IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

FRANCIS J. SAVARIRAYAN	)	
	)	
v.	)	NO. 2:07-0055
	)	
WHITE COUNTY COMMUNITY HOSPITAL, et al.	)	

ORDER

Presently pending are several motions which are ruled on as follows.

The motion to strike (Docket Entry No. 92) filed by Defendant John Wayne Allen is DENIED. Defendant Allen's arguments for striking the plaintiff's response to Defendant Allen's pending dispositive motion are unpersuasive. The response filed by the plaintiff will be considered by the Court.

The several filings of the plaintiff styled as "Omnibus Motion[s]" or "Response & Motion" (Docket Entry Nos. 79, 88, 93, 97, and 98) are GRANTED to the extent that the filings are intended to be responses to the pending dispositive motions. To the extent that the plaintiff requests any other action or relief in those motions and to the extent that two of the motions (Docket Entry Nos. 93 and 98) seek to strike certain filings, the motions are DENIED as lacking in any legal merit.

Any party desiring to appeal this Order may do so by filing a motion for review no later than ten (10) days from the date this Order is served upon the party. The motion for review must be accompanied by a brief or other pertinent documents to apprise the District Judge of the basis for appeal. See Rule 9(a)(1) of the Local Rules for Magistrate Judge Proceedings.

So ORDERED.

Juliet Griffin

JULIET GRIFFIN
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
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v.	)	NO. 2:07-0055
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WHITE COUNTY COMMUNITY HOSPITAL, et al.	)	
	)	

TO: Honorable Aleta A. Trauger, District Judge

REPORT AND RECOMMENDATION

Pursuant to Order entered August 24, 2007 (Docket Entry No. 5), this action was referred to the Magistrate Judge for case management, decision on all pretrial, nondispositive motions and report and recommendation on all dispositive motions under 28 U.S.C. § 636(b)(1), and to conduct any necessary proceedings under Rule 72 of the Federal Rules of Civil Procedure.

Presently pending before the Court are several dispositive motions:

1. Motion to Dismiss (Docket Entry No. 28) of Defendant John Wayne Allen;

2. Motion for Summary Judgment (Docket Entry No. 30) of Defendants White County Community Hospital, Community Health Systems, Inc., and Gary Newsome;

3. Motion for Summary Judgment (Docket Entry No. 42) of Defendant Chad Griffin;

4. Motion to Dismiss of Defendant Chad Griffin (Docket Entry No. 46);

5. Second Motion to Dismiss (Docket Entry No. 47) of Defendant John Wayne Allen;

6. Motions to Dismiss (Docket Entry No. 53 and 55) of Defendants White County Community Hospital, Community Health Systems, Inc., and Gary Newsome; and

7. Motion for Summary Judgment (Docket Entry No. 59) of Defendants Daniel Barnett and Blue Cross/Blue Shield of Tennessee.

Set out below are the Court's recommendations for disposition of the motions.

I. FACTUAL BACKGROUND

The plaintiff is a physician practicing in the field of urology. On or about October 11, 2002, he entered into a Recruitment Agreement ("the Agreement") with Sparta Hospital Corporation d/b/a White County Community Hospital ("the Hospital") to engage in the full-time practice of urology in the community of White County, Tennessee. The Agreement was signed by Gary Newsome ("Mr. Newsome"), the President of the Hospital, and signed by Mark Cain ("Mr. Cain"), the Facility Officer at the Hospital. See Exhibit 3 to Amended Complaint (Docket Entry No. 6). The plaintiff's medical practice was to commence on February 15, 2003, and the term of the Agreement was for three years. Id. The Agreement provided for an initial twelve month guarantee period during which the plaintiff was to be paid a monthly amount of $35,417.00 for a total of $425,004.00. Id.

The Agreement never reached its full term as difficulties between the plaintiff and the Hospital arose during the first year of the Agreement.

The plaintiff contends that he was not given proper support from the Hospital in terms of advertising his practice or providing necessary medical equipment to him and that, after September 2003, the Hospital delayed issuing the monthly guaranteed income checks to him. The plaintiff further alleges that local physicians failed to refer urology patients to him and instead referred these patients to other physicians. He alleges that Dr. Chad Griffin ("Dr. Griffin"), a local physician affiliated with the Hospital would not refer to the plaintiff any patients who had insurance coverage and discharged one of the plaintiff's patients who was awaiting surgery so that another physician could perform the procedure. See Amended Complaint, at ¶¶ 22-26 and 39. The plaintiff contends that these acts were part of a concerted effort to destroy his medical practice. Id. at ¶ 40. During this same time period, the plaintiff asserts that he was prevented from receiving payments for services performed on patients insured with BlueCross/BlueShield of Tennessee, Inc. ("Blue Cross") or its

affiliates because Blue Cross denied his application to become part of the Blue Cross credentialed network. Id. at ¶ 33.

On the other hand, the Hospital believed that the plaintiff was not fulfilling obligations and duties required of him under the Agreement. As set out in a letter to the plaintiff from Mr. Cain, dated October 8, 2003, the Hospital contended that the plaintiff had not obtained an acceptable billing and collections system, had not entered into third party payor agreements, and had not properly promoted and marketed his practice. See Exhibit A (Docket Entry No. 9-2) to the Answer (Docket Entry No. 9) of the Hospital, Community Health Systems, Inc., and Mr. Newsome. By a second letter dated, November 18, 2003, the plaintiff was informed that until the issues noted in the prior letter were remedied, the Hospital would discontinue making the guaranteed payments and would terminate the Agreement if the matters were not remedied within fifteen days of the date of the letter. See Exhibit B (Docket Entry No. 9-2) to the Answer. On November 21, 2003, a third letter was sent to the plaintiff alerting him that the requirement that he obtain third party payor agreements remained unfulfilled and that his practice would be audited on a regular basis to ensure that he was complying with the requirement that he maintain a minimum of 40 hours of work per week. See Exhibit C (Docket Entry No. 9-3) to the Answer.

On January 16, 2004, Mr. Cain met with the plaintiff and delivered to him another letter alerting him that the Hospital was terminating the Agreement because of the previously noted issues and because of other issues revealed by the audit of the plaintiff's practice. See Exhibit D (Docket Entry No. 9-4) to the Answer. To resolve the situation, the Hospital offered the plaintiff a Settlement Agreement and Release of Claims ("Settlement Agreement"). See Exhibit H (Docket Entry No. 9-8) to the Answer. The terms of the Settlement Agreement called for the plaintiff to relinquish any claims against the Hospital and any of its agents or employees related to or arising out of the Agreement.

Id. In return, the Hospital agreed to release and forgive the plaintiff from repayment of the sum of $260,789.44 which had already been paid to him under the Agreement. Id. The Settlement Agreement was ultimately signed by the plaintiff.[1]

The plaintiff subsequently sought out an attorney in order to bring a lawsuit over the matter. He alleges that, in August 2005, attorney Tom Nebel agreed to represent him but failed to sign an actual attorney/client contract and moved his office. See Amended Complaint (Docket Entry No. 6, at ¶ 42), and Exhibit 15 to Amended Complaint. The plaintiff then contacted attorney John Wayne Allen ("Mr. Allen") to represent him, and a lawsuit was filed on January 26, 2007, in the Circuit Court for White County, Tennessee against the Hospital, Community Health Systems, Inc., Mark Cain, Gary Newsome, Chad Griffin, Daniel Barnett, and Blue Cross. See Amended Complaint, at ¶¶ 43-44; Exhibit No. 33 to Complaint (Docket Entry No. 1); and Exhibits 16-18 to Amended Complaint. The plaintiff raised a breach of contract claim, a civil rights claim under 42 U.S.C. § 1981, a claim for tortuous interference with a business relationship, and a claim for violation of the Tennessee Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101 et seq. See Exhibit No. 33 to Complaint.

On March 14, 2007, a notice of voluntary dismissal was filed on behalf of the plaintiff in the state action, and an order of non-suit was entered on April 9, 2007, dismissing all claims with prejudice. See Exhibit 17 to Amended Complaint. The plaintiff thereafter terminated the services of Mr. Allen. The state court held a hearing and, by order entered November 19, 2007, set aside the prior order of dismissal. See Exhibit C (Docket Entry No. 44-3) to Defendant Griffin's Memorandum in Support of Dismissal.

[1] Although the Settlement Agreement is signed and bears the date of January 16, 2004, letters provided by the defendants appear to indicate that the plaintiff was given until January 27, 2004, to execute the Settlement Agreement. See Exhibits E, F, and G (Docket Entry Nos. 9-5, 9-6, and 9-7) to the Answer.

After a hearing on November 2, 2007, see Docket Entry No. 42-3, at 5-24, the state court action was dismissed with prejudice as to Defendant Griffin on November 19, 2007.[2] See Exhibit C (Docket Entry No. 42-3) to Defendant Griffin's Motion for Summary Judgment. By Order entered January 17, 2008, the action was dismissed with prejudice as to each of the remaining defendants named in the state court action. See Exhibit No. 2 (Docket Entry No. 59-2) to Defendant Blue Cross and Daniel Barnett's Motion for Summary Judgment. The state court also awarded monetary sanctions against the plaintiff and in favor of the defendants. Id. It is unclear from the record whether the plaintiff sought an appeal in the state court action from the orders of dismissal.

II. FEDERAL COMPLAINT

On August 24, 2007, and while the state court action was pending, the instant action was filed pro se by the plaintiff. The caption of the complaint lists both the plaintiff and the Commission on Quality Health Care in America ("CQHCA"), which is described as a "Federal entity set up under Title IV of Public Law 99-660-The Health Care Quality Improvement Act of 1986." See Amended Complaint (Docket Entry No. 6), at 1.[3] However, the CQHCA is not specifically named as a plaintiff in the body of the complaint and all references to "plaintiff" in the complaint are clearly intended to mean the plaintiff.

Named as defendants to the instant action are the seven entities named in the prior state court action -- the Hospital, Community Health Systems, Inc., Mr. Cain, Mr. Newsome, Dr. Griffin,

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[2] Although the order setting aside the prior order of dismissal and the order granting the motion for summary judgment filed by Dr. Griffin were entered on the same day, it is clear that the order setting aside the prior order was entered first. See Docket Entry No. 44-3.

[3] The plaintiff's amended complaint (Docket Entry No. 6) is the same in all respects as his original complaint except for the inclusion of additional factual allegations against Defendant Pincus. See Amended Complaint, at ¶¶ 54-63.

Mr. Barnett, and Blue Cross -- as well as Tom Nebel, John Wayne Allen, the Practitioner Data Banks Branch ("PDBB"), the National Practitioner Data Bank ("NPDB"), Mark Pincus, who is the Chief of the PDBB, Ronda Pekalo, who is the Manager of the NPDB, and three "John Doe" defendants. See Amended Complaint (Docket Entry No. 6), at 1.

The amended complaint sets out the same claims as alleged in the prior state court action and adds: 1) legal malpractice claims against Defendants Nebel and Allen for alleged mishandling of his state court lawsuit; 2) antitrust and Clayton Act claims against Defendants Cain, Griffin, Barnett, and Blue Cross; and 3) a claim under the Racketeer Influenced Corrupt Organizations Act ("RICO") against all defendants. Id. at ¶¶ 64-79. The plaintiff seeks a total of 15 million dollars in damages.

III. PROCEDURAL BACKGROUND

The Hospital, Community Health Systems, Inc., and Mr. Newsome filed a joint answer and counter-claims against the plaintiff seeking recovery of $260,789.44 on the theory that the plaintiff has breached both the Agreement and the Settlement Agreement and seeking costs, attorneys fees and expenses under 42 U.S.C. § 1988 and Tenn. Code. Ann. § 47-18-109(e)(2). See Docket Entry No. 9. Blue Cross and Mr. Barnett likewise filed a joint answer and a counter-claim against the plaintiff seeking costs, attorneys fees and expenses under 42 U.S.C. § 1988 and Tenn. Code. Ann. § 47-18-109(e)(2). See Docket Entry No. 17. Separate answers were also filed by Defendant Griffin (Docket Entry No. 10) and Defendant Allen (Docket Entry No. 20).

On December 21, 2007, the plaintiff filed a notice of voluntary dismissal of all of his claims without prejudice. See Docket Entry No. 45. In accordance with Rule 41(a)(1)(a)(i) of the Federal Rules of Civil Procedure, the Court dismissed without prejudice the plaintiff's claims against Defendants Mark Cain, Tom Nebel, Mark Pincus, Ronda Pekalo, PDBB, NPDB, and the three "John

Doe" defendants because these defendants had not yet filed an answer or a motion for summary judgment in the action. See Order entered January 7, 2008 (Docket Entry No. 48).

In the Order, the Court also instructed the plaintiff to file, by January 31, 2008, either a notice of voluntary dismissal with prejudice of his claims against the remaining defendants – the Hospital, Community Health Systems, Inc., Mr. Newsome, Dr. Griffin, Mr. Barnett, Blue Cross, and Mr. Allen – or file and serve responses to these defendants' pending dispositive motions. Id.

By Order entered February 4, 2008 (Docket Entry No. 65), the Court stayed discovery in the action pending resolution of the defendants' dispositive motions and granted the plaintiff an extension of time to February 29, 2008, to respond to the dispositive motions. By Order entered March 11, 2008 (Docket Entry No. 77), the Court denied the plaintiff's motions to suspend action in the case and appoint a special master and granted the plaintiff another extension of time to April 10, 2008, to file responses to the pending dispositive motions.

On April 11, 2008, the plaintiff filed an "Omnibus Motion." See Docket Entry No. 79. The filing is essentially a response to the motion for summary judgment filed by Defendant Griffin. The plaintiff subsequently filed similar "Omnibus Motion[s]," which the Court construes as responses, albeit untimely, to the pending dispositive motions. See Docket Entry Nos. 88, 93, 97, and 98.[4]

[4] In all of the plaintiff's "Omnibus motions," he makes arguments related to a state court action filed by Blue Cross and Mr. Barnett against him in the Hamilton County Circuit Court. In that action, Blue Cross and Mr. Barnett obtained a permanent injunction against the plaintiff and an award of damages. See Exhibit A (Docket Entry No. 90-1), to Reply (Docket Entry No. 90) of Defendants Blue Cross and Mr. Barnett. However, the proceedings in that action are unrelated to the claims the plaintiff has made against Blue Cross and Mr. Barnett in the instant action, and his arguments regarding the Hamilton County case are irrelevant to analysis of the pending dispositive motions.

IV. STANDARD OF REVIEW

Federal Rule of Civil Procedure 56(c) provides that summary judgment shall be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." To prevail, the moving party must meet the burden of proving the absence of a genuine issue of material fact as to an essential element of the opposing party's claim. See Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); Logan v. Denny's, Inc., 259 F.3d 558, 566 (6th Cir. 2001).

In determining whether the moving party has met its burden, the Court must view the factual evidence and draw all reasonable inferences in the light most favorable to the nonmoving party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S.Ct. 1348, 80 L.Ed.2d 538 (1986); McLean v. 988011 Ontario, Ltd., 224 F.3d 797, 800 (6th Cir. 2000). "The court's function is not to weigh the evidence and determine the truth of the matters asserted, 'but to determine whether there is a genuine issue for trial.'" Little Caesar Enters., Inc. v. OPPCO, LLC, 219 F.3d 547, 551 (6th Cir. 2000) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed. 2d 201 (1986)).

If the nonmoving party fails to make a sufficient showing on an essential element of the case with respect to which he has the burden, however, the moving party is entitled to summary judgment as a matter of law. See Williams v. Ford Motor Co., 187 F.3d 533, 537-38 (6th Cir. 1999). To preclude summary judgment, the nonmoving party "must go beyond the pleadings and come forward with specific facts to demonstrate that there is a genuine issue for trial." Chao v. Hall Holding Co., Inc., 285 F.3d 415, 424 (6th Cir. 2002). "The mere existence of a scintilla of evidence in support of the [nonmoving party's] position will be insufficient; there must be evidence on which the jury could

reasonably find for the [nonmoving party]." Shah v. Racetrac Petroleum Co., 338 F.3d 557, 566 (6th Cir. 2003) (quoting Anderson, 477 U.S. at 252). If the evidence offered by the nonmoving party is "merely colorable," or "not significantly probative," or not enough to lead a fair-minded jury to find for the nonmoving party, the motion for summary judgment should be granted. Anderson, 477 U.S. at 249-52. "A genuine dispute between the parties on an issue of material fact must exist to render summary judgment inappropriate." Hill v. White, 190 F.3d 427, 430 (6th Cir. 1999) (citing Anderson, 477 U.S. at 247-49).[5]

V. CONCLUSIONS

A. Defendants the Hospital, Community Health Systems, Inc., and Gary Newsome

Summary judgment should be granted to these defendants on each of the claims raised by the plaintiff.

In their motions to dismiss (Docket Entry Nos. 53 and 55),[6] the defendants raise the defense of res judicata and argue that the order which dismissed the plaintiff's state lawsuit should be given preclusive effect and should bar the plaintiff from pursuing claims against them in this action. The Court agrees. The plaintiff simply cannot re-litigate the claims and issues which were raised or which

[5] Defendant Allen has filed a motion to dismiss (Docket Entry No. 28) and second motion to dismiss (Docket Entry No. 47) under Rule 12(b)(6) of the Federal Rules of Civil Procedure. In addition to their motions for summary judgment, motions to dismiss have also been filed by Defendants Griffin (Docket Entry No. 46) and by Defendants Hospital, Community Health Systems, Inc., and Mr. Newsome (Docket Entry Nos. 53 and 55). Given the status of this case, the Court, in considering the motions to dismiss, shall not exclude consideration of any evidence which is in the lengthy record and shall, in accordance with Rule 12(b), consider the motions to dismiss as motions for summary judgment in accordance with Rule 56.

[6] These two motions are identical except that the second-filed motion contains a certificate of service, in accord with the clerk's instructions.

could have been raised in his state lawsuit via the instant action. That is exactly the situation which res judicata is intended to prevent.

A federal court must give to a state court judgment the same preclusive effect as would be given that judgment under the law of the state in which the judgment was rendered. Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75, 104 S.Ct. 892, 896, 79 L.Ed.2d 56 (1984); Hutcherson v. Lauderdale County, Tennessee, 326 F.3d 747, 758 (6th Cir. 2003); Smith v. Metropolitan Development Housing Agency, 857 F. Supp. 597, 600 (M.D. Tenn. 1994). Accordingly, if the courts of Tennessee would view the January 17, 2008, judgment dismissing Plaintiff's state court lawsuit as barring a subsequent lawsuit because of principles of res judicata, this Court should accord that judgment the same preclusive effect.

Under Tennessee law, the doctrine of res judicata bars "all claims that were actually litigated or could have been litigated in the first suit between the same parties." Am. Nat'l Bank & Trust Co. of Chattanooga v. Clark, 586 S.W.2d 825, 826 (Tenn. 1979). Four elements must be established before res judicata can be asserted as a defense: (1) the underlying judgment must have been rendered by a court of competent jurisdiction; (2) the same parties were involved in both suits; (3) the same cause of action was involved in both suits; and (4) the underlying judgment was on the merits. Collins v. Greene County Bank, 916 S.W.2d 941, 945 (Tenn. Ct. App. 1995) (citing Lee v. Hall, 790 S.W.2d 293, 294 (Tenn. Ct. App. 1990)).

The instant action is a virtual carbon copy of the action which was dismissed with prejudice on the merits by the state court. Indeed, the complaints filed in both actions are virtually identical with respect to these three defendants. Res judicata should apply as each of the elements required for application of res judicata are satisfied.

Res judicata bars the plaintiff from pursuing not only the causes of action which were raised in the state court action, but also bars him from pursuing the RICO claim he added to his federal complaint. As the Tennessee Supreme Court noted in American Nat'l Bank & Trust Co. of Chattanooga v. Clark, "[i]t has long been the rule in this state that not only issues which were actually determined, but all claims and issues which were relevant and which could reasonably have been litigated in a prior action, are foreclosed by the judgment therein." 586 S.W.2d at 826 (citing Jordan v. Johns, 168 Tenn. 525, 79 S.W.2d 798 (1935)). The doctrine of res judicata operates to bar all claims that were actually litigated or could have been litigated in the first suit between the same parties. Graybar Electric Co. v. New Amsterdam Casualty Co., 186 Tenn. 446, 211 S.W.2d 903 (1948). Because the RICO claim arose out of the same set of events and could have been raised in the state court action, it is likewise barred by res judicata.[7]

In his responses to the pending dispositive motions, the plaintiff raises two arguments against the application of res judicata to the instant action, neither of which directly address the issue of whether res judicata applies. The Court finds neither of the arguments raised persuasive.

First, the plaintiff contends that the rulings of the state court should be disregarded because the judges "received massive contributions from the opposing counsels." See Docket Entry No. 79, at 2; Docket No. 83, at 2. There is no indication in the record that the plaintiff successfully appealed the judgment in the state court case on the basis of these allegations. Accordingly, the judgment of the state court stands as a valid and legitimate judgment. This Court cannot ignore the preclusive

[7] Although not necessary to deciding the instant action, the plaintiff's two sentence RICO claim as set out in his amended complaint lacks the specificity necessary to plead a claim under that act.

effect of that judgment based upon mere allegations[8] of impropriety such as those raised by the plaintiff.

Second, this court has no authority to engage in an independent review of a state court civil action in order to overturn the judgments rendered therein. Review of final determinations in state judicial proceedings can be obtained only in the United States Supreme Court. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476, 103 S.Ct. 1303, 1311-12, 75 L.Ed.2d 206 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416, 44 S.Ct. 149, 150, 68 L.Ed. 362 (1923). A United States district court "has no authority to review final judgments of a state court in judicial proceedings." Feldman, 460 U.S. at 482. See, e.g., Patmon v. Michigan Supreme Court, 224 F.3d 504, 506 (6th Cir. 2000) (noting that, pursuant to Rooker-Feldman, application to the Supreme Court is "the only avenue for federal review of state court proceedings"); United States v. Owens, 54 F.3d 271, 274 (6th Cir. 1995) (the Rooker-Feldman doctrine "stands for the proposition that a federal district court may not hear an appeal of a case already litigated in state court"). This is true even though the state court judgment may have been erroneous. Texaco, Inc. v. Pennzoil Co., 784 F.2d 1133, 1142 (2nd Cir. 1986).

The Court likewise agrees with the argument raised by the defendants in their motion for summary judgment (Docket Entry No. 30) that by entering into the Settlement Agreement, the plaintiff specifically agreed to release any and all claims which arise from the Agreement. Section 2 of the Settlement Agreement states:

> For and in consideration of the representations and promises contained in paragraph 1 above, the Releasor unconditionally settles, releases, compromises, reaches accord and satisfaction, waives, remises, discharges, acquits, indemnifies, and holds harmless,

[8] The plaintiff presents no evidence with respect to White County Circuit Judge Turnbull, who issued the decisions in the plaintiff's state court case. The plaintiff's allegations with respect to Hamilton County Circuit Judge Jeffery Hollingsworth are irrelevant to the instant action.

> Hospital, its subsidiaries, parent, and affiliated corporations and operations and their officers, directors, agents, employees, attorneys, and the successors and assigns of any of them, for each, every, and all actions, causes of action, liabilities, claims including past and future claims of any type whether known or unknown, or liquidated or unliquidated, liens and/or subrogated interests herein which these funds are intended to cover, damages, and expenses of whatever kind and nature, including but not limited to any and all costs and attorney fees, which Releasor had or now has or which Releasor, his/her heirs, executors, administrators, successors, or assigns may ever have including, but not limited to, any claims arising under any federal, state, and/or local statutes or ordinances, and all known and unknown and anticipated claims of whatever kind and nature and any and all claims in any way relating to or arising out of the Recruitment Agreement.

See Exhibit H (Docket Entry No. 9-8) to Answer (Docket Entry No. 9).

The plaintiff cannot escape the language of the Settlement Agreement which he signed, and he has not shown any valid legal reason why he should not be held to the terms of the Settlement Agreement in which he agreed to release any claims he had arising from the Recruitment Agreement. The terms of the Settlement Agreement are clear and unambiguous and bar him from pursuing the claims he brings in the instant action against the Hospital, Community Health Systems, Inc., and Mr. Newsome. See Evans v. Tillet Bros. Const. Co., Inc., 545 S.W.2d 8, 11 (Tenn. Ct. App. 1976).

B. Defendants Blue Cross and Mr. Barnett

The motion for summary judgment (Docket Entry No. 59) of Defendants Blue Cross and Daniel Barnett should be granted. Summary judgment should be granted to Defendants Blue Cross and Barnett on the basis of res judicata for the same reasons as set out supra. The dismissal of the claims raised by the plaintiff against Blue Cross and Mr. Barnett in the state court action was on the merits and was with prejudice. The claims which were dismissed in the state action mirror those raised by him in the instant action. The state court dismissal bars him from pursuing the same claims in the instant action and also bars him from pursuing the antitrust, Clayton Act, and RICO claims which he added to his federal complaint.

Because res judicata requires dismissal of all claims raised by the plaintiff against Blue Cross and Mr. Barnett, it is unnecessary to address the alternative arguments for dismissal raised by the defendants.

C. Defendant Griffin

The motion for summary judgment (Docket Entry No. 42) of Defendant Griffin should be granted. Summary judgment should be granted to the defendant on the basis of res judicata for the same reasons as set out supra. The November 19, 2007, order of the state court dismissing the claims raised by the plaintiff against Defendant Griffin in the state court action was on the merits and was with prejudice. The claims which were dismissed in the state action mirror those raised by him in the instant action. The state court dismissal bars him from pursuing the same claims in the instant action and also bars him from pursuing the antitrust, Clayton Act, and RICO claims which he added to his federal complaint.

Because res judicata requires dismissal of all claims raised by the plaintiff against Defendant Griffin, it is unnecessary to address the alternative arguments for dismissal that he raised.

Defendant Griffin's motion to dismiss (Docket Entry No. 46) is directed at the notice of voluntary dismissal filed by the plaintiff on December 21, 2007, and asks that the voluntary dismissal be entered with prejudice. The Court addressed the plaintiff's notice of voluntary dismissal in the Order entered January 7, 2008 (Docket Entry No. 48), and declined to enter a dismissal with prejudice in favor of Defendant Griffin. Accordingly, the motion to dismiss was implicitly denied at that time and the arguments raised by Defendant Griffin in the motion are moot.

D. Defendant John Wayne Allen

Defendant Allen contends that the claim of legal malpractice brought against him should be dismissed because the plaintiff fails to set forth facts showing that any alleged negligence on the part of Allen in the handling of the state lawsuit was the proximate or legal cause of any damages suffered by the plaintiff. See Docket Entry No. 28.

In order to make out a prima facie legal malpractice claim, the plaintiff must show: (1) that the accused attorney owed a duty to the plaintiff; (2) that the attorney breached that duty; (3) that the plaintiff suffered damages; (4) that the breach was the cause in fact of the plaintiff's damages; and (5) that the attorney's negligence was the proximate, or legal, cause of the plaintiff's damages. See Gibson v. Trant, 58 S.W.3d 103, 108 (Tenn. 2001); Lazy Seven Coal Sales, Inc. v. Stone & Hinds, 813 S.W.2d 400, 403 (Tenn. 1991); Horton v. Hughes, 971 S.W.2d 957, 959 (Tenn. Ct. App. 1998).

The Court agrees with Defendant Allen that, even if the Court presumes, for the purposes of deciding the defendant's motion, that Defendant Allen breached a duty to the plaintiff by making mistakes in the handling of the state lawsuit in White County, there is no evidence before the Court showing that these mistakes were the factual and proximate cause of any damage suffered by the plaintiff.

There is no question that the White County lawsuit was initially dismissed in favor of the defendants when a notice of voluntary dismissal was filed by Defendant Allen on March 14, 2007, and an order of non-suit was subsequently entered on April 9, 2007, dismissing all claims with prejudice. See Exhibit 17 to Amended Complaint. For the purposes of the defendant's motion, the Court will presume that errors on the part of Defendant Allen led to this unfavorable judgment and that these errors rose to the level of a breach of Defendant Allen's duty to the plaintiff.

However, there is also no dispute that the judge in the White County lawsuit set aside the prior order of dismissal. See Exhibit C (Docket Entry No. 44-3) to Defendant Griffin's Memorandum in Support of Dismissal. At this point, and by which time the plaintiff had discharged the services of Defendant Allen, any damages suffered by the plaintiff which were attributable to how the case had been previously handled by Defendant Allen were cured and the plaintiff remained in the same position in that lawsuit as he had been prior to the entry of dismissal.

In his response in opposition to the motion to dismiss (Docket Entry No. 91), the plaintiff does not address the issue raised by Defendant Allen and fails to set forth any persuasive argument as to why the claim against Defendant Allen should not be dismissed. The plaintiff's allegations that Defendant Allen colluded with, was influenced by, or received improper consideration from the defendants in the White County lawsuit in exchange for mishandling the lawsuit are supported by absolutely no evidence and are conclusory and speculative on the part of the plaintiff. Such allegations will not prevent dismissal of the claim against Defendant Allen.

Defendant Allen's second motion to dismiss (Docket Entry No. 47) is directed at the notice of voluntary dismissal filed by the plaintiff on December 21, 2007, and asks that the voluntary dismissal be entered with prejudice. The Court addressed the plaintiff's notice of voluntary dismissal in the Order entered January 7, 2008 (Docket Entry No. 48), and declined to enter a dismissal with prejudice in favor of Defendant Allen. Accordingly, the second motion to dismiss was implicitly denied at that time and the arguments raised by Defendant Allen in the motion are moot.

RECOMMENDATIONS

Accordingly, the Court respectfully RECOMMENDS that:

1. the Motion to Dismiss (Docket Entry No. 28) of Defendant John Wayne Allen be GRANTED;

2. the Motion for Summary Judgment (Docket Entry No. 30) of Defendants White County Community Hospital, Community Health Systems, Inc., and Gary Newsome be GRANTED;

3. the Motion for Summary Judgment (Docket Entry No. 42) of Defendant Chad Griffin be GRANTED;

4. Motion to Dismiss of Defendant Chad Griffin (Docket Entry No. 46) be DENIED;

5. Second Motion to Dismiss (Docket Entry No. 47) of Defendant John Wayne Allen be DENIED;

6. Motions to Dismiss (Docket Entry No. 53 and 55) of Defendants White County Community Hospital, Community Health Systems, Inc., and Gary Newsome be GRANTED; and

7. Motion for Summary Judgment (Docket Entry No. 59) of Defendants Daniel Barnett and Blue Cross/Blue Shield of Tennessee be GRANTED.

All claims raised by the plaintiff in this action should be DISMISSED WITH PREJUDICE as to Defendants White County Community Hospital, Community Health Systems, Inc., Gary Newsome, Daniel Barnett, Blue Cross/Blue Shield of Tennessee, and John Wayne Allen.

Remaining in this action are the counter-claims raised by Defendants White County Community Hospital, Community Health Systems, Inc., Gary Newsome, Daniel Barnett, and Blue Cross/Blue Shield of Tennessee. The counter-claims were not a part of the dispositive motions which were filed by the defendants, nor were they addressed by any party.

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within ten (10) days of service of this Report and Recommendation upon the party and must state with particularity the specific portions of this Report and Recommendation to which objection is made. Failure to file written objections within the specified time can be deemed a waiver of the right to appeal the District Court's Order regarding the Report and Recommendation. See Thomas v. Arn, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); United States v. Walters, 638 F.2d 947 (6th Cir. 1981).

Respectfully submitted,

JULIET GRIFFIN
United States Magistrate Judge