24-____

IN THE

SUPREME COURT OF THE UNITED STATES

PALANI KARUPAIYAN et al

---Petitioners

V.

ARNAUD VAISSIE et al

---- Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit (Dkt(s) 23-1948 & 23-2946)

Appendix-PETITION FOR WRIT OF CERTIORARI

Palani Karupaiyan.
Pro se, Petitioner,
1326 W. William St,
Philadelphia, PA 19132
palanikay@gmail.com
212-470-2048(m)

List of Appendix

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I. APPENDIX-A :USCA3'S CONSOLIDATED OPINION FOR APPEAL AND PETITION FOR WRIT OF MANDAMUS. (FEB 7 2024)

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 23-1948 & 23-2946

PALANI KARUPAIYAN, *P. P.; R. P., Appellant
Appellant in C.A. No. 23-1948

v.

ARNAUD VAISSIE, Individually and in his official capacity as CEO of Isos;
DESSI NIKOLOVA, Individually and in her Official Capacity as Director,
Product Engineering of the International SOS;
ACCESS STAFFING LLC;
MIKE WEISTEIN, Individually and in his Official Capacity as Principal, Product Engineering of Access Staffing LLC; KAPITAL DATA CORP; KUMAR MANGALA, Individually and in their Official Capacity as Founder and CEO of the Kapital Data Corp.; KARUPAIYAN CONSULTING INC;
GREGORY HARRIS, Individually and in his Official Capacity as Team
Leader, Mobile Applications of the International SOS; INTERNATIONAL SOS
(*Dismissed pursuant to Court Order dated August 10, 2023)

IN RE: PALANI KARUPAIYAN,
Petitioner in C.A. No. 23-2946

On Appeal and Petition for Writ of Mandamus
from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-22-cv-03083)
District Judge: Hon. Nitza I. Quiñones Alejandro

Submitted Pursuant to Third Circuit LAR 34.1(a)
February 1, 2024
Before: JORDAN, PHIPPS, and NYGAARD, Circuit Judges
(Opinion filed: February 7, 2024)

OPINION*

PER CURIAM

Palani Karupaiyan, by appeal and mandamus petition, challenges the dismissal of his amended complaint. We will affirm in his appeal and deny his mandamus

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

petition[1].

I.

Karupaiyan was temporarily employed as a software engineer by International SOS through contractual arrangements with Access Staffing, LLC, and Kapital Data Corp. The civil action at issue here is his second against these companies and related defendants concerning their termination of his contract and decision not to rehire him, which he attributes to various forms of discrimination. In Karupaiyan's first action, the District Court dismissed his complaint with prejudice pursuant to Fed. R. Civ. P. 42(b) for, inter alia, his repeated failure to file a complaint that complied with Fed. R. Civ. P. 8(a). We affirmed. See Karupaiyan v. Int'l SOS, No. 21-1853, 2021 WL 6102077, at *2 (3d Cir. Dec. 22, 2021), cert. denied, 142 S. Ct. 2726 (2022).

Karupaiyan then filed the civil action at issue here, which is substantively identical[2]. The International SOS defendants and Access Staffing

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[1] Karupaiyan's mandamus petition challenges the same dismissal orders that he appeals. The proper way to challenge those orders is by appeal, not mandamus. See Gillette v. Prosper, 858 F.3d 833, 841 (3d Cir. 2017). Thus, our discussion focuses on the appeal. To the extent that Karupaiyan's mandamus petition can be construed to seek any other relief, he has not shown that it is warranted

[2] Some cosmetic differences aside, it appears that the only difference in Karupaiyan's amended complaint in this case was that he added as defendants Arnaud Vaissie and Karupaiyan Consulting Inc. But Karupaiyan's only allegation regarding Vaissie was that he is the Chief Executive Officer of International SOS. Karupaiyan's allegations regarding Karupaiyan Consulting are addressed in note six, infra

defendants[3]3 filed motions to dismiss his amended complaint under Fed. R. Civ. P. 12(b)(6). They argued, inter alia, that this suit is barred by claim preclusion/res judicata. The District Court agreed and dismissed Karupaiyan's amended complaint with prejudice on that basis as to those defendants. That ruling left pending Karupaiyan's claims against Kapital Data, Kumar Mangala, and Karupaiyan Consulting. The District Court ultimately dismissed Karupaiyan's claims against those defendants for Karupaiyan's failure to serve them with process. Karupaiyan appeals, and we have jurisdiction under 28 U.S.C. § 1291.

II.

We will affirm. Karupaiyan raises two challenges on appeal. First, he challenges the dismissal of his claims against the International SOS and Access Staffing defendants on claim preclusion grounds. His only argument on that point is that the dismissal of his prior suit was not "on the merits" for purposes of claim preclusion. See Hoffman v. Nordic Nats., Inc., 837 F.3d 272, 279 (3d Cir. 2016) (explaining that federal claim preclusion requires, inter alia, "a final judgment on the merits in a prior suit") (quotation marks omitted). But the District Court expressly dismissed Karupaiyan's prior suit with prejudice under Rule 42(b). That ruling operates as a judgment on the merits as to this suit. See Papera v. Pa. Quarried Bluestone Co., 948 F.3d 607, 610-11 (3d Cir. 2020). The other elements of claim preclusion also were satisfied as the District Court explained.

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[3] The "International SOS defendants" are International SOS, Arnaud Vaissie, Dessi Nikolova, and Gregory Harris. The "Access Staffing defendants" are Access Staffing and Mike Weinstein.

Second, Karupaiyan challenges the dismissal without prejudice against the remaining defendants (Kapital Data, Kumar Mangala, and Karupaiyan Consulting) for lack of service of process. He argues, inter alia, that the court was required to serve process itself because he was proceeding in forma pauperis. See 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3). But Karupaiyan's arguments in this regard do not state any basis for relief on appeal because any error in dismissing his claims against these defendants for lack of service was harmless. See Gen. Motors Corp. v. New A.C. Chevrolet, Inc., 263 F.3d 296, 328-29 & n.18 (3d Cir. 2001) (discussing 28 U.S.C. § 2111 and Fed. R. Civ. P. 61); see also Stanciel v. Gramley, 267 F.3d 575, 579-80 (7th Cir. 2001) (deeming dismissal for lack of service harmless where claims failed for other reasons).

Karupaiyan named Kapital Data and Mangala as defendants in his previous action, and his claims against those defendants are barred by claim preclusion for the same reasons as his claims against the moving defendants. Cf. Couden v. Duffy, 446 F.3d 483,500 (3d Cir. 2006) (affirming sua sponte entry of summary judgment for non-moving party on grounds that applied equally to a moving party); Stanciel, 267 F.3d at 580 (deeming dismissal for lack of service on some defendants harmless where claims at issue were the "same" or "virtually identical" to claims resolved in favor of other defendants). As for Karupaiyan Consulting, Karupaiyan's amended complaint did not allege any actionable conduct by that defendant and did not suggest any way in which he could do so by amendment[4]. Thus, any error in the dismissal of

[4] Karupaiyan initially named Karupaiyan Consulting as a plaintiff in his prior action. It is not clear why he named it as a defendant in this one. Karupaiyan alleged that he was employed

Karupaiyan's claims against these defendants was harmless.

III.

For these reasons, we will affirm the judgment of the District Court and deny Karupaiyan's mandamus petition.

"through" Karupaiyan Consulting and that it went out of business because the other defendants failed to pay. Karupaiyan also provided an address for Karupaiyan Consulting that he himself has used during this litigation, and it appears that Karupaiyan Consulting is "directed by him and his sister." Karupaiyan v. CVS Health Corp., No. 19 cv 8814, 2023 WL 5713714, at *24 (S.D.N.Y. Sept. 5, 2023). In any event, none of Karupaiyan's filings suggests any basis for a claim against this entity relating to any of the matters alleged in the amended complaint

II. APPENDIX-B :USCA3'S JUDGMENT FOR APPEAL (FEB 7, 2024)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1948

PALANI KARUPAIYAN,
*P. P.; R. P., Appellant
v.
ARNAUD VAISSIE, Individually and in his official capacity as CEO of Isos;
DESSI NIKOLOVA, Individually and in her Official Capacity as Director,
Product Engineering of the International SOS;
ACCESS STAFFING LLC;
MIKE WEISTEIN, Individually and in his Official Capacity as Principal, Product
Engineering of Access Staffing LLC; KAPITAL DATA CORP; KUMAR
MANGALA, Individually and in their Official Capacity as Founder and CEO
of the Kapital Data Corp.; KARUPAIYAN CONSULTING INC;
GREGORY HARRIS, Individually and in his Official Capacity as Team
Leader, Mobile Applications of the International SOS; INTERNATIONAL SOS
(*Dismissed pursuant to Court Order dated August 10, 2023)

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-22-cv-03083)

District Judge: Hon. Nitza I. Quiñones Alejandro

Submitted Pursuant to Third Circuit LAR 34.1(a)
February 1, 2024
Before: JORDAN, PHIPPS, and NYGAARD, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on February 1, 2024. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgments of the District Court entered February 1, 2023, and May 9, 2023, be and the same are hereby affirmed.

Costs are taxed against appellant. All of the above in accordance with the opinion of this Court.

ATTEST:
s/ Patricia S. Dodszuweit
Clerk

Dated: February 7, 2024

III. APPENDIX-C :USCA3' ORDER DENYING PETITION FOR WRIT OF MANDAMUS -FEB 7, 2024

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2946

IN RE: PALANI KARUPAIYAN, Petitioner

On a Petition for Writ of Mandamus from the United States District Court for the Eastern District of Pennsylvania
(Related to E.D. Pa. Civ. No. 2-22-cv-03083)

Submitted Pursuant to Rule 21, Fed. R. App. P.
February 1, 2024
Before: JORDAN, PHIPPS, and NYGAARD, Circuit Judges

ORDER

PER CURIAM:

This cause came to be considered on a petition for writ of mandamus submitted on February 1, 2024. On consideration whereof, it is now hereby

ORDERED by this Court that the petition for writ of mandamus be, and the same is, denied. All of the above in accordance with the opinion of the court.

A True Copy
(USCA3's Official Seal)
s/ Patricia S. Dodszuweit
Patricia S. Dodszuweit, Clerk

DATED: February 7, 2024
PDB/cc: Palani Karupaiyan
All Counsel of Record

IV. APPENDIX-D : ECF-34 ORDER OF US DIST. COURT FOR THE EASTERN DIST. OF PENNSYLVANIA TO DISMISSING THE COMPLAINT FOR INTERNATIONAL SOS JAN 31 2023.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Palani Karupaiyan et al *Plaintiffs, Prose* V Arnaud Vaissie et al *Defendants*	Civil Action No 22-3083

ORDER

AND NOW, this 31st day of January 2023, upon consideration of the *motion to dismiss the amended complaint* filed by Defendants International SOS, Arnaud Vaissie, Dessi Nikolova, and Gregory Harris (collectively, "Moving Defendants"), [ECF 30], Plaintiffs' response in opposition, [ECF 31], and the allegations in the amended complaint, [ECF 24],

it is hereby **ORDERED** that the motion to dismiss is **GRANTED**[1]. Accordingly, this matter is **DISMISSED**, with prejudice, as to Moving Defendants.

BY THE COURT

/S/ Nitza I. Quinones Alejandro

NITZA I. QUINONES ALEJANDRO

Judge, United States Dist Court.

FoteNote-1. Continues below

In his amended complaint, Plaintiff Palani Karupaiyan ("Plaintiff"), proceeding *pro se* on his own behalf and purportedly on behalf of his children, asserts various claims against Moving Defendants premised on their alleged unlawful termination of his employment contract and their subsequent decision to not hire him for another position allegedly because of his race, ethnicity, national origin, and disability, in violation of various federal and state statutes. (Am. Compl., ECF 24, at ¶ 2).

Moving Defendants filed the instant motion to dismiss and argue that the doctrine of *res judicata* bars Plaintiff's claims against them. When considering a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure ("Rule") 12(b)(6), the court "must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions." *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210–11 (3d Cir. 2009). The court must determine "whether the facts alleged in the complaint are sufficient to show that the plaintiff has a 'plausible claim for relief.'" *Id.* at 211 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). The complaint must do more than merely allege the plaintiff's entitlement to relief; it must "show such an entitlement with its facts." *Id.* (quotations and citations omitted).

As noted, Moving Defendants move to dismiss Plaintiff's claims of unlawful termination of employment as barred by the doctrine of *res judicata*. Specifically, Moving Defendants argue that because Plaintiff previously brought identical claims against

Moving Defendants in this Court that were fully adjudicated on the merits in Moving Defendants' favor by the Honorable Petrese B. Tucker, in the matter styled *Karupaiyan v. International SOS, et al.*, Civil Action No. 19-2259 (the "Prior Action"), Plaintiff's amended complaint here should be dismissed. Notably, Judge Tucker dismissed the Prior Action "with prejudice," and the United States Court of Appeals for the Third Circuit (the "Third Circuit") affirmed the dismissal. *See Karupaiyan v. Int'l SOS*, 2021 WL 6102077 (3d Cir. Dec. 22, 2021). For the reasons set forth herein, this Court agrees with Moving Defendants.

The doctrine of *res judicata*, or claim preclusion, "protect[s] litigants from the burden of relitigating an identical issue with the same party or his privy and . . . promot[es] judicial economy by preventing needless litigation." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 327 (1979). For the doctrine of *res judicata* to apply, the following requirements must be met, *to wit*: "(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action." *Lubrizol Corp. v. Exxon Corp.*, 929 F.2d 960, 963 (3d Cir. 1991).

In evaluating whether these elements are met, this Court must "focus on the central purpose of the doctrine, to require a plaintiff to present all claims arising out of the same occurrence in a single suit. In so doing, we avoid piecemeal litigation and conserve judicial resources." *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 277 (3d Cir. 2014) (internal quotation marks and brackets omitted). In *Blunt*, the Third Circuit explained:

> *[W]e take a broad view of what constitutes the same cause of action and that res judicata generally is thought to turn on the essential similarity of the underlying events giving rise to the various legal claims. In analyzing essential similarity, we consider several factors: (1) whether the acts complained of and the demand for relief are the same . . . ; (2) whether the theory of recovery is the same; (3) whether the witnesses and documents necessary at trial are the same . . . ; and (4) whether the material facts alleged are the same. It is not dispositive that a plaintiff asserts a different theory of recovery or seeks different relief in the two actions.*

Id. (internal citations and quotations omitted); *see also Elkadrawy v. Vanguard Grp.*, 584 F.3d 169, 173 (3d Cir. 2009) ("This analysis does not depend on the specific legal theory invoked, but rather [on] the essential similarity of the underlying events giving rise to the various legal claims.") (internal quotation marks omitted). "The doctrine of *res judicata* bars not only claims that were brought in a previous action, but also claims that could have been brought." *In re Mullarkey*, 536 F.3d 215, 225 (3d Cir. 2008). With respect to privity between defendants, claim preclusion is applied whenever "there is a close or significant relationship between successive defendants." *Lubrizol*, 929 F.2d at 966.

Here, Plaintiff and Moving Defendants (with the exception of Defendant Arnaud Vaissie) were all parties to the Prior Action. As the alleged CEO of Defendant International SOS (named as a defendant in this action *and* the Prior Action), Defendant Vaissie has a "close or significant relationship" to a previously named defendant such that he is in privity for preclusion purposes. *Salerno v. Corzine*, 449 F.

App'x 118, 122–23 (3d Cir. 2011) (finding privity between employer and employees). Plaintiff's claims against Moving Defendants in this case are also the same and/or premised on the same underlying allegations and theories as those he asserted in the Prior Action. Indeed, in the second amended complaint filed in the Prior Action, Plaintiff alleged:

> *This suit arises from Defendant's decision to refuse[] to hire fulltime job and/or refused hire contract job and/or terminate Plaintiff because of his Race, Color, National of Origin, (Language), retaliation, Age, Disability, genetic information, US Citizenship in violation of [various federal statutes]."*

(Sec. Am. Compl., Civil Action No. 19-2259, ECF 56, at ¶ 1). In the amended complaint underlying this action, Plaintiff makes the same allegations:

> *This suit arises from Defendant's decision to refuse[] to hire fulltime job and/or refused hire contract job and/or terminate Plaintiff because of his Race, Color, National of Origin, (Language), retaliation, Age, Disability, genetic information, US Citizenship in violation of Under Laws."*

(Am. Compl., ECF 24, at ¶ 2). As such, the second and third elements for application of *res judicata* are clearly met.

Plaintiff contends, however, that the judgment in the Prior Action was not "on the merits" because it was premised on pleading deficiencies under Rules 8 and 10 and on his failure to comply with Court Orders under *Poulis v. State Farm Fire and Casualty Co.*, 747 F.2d 863 (3d Cir. 1984). While Plaintiff is correct as to the bases of the prior dismissal, he is incorrect as to the preclusive effect of such dismissals. Though not

squarely determined by the Third Circuit, district courts in this Circuit have held that dismissal of a plaintiff's claims with prejudice for failure to comply with federal court orders operates as an adjudication on the merits for preclusion purposes. *See, e.g.*, *Jackson v. Dow Chem. Co.*, 902 F. Supp. 2d 658, 668–69 (E.D. Pa. 2012); *Nwani v. Molly*, 2018 WL 2461987, at *6 (E.D. Pa. May 31, 2018) (citing and following *Jackson*). This approach is also the uniform view taken by other federal courts. *See Dillard v. Sec. Pac. Brokers, Inc.*, 835 F.2d 607, 608 (5th Cir. 1988) (affirming application of claim preclusion to earlier federal judgment entered as a sanction for failure to comply with court order); *United States v. $149,345 U.S. Currency*, 747 F.2d 1278, 1280 (9th Cir. 1984) (same); *see also* 18A Charles A. Wright *et al.*, *Federal Practice and Procedure* § 4440 n.1 (3d ed.) (collecting cases). Though in *dicta*, the United States Supreme Court indicated its agreement. *See Costello v. United States*, 365 U.S. 265, 286 (1961) (stating that dismissal for reasons enumerated in Rule 41(b), including "failure . . . to comply with an order of the Court," would normally "bar a subsequent action"). Further, the Third Circuit has recognized that dismissal as a sanction for failure to obey a court order would give rise to preclusion under Pennsylvania law. *McCarter v. Mitcham*, 883 F.2d 196, 199–200 (3d Cir. 1989). In light of this caselaw, this Court agrees that a dismissal with prejudice premised on a plaintiff's failure to comply with court orders operates as a decision on the merits for preclusion purposes.

Here, Judge Tucker dismissed the Prior Action, with prejudice, on account of Plaintiff's failure to comply with prior orders. Specifically, she concluded that Plaintiff's second amended complaint was filed

after the deadline set in an Order dismissing Plaintiff's previous complaint. After conducting the requisite *Poulis* analysis, which included consideration of the merits of Plaintiff's claims, Judge Tucker dismissed the second amended complaint with prejudice. Judge Tucker's dismissal with prejudice was affirmed on appeal by the Third Circuit. *See Karupaiyan*, 2021 WL 6102077 (3d Cir. Dec. 22, 2021). Under these circumstances, and based on the caselaw cited above, this Court finds that the dismissal of the Prior Action with prejudice for failure to comply with court orders constitutes a decision on the merits for preclusion purposes. As such, Plaintiff's claims against Moving Defendants are precluded by the doctrine of *res judicata*.

V. APPENDIX-E :ECF-35 DIST COURT ORDER THAT DISMISSING THE ACCESS DEFENDANTS. JAN 31 2023.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DIST OF PENNSYLVANIA

Palani Karupaiyan et al *Plaintiffs, Prose* V Arnaud Vaissie et al *Defendants*	Civil Action No 22-3083

ORDER

AND NOW, this 31st day of January 2023, upon consideration of the *motion to dismiss the amended complaint* filed by Defendants Access Staffing, LLC, and Mike Weinstein (collectively, "Moving Defendants"), [ECF 28], Plaintiffs' response in opposition, [ECF 32], and the allegations in the amended complaint, [ECF 24], it is hereby **ORDERED** that the motion to dismiss is **GRANTED**.[1] Accordingly, this matter is **DISMISSED**, with prejudice, as to Moving Defendants.

BY THE COURT:
/s/ Nitza I. Quiñones Alejandro
NITZA I. QUIÑONES ALEJANDRO
Judge, United States District Court

FootNote-1

In his amended complaint, Plaintiff Palani Karupaiyan ("Plaintiff"), proceeding *pro se* on his own behalf and purportedly on behalf of his children, asserts various claims against Moving Defendants premised on their alleged unlawful termination of his employment contract and their subsequent decision to not hire him for another position allegedly because of his race, ethnicity, national origin, and disability, in violation of various federal and state statutes. (Am. Compl., ECF 24, at ¶ 2).

Moving Defendants filed the instant motion to dismiss and argue, *inter alia*, that the doctrine of *res judicata* bars Plaintiff's current claims against them. When considering a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure ("Rule") 12(b)(6), the court "must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions." *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210–11 (3d Cir. 2009). The court must determine "whether the facts alleged in the complaint are sufficient to show that the plaintiff has a 'plausible claim for relief.'" *Id.* at 211 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). The complaint must do more than merely allege the plaintiff's entitlement to relief; it must "show such an entitlement with its facts." *Id.* (quotations and citations omitted).

As noted, Moving Defendants move to dismiss Plaintiff's claims of unlawful termination of employment as barred by the doctrine of *res judicata*. Specifically, Moving Defendants argue that because Plaintiff previously brought identical claims against Moving Defendants in this Court that were fully adjudicated on the merits in Moving Defendants' favor by the Honorable Petrese B. Tucker, in the

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The doctrine of *res judicata*, or claim preclusion, "protect[s] litigants from the burden of relitigating an identical issue with the same party or his privy and . . . promot[es] judicial economy by preventing needless litigation." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 327 (1979). For the doctrine of *res judicata* to apply, the following requirements must be met, *to wit*: "(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action." *Lubrizol Corp. v. Exxon Corp.*, 929 F.2d 960, 963 (3d Cir. 1991).

In evaluating whether these elements are met, this Court must "focus on the central purpose of the doctrine, to require a plaintiff to present all claims arising out of the same occurrence in a single suit. In so doing, we avoid piecemeal litigation and conserve judicial resources." *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 277 (3d Cir. 2014) (internal quotation marks and brackets omitted). In *Blunt*, the Third Circuit explained:

> *[W]e take a broad view of what constitutes the same cause of action and that res judicata generally is thought to turn on the essential similarity of the underlying events giving rise to*

> *the various legal claims. In analyzing essential similarity, we consider several factors: (1) whether the acts complained of and the demand for relief are the same . . . ; (2) whether the theory of recovery is the same; (3) whether the witnesses and documents necessary at trial are the same . . . ; and (4) whether the material facts alleged are the same. It is not dispositive that a plaintiff asserts a different theory of recovery or seeks different relief in the two actions.*

Id. (internal citations and quotations omitted); *see also Elkadrawy v. Vanguard Grp.*, 584 F.3d 169, 173 (3d Cir. 2009) ("This analysis does not depend on the specific legal theory invoked, but rather [on] the essential similarity of the underlying events giving rise to the various legal claims.") (internal quotation marks omitted). "The doctrine of *res judicata* bars not only claims that were brought in a previous action, but also claims that could have been brought." *In re Mullarkey*, 536 F.3d 215, 225 (3d Cir. 2008). With respect to privity between defendants, claim preclusion is applied whenever "there is a close or significant relationship between successive defendants." *Lubrizol*, 929 F.2d at 966.

Here, Plaintiff and Moving Defendants were all parties to the Prior Action. Plaintiff's claims against Moving Defendants in this case are also the same and/or premised on the same underlying allegations and theories as those he asserted in the Prior Action. Indeed, in the second amended complaint filed in the Prior Action, Plaintiff alleged:

> *This suit arises from Defendant's decision to refuse[] to hire fulltime job and/or refused hire contract job and/or terminate Plaintiff because of his Race, Color, National of Origin, (Language), retaliation, Age, Disability, genetic*

> *information, US Citizenship in violation of [various federal statutes].*"

(Sec. Am. Compl., Civil Action No. 19-2259, ECF 56, at ¶ 1). In the amended complaint underlying this action, Plaintiff makes the same allegations:

> *This suit arises from Defendant's decision to refuse[] to hire fulltime job and/or refused hire contract job and/or terminate Plaintiff because of his Race, Color, National of Origin, (Language), retaliation, Age, Disability, genetic information, US Citizenship in violation of Under Laws.*"

Am. Compl., ECF 24, at ¶ 2). As such, the second and third elements for application of *res judicata* are clearly met.

Plaintiff contends, however, that the judgment in the Prior Action was not "on the merits" because it was premised on pleading deficiencies under Rules 8 and 10 and on his failure to comply with Court Orders under *Poulis v. State Farm Fire and Casualty Co.*, 747 F.2d 863 (3d Cir. 1984). While Plaintiff is correct as to the bases of the prior dismissal, he is incorrect as to the preclusive effect of such dismissals. Though not squarely determined by the Third Circuit, district courts in this Circuit have held that dismissal of a plaintiff's claims with prejudice for failure to comply with federal court orders operates as an adjudication on the merits for preclusion purposes. *See, e.g.*, *Jackson v. Dow Chem. Co.*, 902 F. Supp. 2d 658, 668–69 (E.D. Pa. 2012); *Nwani v. Molly*, 2018 WL 2461987, at *6 (E.D. Pa. May 31, 2018) (citing and following *Jackson*). This approach is also the uniform view taken by other federal courts. *See Dillard v. Sec. Pac. Brokers, Inc.*, 835 F.2d 607, 608 (5th Cir. 1988) (affirming application of claim preclusion to earlier federal judgment entered as a sanction for failure to comply with court order); *United States v. $149,345*

U.S. Currency, 747 F.2d 1278, 1280 (9th Cir. 1984) (same); *see also* 18A Charles A. Wright *et al.*, *Federal Practice and Procedure* § 4440 n.1 (3d ed.) (collecting cases). Though in *dicta*, the United States Supreme Court indicated its agreement. *See Costello v. United States*, 365 U.S. 265, 286 (1961) (stating that dismissal for reasons enumerated in Rule 41(b), including "failure . . . to comply with an order of the Court," would normally "bar a subsequent action"). Further, the Third Circuit has recognized that dismissal as a sanction for failure to obey a court order would give rise to preclusion under Pennsylvania law. *McCarter v. Mitcham*, 883 F.2d 196, 199–200 (3d Cir. 1989). In light of this caselaw, this Court agrees that a dismissal with prejudice premised on a plaintiff's failure to comply with court orders operates as a decision on the merits for preclusion purposes.

Here, Judge Tucker dismissed the Prior Action, with prejudice, on account of Plaintiff's failure to comply with prior orders. Specifically, she concluded that Plaintiff's second amended complaint was filed after the deadline set in an Order dismissing Plaintiff's previous complaint. After conducting the requisite *Poulis* analysis, which included consideration of the merits of Plaintiff's claims, Judge Tucker dismissed the second amended complaint with prejudice. Judge Tucker's dismissal with prejudice was affirmed on appeal by the Third Circuit. *See Karupaiyan*, 2021 WL 6102077 (3d Cir. Dec. 22, 2021). Under these circumstances, and based on the caselaw cited above, this Court finds that the dismissal of the Prior Action with prejudice for failure to comply with court orders constitutes a decision on the merits for preclusion purposes. As such, Plaintiff's claims against Moving Defendants are precluded by the doctrine of *res judicata*.

VI. APPENDIX-F: ECF-17 DIST COURT ORDER- FORMA PAUPERIS GRANTED & ORDERED TO SERVE THE SUMMON AND COMPLAINT. NOV 3 2022. ECF-17

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DIST OF PENNSYLVANIA

PALANI KARUPAIYAN V ARNAUD VAISSIE, *et al.*	CIVIL ACTION NO. 22-3083

ORDER

AND NOW, this 3rd day of November 2022, upon consideration of Plaintiff's *application to proceed in District Court without prepaying fees or costs*, [ECF 1], and it appearing to this Court that Plaintiff is unable to pre-pay the filing fees and costs, it is hereby **ORDERED** that:

1. Plaintiff's application to proceed *in forma pauperis* is **GRANTED**;

2. The Clerk of Court shall file the complaint and issue summons;

3. All original pleadings and other papers submitted for consideration to the Court in this case are to be filed with the Clerk of Court. Copies of papers filed in this Court are to be served upon counsel for all other parties (or directly on any party acting *pro se*). Service may be made by mail. Proof that service has been made is provided by a certificate of service. The certificate of service should be filed in the case along with the original papers and should show the day and manner of service. An example of a certificate of service by mail follows:

"I, (name), do hereby certify that a true and correct copy of the foregoing (name of pleading or other paper) has been served upon (name(s) of person(s) served) by placing the same in the U.S. mail, properly addressed, this (day) of (month), (year).

_____

(Signature)"

4. Any request for court action shall be set forth in a motion, properly filed and served. The parties shall file all motions, including proof of service upon opposing parties, with the Clerk of Court. The Federal Rules of Civil Procedure and local rules are to be followed. Plaintiff is specifically directed to comply with Local Civil Rule 7.1 and serve and file a proper response to all motions within fourteen (14) days. Failure to do so may result in dismissal of this action;

5. Plaintiff is specifically directed to comply with Local Rule 26.1(f) which provides that "[n]o motion or other application pursuant to the Federal Rules of Civil Procedure governing discovery or pursuant to this rule shall be made unless it contains a certification of counsel that the parties, after reasonable effort, are unable to resolve the dispute." Plaintiff shall attempt to resolve any discovery disputes by contacting defendant's counsel directly by telephone or through correspondence;

6. No direct communication is to take place with the District Judge or United States Magistrate Judge with regard to this case. All relevant information and papers are to be directed to the Clerk;

7. In the event a summons is returned unexecuted, it is plaintiff's responsibility to ask the Clerk of Court to issue an alias summons and to

provide the Clerk with the defendant's correct address, so service can be made; and

8. The parties should notify the Clerk's Office when there is an address change. Failure to do so could result in court orders or other information not being timely delivered, which could affect the parties' legal rights

BY THE COURT:
/s/ *Nitza I. Quiñones Alejandro*
NITZA I. QUIÑONES ALEJANDRO
Judge, United States District Court

VII. APPENDIX-G : DIST COURT ORDER DISMISSING FOR KAPITAL DATA CORP, KUMARA MANGALA AND KARUPAIYAN CONSULTING. ECF-50. –MAY 9 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

PALANI KARUPAIYAN, et al. Plaintiff(s)
v.
ARNAUD VAISSIE, et al.- Defendants
CIVIL ACTION- NO. 22-3083

ORDER

AND NOW, this 9th day of May 2023, a review of the docket reveals that Plaintiff has failed to comply with this Court's January 31, 2023 Notice, [ECF 36], by not properly serving by February 23, 2023, the summons and the amended complaint upon Defendants Kapital Data Corp., Kumar Mangala, and Karupaiyan Consulting Inc., as required by Federal Rule of Civil Procedure 4. Therefore, it is hereby **ORDERED** that this action is **DISMISSED**, without prejudice, as to these Defendants.

The Clerk of Court is directed to **CLOSE** this matter.

BY THE COURT:
/s/ Nitza I. Quiñones Alejandro
NITZA I. QUIÑONES ALEJANDRO
Judge, United States District Court