff's proposed Amended Complaint liberally, one cannot glean any semblance of a cause of action being asserted against HABC, which is further reflected by the fact that in pleading his purported "causes of action" at the end of the proposed Amended Complaint, Plaintiff explicitly names those defendants against whom he directs each specific claim. Noticeably, HABC is not identified as a defendant against whom Plaintiff attempts to seek relief in connection with any of his claims.

All of the same arguments as to why Plaintiff's lawsuit must be dismissed pursuant to Fed. R. Civ. Proc. 12(b)(6) made in HABC's Motion To Dismiss Plaintiff's Complaint (see ECF No. 14-1) are equally (if not more so) applicable herein, and thus are hereby re-incorporated by reference in their entirety.

Accordingly, Plaintiff's Motion must be dismissed since the proposed Amended Complaint is futile because it is subject to dismissal pursuant to Fed. R. Civ. Proc. 12(b)(6).

D. Plaintiff's Proposed Amended Complaint Must Be Dismissed As Futile Because, Even Assuming *Arguendo* It Did State A Cognizable Legal Claim Against HABC, It Would Be Barred By The *Rooker-Feldman* Doctrine.

Furthermore, even assuming arguendo Plaintiff's ramblings were to be construed (even under the most liberal of standards) to state a claim against HABC, any such claim would be barred by the Rooker-Feldman doctrine.

The Rooker–Feldman doctrine, which derives its name from the Supreme Court's decisions in Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983), "preclude[s] lower federal court jurisdiction over claims that were actually litigated or 'inextricably intertwined' with adjudication by a state's courts." Parkview Assocs. Pshp. v. City of Leb., 225 F.3d 321, 325 (3d Cir.2000) (quoting Gulla v. North Strabane Twp., 146 F.3d 168, 171 (3d Cir.1998)). In Rooker, the parties that were defeated in state court turned to a Federal District Court for relief. Alleging that the adverse state-court judgment was rendered in contravention of the Constitution, they asked the federal court to declare it "null and void". Id. at 414-415, 44 S. Ct. 149. A finding that Rooker-Feldman bars a litigant's federal claims divests a District Court of subject matter

jurisdiction over those claims. Guarino v. Larsen, 11 F.3d 1151, 1156-57 (3d Cir.1993).

The Rooker–Feldman doctrine is based on "the well-settled understanding that the Supreme Court of the United States, and not the lower federal courts, has jurisdiction to review a state court decision." Parkview supra, 225 F.3d at 324. Under 28 U.S.C. § 1257, the Supreme Court has jurisdiction to review a decision by "the highest court of a State in which a decision [may] be had." Since Congress has never conferred a similar power of review on the United States District Courts, the Supreme Court has inferred that Congress did not intend to empower District Courts to review state court decisions. Feldman, supra, 460 U.S. at 476; Gulla supra, 146 F.3d at 171. To ensure that Congress's intent to prevent "the lower federal courts" from "sit[ting] in direct review of the decisions of a state tribunal" is given effect, Gulla supra, 146 F.3d at 171, the Rooker–Feldman doctrine prohibits District Courts from adjudicating actions in which "the relief requested ... requires determining that the state court's decision is wrong or ... void[ing] the state court's ruling." FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834, 840 (3d Cir.1996).

Four requirements must be met for the Rooker–Feldman doctrine to apply: (1) the federal plaintiff lost in state court; (2) the plaintiff complains of injuries caused by the state-court judgments; (3) those judgments were rendered before the

federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments. Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 166 (3d Cir. 2010) (first alteration added) (citing Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005)) "The second and fourth requirements are the key to determining whether a federal suit presents an independent, non-barred claim." Great W. Mining supra, 615 F.3d at 166.

Here, Plaintiff's initial filing of his Complaint, as well as his instant attempt to file an Amended Complaint and preserve this federal court action, collectively constitute a transparent attempt to obtain a second bite at the apple and litigate his prior state court action (see Exhibit A to Certification of Counsel submitted in support of the Martin/Anderson defendants' opposition to Plaintiff's Motion, ECF No. 34-1) – which made allegations arising out of the exact same operative facts, and which was dismissed with prejudice – in federal court without having directly appealed dismissal of the same.

This is a textbook scenario for application of Rooker-Feldman to bar Plaintiff's lawsuit and proposed Amended Complaint, as all four requirements under the Rooker-Feldman are clearly met. The "with prejudice" dismissal of Plaintiff's state court lawsuit undoubtedly reflects that Plaintiff "lost" in state court, thus satisfying the first element of Rooker-Feldman. The second Rooker-Feldman element is met because Plaintiff's filing the exact same action in federal

court now without having directly appealed the dismissal of his state court action essentially constitutes Plaintiff complaining of injuries caused by dismissal of that state court lawsuit (just in another forum). The third Rooker-Feldman element is met because orders were entered dismissing Plaintiff's state court lawsuit against all defendants prior to his initiating the instant action (see Exhibits F through G to Certification of Counsel submitted in support of the Martin/Anderson defendants' opposition to Plaintiff's Motion, ECF No. 34-1), which dismissals were ultimately "with prejudice" based on Plaintiff's failure to even oppose the same. See ibid., Exhibits I through K. Finally, the fourth element of Rooker-Feldman is met because by not directly appealing the dismissal of his state court lawsuit, but rather filing the exact same lawsuit in federal court, Plaintiff is effectively inviting this Court to review and reject the state court's dismissal of this action, look at it anew and get a second bite at the apple. Such tactics should not be countenanced.

Thus, for the reasons set forth above, this court lacks jurisdiction pursuant to the Rooker-Feldman doctrine to adjudicate Plaintiff's proposed Amended Complaint, and accordingly such proposed pleading is futile and therefore Plaintiff's Motion must be denied.

POINT II

THE COURT MUST DENY PLAINTIFF'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT BECAUSE PLAINTIFF'S CONDUCT IN FILING SAID MOTION EXHIBITS BAD FAITH WARRANTING DENIAL OF THIS MOTION IN THE INTEREST OF JUSTICE.

HABC respectfully adopts, relies upon and hereby incorporates by reference the legal "Argument" made in the Brief In Opposition to Plaintiff's Motion For Leave To File An Amended Complaint filed by the Martin/Anderson defendants (see ECF No. 34).

CONCLUSION

For all of the aforementioned reasons, defendant Housing Authority of Bergen County ("HABC") respectfully requests that this Court deny Plaintiff's Motion For Leave To File An Amended Complaint in its entirety.

Respectfully submitted,

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Dated: February 5, 2019