IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Vitamin OldCo Holdings, Inc. (f/k/a GNC Holdings, Inc.), *et al.*, Debtors.	)	Chapter 11 Case No. 20-11662 (KBO)
John Yong Tang and Faris Al Kooheji, on behalf of themselves and others similarly situated, Plaintiffs, v. CITIC Capital Holdings Ltd., *et al.*, Defendants.	)	Adv. Proc. No. 24-50020 (KBO)

MEMORANDUM ORDER ON MOVING DEFENDANTS' MOTION FOR COSTS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 41(D)

Before the Court is the motion (the "Rule 41(d) Motion") of CITIC Capital Partners LLC, GNC Holdings, LLC, ZT Biopharmaceutical LLC, Hans Allegaert, Cameron Lawrence, Kenneth A. Martindale, Tricia K. Tolivar, Susan M. Canning, Alan D. Feldman, Michael F. Hines, Amy B. Lane, Philip E. Mallott, Michele S. Meyer, Robert F. Moran, Evercore Inc., and Gregory Berube (the "Moving Defendants").[1] The Rule 41(d) Motion seeks an order, pursuant to Rule 41(d) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7041 of the Federal Rules of Bankruptcy Procedure, awarding costs to the Moving Defendants in an amount to be determined at a later date and staying this proceeding until such payment is made. Moving Defendants assert that this relief is appropriate because of Plaintiffs' alleged forum shopping to avoid this Court after receiving two adverse venue-related decisions from district courts, which caused the Moving Defendants considerable expense. Plaintiffs oppose the Motion. For the reasons set forth herein, the Court will award costs to Moving Defendants ZT Biopharmaceutical LLC, Kenneth A. Martindale, Tricia K. Tolivar, Alan D. Feldman, Michael F. Hines, Amy B. Lane, Philip E. Mallott, Michele S. Meyer, Robert F. Moran, Evercore Inc., and Gregory Berube

[1] The docket of the SDNY Action (as defined herein) was docketed and incorporated into this adversary proceeding on February 29, 2024 following the transfer and referral of the action. *See* Adv. D.I. 2.

("Overlapping Defendants") and will stay the proceeding in its entirety until paid or a further order is entered.

I. PROCEDURAL AND FACTUAL BACKGROUND[2]

This adversary proceeding arises from the bankruptcy proceeding of GNC Holdings, Inc. ("GNC") and several of its affiliated entities (together with GNC, the "Debtors"), which filed for bankruptcy in this Court in June 2020. Almost a year after the Court confirmed the Debtors' plan of reorganization,[3] Plaintiffs filed an action in the District of New Jersey against the Overlapping Defendants and eight others, who were purchasers of GNC's assets and certain of GNC's directors, officers, and advisors involved in the bankruptcy (the "DNJ Action").[4] In the DNJ Action, the Plaintiffs alleged claims for federal civil RICO, federal civil RICO conspiracy, New Jersey RICO, New Jersey RICO conspiracy, fraud, conspiracy, breach of fiduciary duties, conversion, negligence, and aiding and abetting conspiracy.[5] These claims "rested on the fundamental allegation that Defendants conspired to force GNC into a 'sham' bankruptcy for their benefit and to the detriment of the Plaintiffs."[6]

The defendants filed motions to dismiss Plaintiffs' claims and a motion to transfer the DNJ Action to this Court pursuant to 28 US.C. §§ 1412 and 1404(a). The motions to dismiss were not fully briefed or heard because the District of New Jersey granted the transfer motion.[7] The District of New Jersey explained that the lawsuit, "at bottom, assails the integrity of the GNC Bankruptcy Case" and that "[m]any of the Complaint's allegations challenge the soundness [of] the Delaware Bankruptcy Court's findings, as set forth in the Sale Order."[8] Thus, the District of New Jersey concluded that "the claims asserted by Plaintiffs here are inextricably intertwined with the GNC Bankruptcy Case."[9] Thereafter, the DNJ Action was transferred to the Delaware District Court

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[2] A substantial majority of this background is derived from the parties' joint statement of the relevant procedural history set forth in their December 12, 2025 *Joint Status Report*, *see* Adv. D.I. 35, and the Delaware District Court's *Memorandum Opinion* dated September 29, 2025 denying Plaintiffs' motion to withdraw the reference, *see John Yong Tang et al. v. CITIC Capital Holdings Ltd. et al.*, No. 24-1376 (MN) (D. Del.), D.I. 17 ("Delaware District Court Opinion").

[3] *See Findings of Fact, Conclusions of Law, and Order Confirming Seventh Amended Joint Chapter 11 Plan of Reorganization of GNC Holdings, Inc. and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code*, No. 20-11662, D.I. 1415.

[4] *John Yong Tang et al. v. CITIC Capital Holdings Ltd. et al.*, No. 2:21-cv-17008-JXN-AME (D.N.J.) ("DNJ D.I."), D.I. 38 (*Second Amended Class Action Complaint*).

[5] *See id.*

[6] Delaware District Court Opinion at 6.

[7] DNJ D.I. 49, 56.

[8] DNJ D.I. 56 at 17-18.

[9] *Id.* at 18.

and referred to this Court, where it was docketed as adversary proceeding number 24-50422. A few weeks later, Plaintiffs voluntarily dismissed the proceeding.[10]

Approximately 3 months later, Plaintiffs filed a complaint in the Southern District of New York (the "SDNY Action").[11] Plaintiffs state that this complaint is an amended version of the complaint in the DNJ Action.[12] The defendants are the Overlapping Defendants, two other DNJ Action defendants,[13] and six new named defendants.[14] Plaintiffs dropped the New Jersey RICO and New Jersey RICO conspiracy claims asserted in the DNJ Action but kept the remainder of their DNJ Action claims. With minimal changes, the allegations supporting the claims are identical.[15] The newly added defendants are similarly situated to the DNJ Action defendants – alleged as either affiliates of the purchasers of GNC's assets or Debtor directors or officers.[16]

The defendants in the SDNY Action filed another set of motions to dismiss and a motion to transfer to this Court. Moving Defendants also filed the Rule 41(d) Motion seeking to recover costs incurred from the DNJ Action. Plaintiffs opposed these motions. Without ruling on the Rule 41(d) Motion or the motions to dismiss, the Southern District of New York granted the motion to transfer and ordered the transfer of the SDNY Action to the District of Delaware.[17] Among other things, the Court found that "Plaintiffs['] first suit in the District of New Jersey was transferred to the District of Delaware because the allegations turned on the integrity of GNCs Chapter 11 proceedings in Delaware Bankruptcy Court" and that "[f]or the same reasons stated in the DNJ transfer order and opinion, Defendants['] motion to transfer the case to the District of Delaware is granted."[18] Thereafter, the SDNY Action was transferred to the Delaware District Court, referred to this Court, and docketed as this adversary proceeding.

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[10] *See John Yong Tang et al. v. CITIC Capital Holdings Ltd.*, No. 22-50455 (KBO) (Bankr. D. Del.), D.I. 4.

[11] *John Yong Tang et al. v. CITIC Capital Holdings Ltd. et al.*, No. 1:23-cv-01195-AKH (S.D.N.Y.) ("SDNY D.I."), D.I. 1; *see also Declaration of Michael J. Reiss in Support of GNC D&O Defendants' Motion to Dismiss Plaintiff's Complaint and Request for Judicial Notice, and Moving Defendants' Motion for Costs Pursuant to Federal Rule of Civil Procedure 41(d) and Motion to Transfer to the District of Delaware*, SDNY D.I. 59, Ex. 15 (redline comparison of the complaints filed the DNJ Action and the SDNY Action).

[12] *Memorandum of Law in Opposition to Moving Defendants' Motion for Costs Pursuant to Federal Rule of Civil Procedure 41(d)* ("Opposition Brief"), SDNY D.I. 76 at 4, 8-9, 11.

[13] CITIC Capital Holdings Ltd. and Yong Kai Wong. *See supra note* 11.

[14] CITIC Limited, CITIC Capital Partners LLC, GNC Holdings, LLC, Hans Allegaert, Cameron Lawrence, and Susan M. Canning. *Id.*

[15] *Id.*

[16] *Id.*

[17] SDNY D.I. 83.

[18] *Id.*

Plaintiffs appealed to the Second Circuit, challenging the order transferring the SDNY Action to the Delaware District Court. The Second Circuit dismissed the appeal.[19] Foreclosed of pursuing their claims in the District of New Jersey and the Southern District of New York, Plaintiffs then requested the Delaware District Court to withdraw the reference and adjudicate their claims. The Delaware District Court issued a Memorandum Opinion and Order denying Plaintiffs' motion without prejudice to file a renewed motion when the case becomes trial ready.[20]

The parties fully briefed the Rule 41(d) Motion and motions to dismiss before the SDNY Action was transferred to Delaware. After the transfer and referral to this Court, the parties submitted supplemental briefing on the motions to dismiss to address differences between the applicable law of the Second and Third Circuits.[21] They also agreed that supplemental briefing was not necessary for the Rule 41(d) Motion. The Court finds that a hearing on the motion is also unnecessary.

II. <u>LEGAL DISCUSSION</u>

Federal Rule 41(d) provides that if "a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant" then the court may "order the plaintiff to pay all or part of the costs of that previous action" and "stay the proceedings until the plaintiff has complied."[22] "This rule permits a court to award costs to a party required to twice defend the same action where the facts of a case warrant such an award." *Huntley, L.L.C. v. Monterey Mushrooms, Inc.*, No. 08-337-GMS, 2009 WL 2992553, at *3 (D. Del. Sept. 18, 2009).

"Rule 41(d) endows federal courts with 'broad discretion' to order stays and the payment of costs to deter 'forum shopping and vexatious litigation.'" *Phunware, Inc. v. Excelmind Group Ltd.*, 117 F. Supp. 3d 613, 621 (D. Del. 2015) (quoting *Esquivel v. Arau*, 913 F. Supp. 1382, 1386 (C.D. Cal. 1996)). In exercising its direction under Rule 41(d), a court must "'assess whether the plaintiff's conduct satisfies the [rule's] requirements' and grant the motion if 'the circumstances of the case warrant an award . . . to prevent prejudice to the defendant.'" *Id.* (*quoting Esquivel*, 913 F. Supp. at 1388) (alterations in original).

Plaintiffs argue that Rule 41(d) does not apply because the SDNY Action is substantially different from the DNJ Action. Plaintiffs highlight the changes in the two complaints, namely the identity of the defendants, the scope and factual allegations, the claims, and the targets of the claims. While the Court agrees that these changes exist, it does not find that they are sufficiently substantial to avoid Rule 41(d)'s "same claim, same defendant" requirement.

The complaint filed in the SDNY Action asserts two less claims and includes some different defendants. But as determined by the Delaware District Court, the theories of Plaintiffs'

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[19] *Yong Tang et al. v. Susan M. Canning et al.*, No. 24-455 (2d Cir.), D.I. 38.

[20] *John Yong Tang et al. v. CITIC Capital Holdings Ltd. et al.*, No. 24-1376 (MN) (D. Del.), D.I. 17-18.

[21] *See* Adv. D.I. 43, 44.

[22] FED. R. CIV. P. 41(d).

complaints in the DNJ Action and the SDNY Action "are the same."[23] The remaining claims and theories of the complaint are identical to the DNJ Action against a subset of the same defendants as the DNJ Action (including the Overlapping Defendants). The Plaintiffs did not materially alter the factual allegations supporting these claims. And the relief they seek is identical to the relief sought in the DNJ Action. The Court finds on these facts that the SDNY Action is based on and includes the same claims as the DNJ Action against the same defendants – the Overlapping Defendants. *See, e.g.*, *Garza v. Citigroup Inc.*, 311 F.R.D. 111, 115-16 (D. Del. Nov. 13, 2015) (finding on similar facts that the standard of Rule 41(d) was satisfied), *aff'd* 881 F.3d 277 (3d Cir. 2018); *see also Phunware*, 117 F. Supp. 3d at 623 ("Generally, costs have only been imposed in cases where 'the plaintiff has brought an identical, or nearly identical claim and requested identical, or nearly identical relief.'" (quoting *Young v. Dole*, No. 90-CV-2667 (TCP), 1991 WL 158977, at *3 (E.D.N.Y. July 11, 1991)). The remaining Moving Defendants were not defendants in the DNJ Action. They are thus not entitled to Rule 41(d) relief by its plain language, and the Moving Defendants do not provide any case law or arguments in support of its extension to them.

"[I]f it appears that there was a good reason for the prior action's dismissal[,]" courts may decline to impose costs. 9 FED. PRAC. & PROC. CIV. § 2375 (4th ed.). Moving Defendants argue that the Plaintiffs' behavior supports an award of costs and a stay until paid because their multi-district filings amount to inappropriate forum shopping and litigation tactics. The Court agrees.

Plaintiffs admit that this Court was not their chosen forum.[24] However, that alone is not troublesome to the Court. It is the Plaintiffs' behavior following the transfer of the DNJ Action that warrants Rule 41(d) relief. When the DNJ Action was finally before this Court, the Plaintiffs believed that they had three choices – appeal the transfer order, move to withdraw the reference, or seek to amend their complaint, with likely opposition.[25] Instead of proceeding with one of those options, the Plaintiffs explain that they "chose the path of least resistance[.]"[26] They voluntarily dismissed the DNJ Action from this Court and filed it in another favored venue with their desired amendments without opposition or court-oversight. This, they claim, was a "more cost effective and efficient approach to" among other things "achieve Plaintiffs' goal of fully litigating the transfer issue" and amending their complaint.[27] In other words, the Plaintiffs purposely acted to avoid the adversarial process that would necessarily follow if they had remained in this Court and pursued one of the three options available to them by the Bankruptcy Code and Rules (i.e. appeal, request withdrawal of the reference, or seek to amend). The behavior is not in good faith as Plaintiffs' urge this Court to find. It is forum shopping and vexatious. Accordingly, the Court finds that an award of costs warranted.

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[23] Delaware District Court Opinion at 7; *see also id.* (finding the complaint in the SDNY Action to be a "very similar complaint . . . against the same three groups of defendants – CITIC, GNC Management, and Evercore – and a few additional defendants, asserting essentially the same claims.").

[24] Opposition Brief at 7, 8.

[25] *Id.* at 9-11.

[26] *Id.* at 11.

[27] *Id.* at 9, 11.

The Plaintiffs' conduct prejudiced the Overlapping Defendants. "To recover costs, a defendant must show it suffered prejudice in the form of 'needless expenditures.'" *Garza*, 311 F.R.D. at 115 (quoting *Esquivel v. Arau*, 913 F. Supp. 1382, 1388 (C.D. Cal. 1996)). The Overlapping Defendants incurred needless expenditures briefing transfer and dismissal motions under Third Circuit law in the DNJ Action only to repeat the process under Second Circuit law in the SDNY Action. While some of the prior work of the Overlapping Defendants in DNJ Action could have been reused, it could not be entirely relied upon because of the amendments to the complaint, the change of applicable law, and the lack of completed briefing in the DNJ Action on the motions to dismiss. *See, e.g.*, *id.* at 116 (finding needless expenditures where movant could not rely completely on its prior work in the new action).

Plaintiffs argue that the Court should not award costs because they are unable to pay. This factor may be relevant to a decision to award fees or to stay a proceeding. *See, e.g.*, 9 FED. PRAC. & PROC. CIV. § 2375; *Phoenix Canada Oil Co. v. Texaco, Inc.*, 78 F.R.D. 445, 448 (D. Del. 1978). No evidence has been provided in support of Plaintiffs' financial wherewithal. The Court will entertain such evidence at any future hearing held to determine the amount of costs to be awarded and whether a continued stay of this action is appropriate.

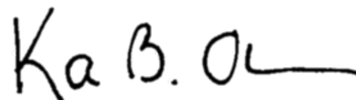
III. <u>CONCLUSION</u>

For the reasons set forth herein, the Court hereby grants the Rule 41(d) Motion as follows:

1. The Plaintiffs are ordered to pay the costs incurred by the Overlapping Defendants in the DNJ Action in an amount to be determined.

2. Until such costs have been paid to the Overlapping Defendants or further order of the Court, this proceeding is stayed.

3. The parties are directed to meet and confer regarding a briefing schedule to address the amount of costs to be awarded to the Overlapping Defendants. Once agreed upon, the parties shall submit such schedule to the Court for its review and approval under Certification of Counsel. If the parties cannot agree, they may jointly contact the Court to schedule a status conference.



Dated: April 29, 2026
Wilmington, Delaware

Karen B. Owens
Chief Judge