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APPENDIX A

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 22-2993

CLAUDE TOWNSEND, JR.,
Appellant

v.

NEW JERSEY TRANSIT

(D. NJ. No.: 3-22-cv-00540)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, AMBRO*, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, and FREEMAN, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and

* At the time the petition for rehearing was submitted to the en banc panel, Judge Ambro was an active judge of the Court. 3rd Cir. I.O.P. 9.5.2.

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a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/Thomas L. Ambro

Circuit Judge

Dated: February 28, 2023

CJG/cc: Claude Townsend, Jr.
Christopher E. Martin, Esq.

APPENDIX B
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CLAUDE TOWNSEND, JR.,

Plaintiff,

v.

NEW JERSEY TRANSIT,

Defendant.

Civil Action No.
22-540 (MAS) (DEA)

ORDER

This matter comes before the Court on Defendant New Jersey Transit's ("NJ Transit") Motion to Dismiss prose Plaintiff Claude Townsend, Jr.'s ("Townsend") Amended Complaint. (ECF No. 7.) Townsend opposed (ECF No. 9) and NJ Transit replied (ECF No. 10). The Court has carefully reviewed the parties' submissions and decides the matter without oral argument under Local Civil Rule 78.1. For the reasons set forth in the accompanying Memorandum Opinion and other good cause shown,

IT IS, on this 18th day of October 2022,
ORDERED as follows:

1. NJ Transit's Motion to Dismiss (ECF No. 7) is **GRANTED**.
2. Townsend's Amended Complaint (ECF No. 5) is **DISMISSED** with prejudice.

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3. NJ Transit shall serve a copy of this Memorandum Opinion and Order on Townsend by no later than **October 31st, 2022**.
4. The Clerk of the Court shall close this case.

/s/ Michael A. Shipp

MICHAEL A. SHIPP
UNITED STATES
DISTRICT JUDGE

NOT FOR PUBLICATION**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CLAUDE TOWNSEND, JR.,

Plaintiff,

V.

NEW JERSEY TRANSIT,

Defendant.

Civil Action No.
22-540 (MAS)(DEA)**MEMORANDUM
OPINION****SHIPP, District Judge**

This matter comes before the Court on Defendant New Jersey Transit's ("NJ Transit") Motion to Dismiss pro-ise Plaintiff Claude Townsend, Jr.'s ("Townsend") Amended Complaint (the "Motion"). (ECF No. 7.) Townsend opposed (ECF No. 9) and NJ Transit replied (ECF No. 10). The Court has carefully reviewed the parties' submissions and decides the matter without oral argument under Local Civil Rule 78.1. For the reasons below, the Court grants NJ Transit's Motion.

I. BACKGROUND

On the surface, this is a case regarding workers' compensation-related claims. But even slightly scratch-ing the gilded surface reveals that this is a case about Townsend's abuse of process in attempting to litigate the same claims in multiple forums for over a decade. While the Court liberally construes Townsend's

Amended Complaint and accepts all well-pleaded facts as true, the Court does not turn a blind eye to the procedural history leading up to this case. *See Phillips v. County of Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008) (explaining that at this stage, courts are required to accept all well-pleaded allegations as true (citing *Pinker v. Roche Holdings, Ltd.*, 292 F.3d 361, 374 n.7 (3d Cir. 2002))).

In January 2008, Townsend was involved in a vehicular accident while working for NJ Transit. (Pl.'s Opp'n Br., ECF No. 9.)¹ Townsend alleges that after fourteen years of working for NJ Transit, NJ Transit wrongfully terminated him, retaliated against him, and discriminated against him after he sustained these work-related injuries and pursued a corresponding workers' compensation claim. (Am. Compl. ii 7, ECF No. 5; Pl.'s Opp'n Br. 1-2.) The crux of Townsend's claims seems to be as follows:

NJ Transit has granted all

White employees [w]orkers' [c]ompensation such as Barbara Zimmerman, Marty Zimmerman, Peter, and Gary. All Black employees did not receive [w]orkers' [c]ompensation due to NJ Transit's discriminatory practices. I[,] as an American Indian[,] was also discriminated

¹ Townsend's Amended Complaint does not allege facts about this accident or the circumstances surrounding it, yet his Opposition Brief to the Motion contains such additional facts. (*See generally* Am. Compl.; Pl.'s Opp'n Br. 1.) Given Townsend's pro se status, the Court considers these additional facts as part of Townsend's initial pleading.

[against] by NJ Transit, wrongfully terminated, and retaliated against just because I filed for a [w]orkers[] [c]ompensation claim.

(Am. Compl. ,i 12.) Townsend now brings this action under (1) the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et. seq.*; (2) the Rehabilitation Act of 1973 (“RA”), 29 U.S.C. § 701; (3) the Social Security Act, 42 U.S.C. § 7; (4) the Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28, § 4 (1988); and (5) Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17. (*Id.*,i 1; Pl.’s Opp’n Br. 1.)² Construing the Amended Complaint in Townsend’s favor, Townsend also generally alleges claims for discrimination, defamation, and intentional infliction of emotional distress. (*See generally* Am. Compl.)

As previewed, the Court has seen this film before. The Honorable Garrett E. Brown, former Chief U.S. District Judge, first addressed and dismissed, in part with prejudice, Townsend’s similar grievances in 2010 for his failure to state a claim. *See Townsend v. NJ Transit & Amalgamated Transit Union*, No. 09-1832, 2010 WL 3883304, at *1 (D.N.J. Sept. 27, 2010) (“*Townsend F*”). Around this same time, on the basis of *Younger* abstention, Judge Brown dismissed Townsend’s similar claims against multiple defendants;

² Although Townsend does not allege the Civil Rights Act of 1964 as a cause of action in his Amended Complaint, he does do so in his Opposition Brief to the Motion. (*See generally* Am. Compl.; Pl.’s Opp’n Br. 1.) Given Townsend’s prose status, the Court includes the Civil Rights Act of 1964 as a cause of action based on a broad reading of his Amended Complaint’s factual allegations.

these defendants originally included NJ Transit before the Court dismissed the entity after Townsend failed to name NJ Transit in his amended complaint. *Townsend v. Calderone*, No. 09-3303, 2010 WL 1999588, at *I, n. 1 (D.N.J. May 18, 2010) (“*Townsend II*”) (citing *Younger v. Harris*, 401 U.S. 37 (1971)). Shortly after Judge Brown’s ruling in *Townsend II*, Townsend decided to voluntarily dismiss yet another complaint he had filed against NJ Transit. *See generally Townsend v. N.J Transit*, No. 09-6052 (D.N.J. June 17, 2010), ECF No. 10 (“*Townsend III*”). Townsend next filed a complaint against NJ Transit and others, including the Department of Labor and Workforce Development Workers’ Compensation; but this case was administratively terminated after the U.S. Court of Appeals for the Third Circuit (“Third Circuit”) vacated and remanded an order by Judge Brown initially denying Townsend leave to proceed *informa pauperis*. *See Townsend v. N.J Transit*, No. 10-1136, 2010 WL 4038833, at *1 (D.N.J. Oct. 13, 2010), *vacated by Townsend v. Calderone*, 396 F. App’x 787, 788 (3d Cir. 2010) (“*Townsend IV*”).³

As the years passed, Townsend’s litigation continued to grow new branches on the same tree of grievances. For example, in 2012, the Honorable Peter G. Sheridan, U.S.D.J., dismissed with prejudice Townsend’s same claims, finding them barred by *resjudicata* and claim preclusion due to their identical nature to

³ In doing so, the Third Circuit expressed “no opinion” as to Judge Brown’s order in *Townsend IV* that once more, dismissed Townsend’s claims on collateral estoppel grounds. *Id.*

the claims brought in *Townsend I*; this time, the Third Circuit upheld the district court's decision. *See Townsend v. N.J. Transit*, No. 11-6492, 2012 WL 3929391, at *I (D.N.J. Sept. 7, 2012), *aff'd sub nom. Townsend v. N.J. Transit*, 516 F.App'x 110 (3d Cir. 2013) ("*Townsend V*"). So concluded Townsend's federal court saga with respect to this matter, until now.

Running parallel to his attempts in federal court, Townsend pursued his workers' compensation claims in the workers' compensation court and in state court. In February 2022, the New Jersey Superior Court Appellate Division dismissed Townsend's third attempt to relitigate his claims in state court. *Townsend v. N.J. Transit*, No. 559-20, 2022 WL 301829, at *2 (N.J. Super. Ct. App. Div. Feb. 2, 2022) ("Here, Townsend has already unsuccessfully litigated the issue of whether he is eligible for workers' compensation benefits multiple times before the [Workers' Compensation Com1] and the Appellate Division. He is not entitled to another bite of the apple at this late date.").

Presumably, in light of this most recent unobtained "bite of the apple," Townsend now brings the instant action, which NJ Transit moves to dismiss under Federal Rules of Civil Procedure 12(6)(1) and 12(6)(6). (See Def.'s Moving Br. 1, ECF No. 7.) Among other arguments, NJ Transit contends that collateral estoppel and *res judicata* require dismissal of the immediate action. (Id.)⁴

⁴ Among other arguments, NJ Transit seeks dismissal for lack of subject matter jurisdiction under Federal Rule of Civil

II. LEGALSTANDARD

When deciding a motion to dismiss under Rule 12(b)(6), the Court must “accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief.” *Phillips*, 515 F.3d at 231 (quoting *Pinker*, 292 F.3d at 374 n.7). “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) (internal quotation marks omitted) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Importantly, on a Rule 12(b)(6) motion to dismiss, “[t]he defendant bears the burden of showing that no claim has been presented.” *Hedges v. United States*, 404 F.3d 744, 750 (3d Cir. 2005) (citing *Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1409 (3d Cir. 1991)).

“[A] pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). Nonetheless, “pro se litigants still must allege sufficient facts in their complaints to support a

Procedure Rule 12(b)(1), contending that the Court lacks jurisdiction to hear the instant case because NJ Transit is entitled to Eleventh Amendment immunity. (Def.’s Moving Br. 14; see Fed. R. Civ. P. 12(b)(1).) “Because dismissal on *resjudicata* grounds does not require us to reach the merits . . . we need not resolve the jurisdictional issue.” *Graboff v. Am. Ass’n of Orthopaedic Surgeons*, 559 F. App’x 191, 193 n.2 (3d Cir. 2014) (internal citation and quotation omitted).

claim.” *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013) (citation omitted).

“*Res judicata* encompasses two preclusion concepts—issue preclusion, which forecloses litigation of a litigated and decided matter, and claim preclusion (often referred to as direct or collateral estoppel), which disallows litigation of a matter that has never been litigated but which should have been presented in an earlier suit.” *Townsend*, 516 F. App’x at 111 (citing *Migra v. Warren City Sch. Dist. Ed. of Educ.*, 465 U.S. 75, 77 (1984)).

III. DISCUSSION

The Court finds that Townsend’s claims must be dismissed in their entirety with prejudice. In *Townsend V*, Judge Sheridan found that relitigation of Townsend’s claims was barred under the doctrine of *res judicata* or claim preclusion because those claims centered on the same set of facts as *Townsend I*, despite the fact that the complaints in the two cases rested on several different legal bases. *Townsend V*, 2012 WL 3929391, at*1, n.l. Affirming the Court’s decision in *Townsend V*, the Third Circuit explained:

As the [d]istrict [c]ourt determined by comparing Townsend’s amended complaint with his amended complaint in an earlier district court action, . . . Townsend presented allegations under the ADA, [the Family & Medical Leave Act], RA, and [New Jersey Law Against Discrimination] against [NJ Transit] that have already been litigated and decided. *See*

Certification of Deputy Attorney General Atkinson at Exs. 2, 3, & 5. To the extent there are allegations in his amended complaint in this action that are not identical to those in the earlier action, they are matters that should have been presented in the earlier suit.

Townsend, 516 F. App'x at 111 (citing *Lum v. Bank of Am.*, 361 F.3d 217, 222 n.3 (3d Cir. 2004)). Here, Townsend's instant action again rests on the same set of facts he has previously asserted.⁵ To the extent there are allegations in his Amended Complaint in this action that are not identical to those in the (several) earlier actions, "they are matters that should have been presented in the earlier suit." *Id.* Thus, Townsend is precluded from relitigating these claims and therefore fails to state a claim upon which relief may be granted. The Court, accordingly, dismisses Townsend's action with prejudice. *See Townsend V*, 2012 WL 3929391, at *I (dismissing Townsend's complaint with prejudice on *res judicata* grounds).

⁵ (*Compare Townsend V Compl.*, ECF No. 4-2 (Townsend alleging that "NJ Transit wrongfully terminated, discriminated, harassed and retaliated against [Townsend] while he was under doctor's care for work-related injuries"), *with Am. Compl.* 12 (Townsend alleging that he was "discriminated [against] by NJ Transit, wrongfully terminated, and retaliated against just because [Townsend] filed for a [w]orkers[] [c]ompensation claim").

IV. CONCLUSION

The Court dismisses Townsend's Amended Complaint for failure to state a claim with prejudice. An appropriate order will follow.

/s/ Michael A. Shipp

MICHAEL A. SHIPP
UNITED STATES
DISTRICT JUDGE

14a

APPENDIX C

BLD-069

NOT PRECEDENTIAL

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 22-2993

CLAUDE TOWNSEND, JR.,

Appellant

V.

NEW JERSEY TRANSIT

On Appeal from the United States District
Court for the District of New Jersey
(D.C. Civil Action No. 3:22-cv-00540)
District Judge: Honorable Michael A. Shipp

Submitted for Possible Dismissal
Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit
LAR 27.4 and I.O.P. 10.6

January 12, 2023

Before: AMBRO, KRAUSE, and
PORTER, Circuit Judges

15a

(Opinion filed: January 17, 2023)

OPINION*

PERCURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

16a

OFFICE OF THE CLERK
PATRICIA S. DODSZUWEIT, CLERK

[SEAL] UNITED STATES COURT OF APPEALS
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov
January 17, 2023
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Claude Townsend Jr.
11 Billie Ellis Lane
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RE: Claude Townsend, Jr. v. New Jersey Transit
Case Number: 22-2993
District Court Case Number: 3-22-cv-00540

ENTRY OF JUDGMENT

Today, **January 17, 2023**, the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

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BLD-069

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-2993

CLAUDE TOWNSEND, JR.,
Appellant

V.

NEW JERSEY TRANSIT

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 3:22-cv-00540)
District Judge: Honorable Michael A. Shipp

Submitted for Possible Dismissal
Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit
LAR 27.4 and I.O.P. 10.6
January 12, 2023

Before: AMBRO, KRAUSE, and
PORTER, Circuit Judges

JUDGMENT

This cause came to be considered on the record
from the United States District Court for the District

of New Jersey and was submitted for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B) and for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on January 12, 2023. On consideration whereof, it is now hereby Claude Townsend, Jr., proceeding prose and in forma pauperis, appeals from the District Court's order granting defendant's motion to dismiss. **We will** summarily affirm. Townsend sued New Jersey Transit in February 2022, alleging that the defendant intentionally inflicted emotional distress and violated the Americans with Disabilities Act, Rehabilitation Act of 1973, Civil Rights Restoration Act of 1987, Social Security Act, and Title VII of the Civil Rights Act of 1964.¹ Dkt. No. 5 at 1; Dkt. No. 9 at 2. Specifically, Townsend alleged that the defendant discriminated against him based on race, wrongfully terminated him, and retaliated against him after he filed a claim for workers' compensation relating to an incident while he worked as a bus driver in 2008. Dkt. No. 5 at 2; Dkt. No. 9 at 1-2. He also made a bare claim for defamation.

The defendant moved to dismiss the complaint on several grounds. Dkt. No. 7. Townsend opposed the motion. In doing so, Townsend elaborated on his defamation claim by stating that a New Jersey law firm, which was not named as a defendant in the action, defamed

¹ Townsend identified the Civil Rights Act of 1964 only in his brief filed in opposition to the defendant's motion to dismiss. Dkt. No. 9 at 2. Mindful of our "special obligation" to construe liberally the pleadings of prose litigants, Zilich v. Lucht, 981 F.2d 694, 694 (3d Cir. 1992), we will consider, as the District Court did, a claim under the Civil Rights Act of 1964.

him by publishing an article about the dismissal of his claim for workers' compensation benefits as frivolous. Dkt. No. 9 at 3-4, Ex. H. Agreeing with the defendant that the claims are barred by res judicata, the District Court granted the defendant's motion and dismissed Townsend's complaint with prejudice. Dkt. No. 15.

Townsend filed this timely appeal. We have jurisdiction under 28 U.S.C. § 1291. We exercise plenary review over the order dismissing the complaint. Chavarriaga v. N.J. Dep't of Corr., 806 F.3d 210, 218 (3d Cir. 2015). Upon review, we will affirm because no substantial question is presented on appeal. See 3d Cir. L.A.R. 27.4.

The District Court correctly concluded that Townsend's claims were barred by res judicata. Res judicata encompasses two preclusion concepts: issue preclusion, which forecloses litigation of a litigated and decided matter, and claim preclusion (often referred to as direct or collateral estoppel), which disallows litigation of a matter that has never been litigated but which should have been presented in an earlier suit. See Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 77 n.1 (1984). Here, Townsend has again presented allegations against the same defendant based on the same set of facts that have already been litigated and decided. See Townsend v. N.J. Transit, 516 F. App'x 110, 110-11 (3d Cir. 2013) (per curiam) ("To the extent there are allegations in [Townsend's] amended complaint in this action that are not identical to those in the earlier action, they are matters that should have been presented in the earlier suit."), aff'g No. 11-06492, 2012

WL 3929391 (D.N.J. Sept. 7, 2012); Townsend v. N.J. Transit, et al., No. 09-01832, 2010 WL 3883304 (D.N.J. Sept. 27, 2010).

To the extent that Townsend sought to bring a claim of defamation relating to an article published about the dismissal of his workers' compensation claim as frivolous- which is unrelated to the underlying facts of Townsend's other claims and is thus not barred by res judicata-the District Court's failure to consider this claim does not raise a substantial question on appeal. The bare mention of defamation in his complaint did not state a claim. See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (explaining that a plaintiff must provide more than "labels and conclusions" in his complaint to establish that he is entitled to relief). And putting aside that Townsend did not name any defendant or include any facts in his amended complaint related to this claim, he also did not state a claim based on his own allegations in his response to the motion to dismiss. Under New Jersey law, "[a] defamatory statement is one that is false and injurious to the reputation of another[.]" Taj Mahal Travel, Inc. v. Delta Airlines, Inc., 164 F.3d 186, 189 (3d Cir. 1998) (citation omitted). Here, Townsend cannot establish that the statements in the article on which his defamation claim is based are false, as his workers' compensation claim was indeed dismissed and costs were awarded to the defendant based on the frivolousness of that claim. See Townsend v. N.J. Transit, No. A-0559- 20, 2022 WL 301829, at *1 (N.J. Super. Ct. -App. Div. Feb. 2, 2022); McTeman v. City of York, Pa., 577 F.3d 521, 526 (3d Cir.

2009) (“[A] court may take judicial notice of a prior judicial opinion.”).

Accordingly, we will affirm the judgment of the District

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered October 18, 2022, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: January 17, 2023
