

# APPENDIX

BLD-008

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 19-2074

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QUINTEZ TALLEY,  
Appellant

v.

PA. DEPT. OF CORRECTIONS; MATIS, BAUM, O'CONNER, P.C;  
CASSIDY L. NEAL; OFFICE OF ATTORNEY GENERAL;  
KELI M. NEARY; BRUCE R. BEEMER; TIMOTHY MAZZOCCA;  
ROBERT D. GILMORE; MICHAEL ZAKEN; WALLACE LEGGETT;  
MCCOMBIE; SHELLY MANKEY; MARK DIALESANDRO; DANIEL CARO;  
JOHN WETZEL; JOHN BURT; AMY ANKROM; DR. LUCAS MALISHCHAK,  
CONNEY WETTGEN

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On Appeal from the United States District Court  
for the Western District of Pennsylvania  
(D.C. Civil Action No. 2-18-cv-01685)  
District Judge: Honorable Nora B. Fischer

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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  
October 10, 2019

Before: AMBRO, GREENAWAY, JR. and BIBAS, Circuit Judges

**JUDGMENT**

This cause came to be considered on the record from the United States District  
Court for the Western District of Pennsylvania and was submitted for possible dismissal  
pursuant to 28 U.S.C. § 1915(e)(2)(B) and for possible summary action pursuant to Third

**APPENDIX A**

Circuit LAR 27.4 and I.O.P. 10.6 on October 10, 2019. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered May 3, 2019, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszeit  
Clerk

DATED: October 30, 2019

BLD-008

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 19-2074

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QUINTEZ TALLEY,  
Appellant

v.

PA. DEPT. OF CORRECTIONS; MATIS, BAUM, O'CONNER, P.C;  
CASSIDY L. NEAL; OFFICE OF ATTORNEY GENERAL;  
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October 10, 2019

Before: AMBRO, GREENAWAY, JR. and BIBAS, Circuit Judges

(Opinion filed: October 30, 2019)

APPENDIX B

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OPINION\*

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PER CURIAM

Pro se appellant Quintez Talley appeals from the order dismissing his complaint for failure to state a claim. Because this appeal does not present a substantial question, we will summarily affirm. See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.

Talley is a prisoner incarcerated at State Correctional Institution Greene. He alleged that, over the course of discovery in a previous lawsuit (Talley v. Gilmore, W.D. Pa. Civ. No. 16-cv-01318) related to a change in his mental health stability classification, Appellees improperly disclosed his confidential medical records to the District Court. He claimed that his rights were violated under the First, Fourth, Fifth, and Fourteenth Amendments, the Racketeer Influenced and Corrupt Organization (“RICO”) Act, and various state tort laws. Specifically, Talley asserted that Appellees acted unlawfully when they filed an appendix to their motions for summary judgment (the “Appendix”), which contained “over [180] pages of [Talley’s] confidential communications with and/or made to licensed psychiatrists, psychologists, and clinical social workers in the course of psychotherapy.” The Appendix included redacted copies of Talley’s mental health records, a declaration from the prison’s Psychological Services Specialist, and a

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

psychological evaluation of Talley. Unredacted copies of these documents were filed separately under seal. Talley further alleged that Appellees fraudulently prepared a declaration, as well as unlawfully refused to provide him with requested copies of his own medical records.

Approving a Magistrate Judge's report and recommendation over Talley's objections, the District Court dismissed Talley's federal claims under 28 U.S.C §§ 1915(e)(2) and 1915A for failure to state a claim and denied him leave to amend his complaint. Following the dismissal of the federal claims, the District Court declined to exercise jurisdiction over Talley's state law claims.

We have appellate jurisdiction pursuant to 28 U.S.C. § 1291, and we exercise plenary review over the District Court's order dismissing the complaint under §§ 1915(e)(2) and 1915A. See Harnage v. Lightner, 916 F.3d 138, 140 (2d Cir. 2019) (per curium); Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000). In reviewing a dismissal for failure to state a claim, "we accept all factual allegations as true [and] construe the complaint in the light most favorable to the plaintiff." Warren Gen. Hosp. v. Amgen, Inc., 643 F.3d 77, 84 (3d Cir. 2011) (quoting Pinker v. Roche Holdings, Ltd., 292 F.3d 361, 374 n.7 (3d Cir. 2002)). We review the District Court's decision to refrain from exercising supplemental jurisdiction over Talley's state law claims for an abuse of discretion. Bright v. Westmoreland Cty., 443 F.3d 276, 286 (3d Cir. 2006).

#### I. Federal Law Claims

We agree with the District Court that Talley's complaint does not state a federal

claim. To begin with, Talley does not allege adequate facts to make out a First Amendment claim. To the extent that Talley's medical records do not belong to him and were never in his possession, his Fourth and Fifth Amendment claims must fail, as there could be no search, seizure, or taking. See, e.g., United States v. Miller, 425 U.S. 435, 440-43 (1976) (holding that a bank did not violate the Fourth Amendment by disclosing depositor's information because such information was the property of the bank).

Additionally, we agree with the District Court that Talley waived any Fourteenth Amendment privacy interest in his medical records when he filed the previous lawsuit. Stemming from the fundamental "individual interest in avoiding disclosure of personal matters," Whalen v. Roe, 429 U.S. 589, 598-600 (1977), this Court has recognized that medical records are protected under the federal privacy right. Scheetz v. The Morning Call, Inc., 946 F.2d 202, 206 (3d Cir. 1991); see also Doe v. Delie, 257 F.3d 309, 317 (3d Cir. 2001) (explaining that prison inmates retain a right to privacy in their medical records that may be limited by "legitimate penological interests") (quoting Turner v. Safely, 482 U.S. 78, 89 (1987)). However, there is no constitutional protection for materials disclosed in the absence of an individual's "reasonable expectations of confidentiality," Fraternal Order of Police, Lodge No. 5 v. City of Phila., 812 F.2d 105, 112 (3d Cir. 1987), and Talley waived any reasonable expectation of confidentiality when he filed the previous lawsuit. Appellees were compelled to disclose Talley's private medical information in direct response to his challenge to a change in his mental health stability classification.

Moreover, we have only found disclosure-based privacy violations where there was (1) actual disclosure of private information and (2) actual identification, or the risk of identification, of the person whose private matters were disclosed. See Doe v. Se. Pa. Transp. Auth. (SEPTA), 72 F.3d 1133, 1138 (3d Cir. 1995); see also C.N. v. Ridgewood Bd. of Educ., 430 F.3d 159, 180 (3d Cir. 2005) (identifying violative disclosures as those that “would allow the individual to be identified and ultimately connected to his or her private information”). Even assuming that Talley had a reasonable expectation of confidentiality in his medical records, his case does not present the kind of “disclosure” that raises constitutional concerns. Talley described only the disclosure of information in the course of litigation to the District Court. Moreover, Appellees took appropriate measures to safeguard the sensitive nature of the materials contained in their Appendix through the processes of redaction and sealing. Finally, because Talley alone filed a lawsuit raising the issue of his mental health, further redacting the Appendix or restricting the number of documents filed would arguably have little effect on a reader’s ability to identify him.<sup>1</sup>

The District Court also properly dismissed Talley’s RICO claim. In order for a private individual to state a viable RICO claim, the plaintiff must allege facts demonstrating that the defendants engaged in a “pattern of racketeering activity” and that

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<sup>1</sup> Talley rightfully acknowledged that Federal Rule of Civil Procedure 5.2(a)(2) limits birthdate information to the year of a person’s birth. However, rules governing procedure in the federal courts do not give rise to a private cause of action. See, e.g., Living Designs, Inc. v. E.I. Dupont de Nemours & Co., 431 F.3d 353, 372 (9th Cir. 2005).

such activities proximately caused an injury to plaintiff's property or business. See 18 U.S.C. § 1962(c); Maio v. Aetna, Inc., 221 F.3d 472, 483 (3d Cir. 2000). Here, Talley conclusively alleged, without support, that Appellees "worked in cohesion" and through a "pattern of racketeering activity" to violate Talley's privacy. Because that undeveloped assertion falls short of alleging the requisite facts needed to state a plausible RICO claim, the District Court properly dismissed this claim.

Finally, the District Court did not err in its refusal to grant Talley leave to amend his complaint, as such amendment would be futile. Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002).

## II. State Law Claims

As Talley failed to state a claim regarding his federal causes of action, the District Court did not abuse its discretion in dismissing his state law claims for lack of supplemental jurisdiction. See 28 U.S.C. § 1367(c)(3); Figueroa v. Buccaneer Hotel, Inc., 188 F.3d 172, 181 (3d Cir. 1999).

## III. Conclusion

In short, the District Court properly dismissed Talley's federal claims and declined to exercise jurisdiction over his state law claims. For the foregoing reasons, we conclude that the appeal presents no substantial question. We will affirm the judgment of the District Court.

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

|  |   |                          |
|--|---|--------------------------|
| QUINTEZ TALLEY,                          | ) |                          |
|  | ) |                          |
| Plaintiff,                               | ) |                          |
|  | ) |                          |
| vs.                                      | ) | Civil Action No. 18-1685 |
|  | ) |                          |
| PA DEPT. OF CORRECTIONS, <i>et al.</i> , | ) |                          |
|  | ) |                          |
| Defendants.                              | ) |                          |

**MEMORANDUM ORDER**

Pending before the Court are the objections by *pro se* Plaintiff Quintez Talley (ECF No. 11), to the April 10, 2019, Report and Recommendation of the Magistrate Judge (ECF No. 9), which recommended that the Complaint be summarily dismissed pre-service for failure to state a claim pursuant to the screening provisions of 28 U.S.C. § § 1915(e)(2) and 1915A.

The Court has reviewed the matter and concludes that the Report and Recommendation correctly analyzes the issues and makes a sound recommendation. Upon consideration of the Complaint, together with the Report and Recommendation and objections filed by Plaintiff, and after undertaking a *de novo* review of the record,

IT IS HEREBY **ORDERED** that Plaintiff's Motion for The Court to Take Judicial Notice of the Docket in Case No. 16-cv-1318 (ECF No. 10) is **GRANTED**;

IT IS FURTHER **ORDERED** that Plaintiff's Objections are **OVERRULED** as they are without merit.

IT IS FURTHER **ORDERED** that the Complaint is **DISMISSED** for failure to state a claim pursuant to the screening provisions of 28 U.S.C. § § 1915(e)(2) and 1915A and leave to

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

QUINTEZ TALLEY,

Plaintiff,

v.

PA DEPT. OF CORRECTIONS, et al,

Defendants.

)  
) Civil Action No. 2: 18-cv-1685  
)  
) United States District Judge  
) Nora Barry Fischer  
)  
) Chief United States Magistrate Judge  
) Cynthia Reed Eddy  
)

**REPORT AND RECOMMENDATION**

**I. Recommendation**

Upon review of the Complaint, and pursuant to the screening requirements for litigants proceeding *in forma pauperis*, the Court recommends *sua sponte* dismissal of the Complaint before service as such claims fail to state a claim upon which relief can be granted. It is further recommended that leave to amend be denied as it would be futile for Plaintiff to amend his claims.

**II. Report**

**A. Background**

The factual scenario that forms the basis of the instant case arises from Defendants filing of Plaintiff's "confidential medical records" in *Talley v. Gilmore*, Civil Action No. 16-cv-1318 (the "Previous Case"). In the Previous Case, which is scheduled for trial on November 18, 2019, Plaintiff challenges Defendants' decision to have his mental health stability code changed from a "D-Code," meaning seriously mentally ill, to a "C-Code," meaning receiving treatment for

mental health but not seriously mentally ill.<sup>1</sup> Defendants' position is that Talley's mental health stability code was changed based on the clinical judgment of practitioners that he does not suffer from a serious mental illness. In support of their motions for summary judgment, Defendants relied upon, and filed with the Court, Talley's medical records, including his mental health treatment records.

In the instant lawsuit, Plaintiff alleges as follows:

All of the herein named defendants have worked in concert to first rob / extort Plaintiff for property (confidential communication created in the course of psychotherapy) converted for their own use, while simultaneously making it available for public consumption (through PACER and purchase from any United States District Court in the NATION!), of which Plaintiff will receive no financial benefit! - nor have these defendants given Plaintiff ANY just compensation, either[.]

Complaint at ¶ 56. He brings his federal claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO") and 42 U.S.C. § 1983 for violations of the First, Fourth, Fifth, and Fourteenth Amendments, as well as a number of claims under state tort common laws. He seeks as relief the following: (1) "an injunction striking the excessively filed confidential communications between Plaintiff and licensed psychiatrist, psychologist, and clinical social workers filed in [the Previous Case]; in a way that it will cease being "public"; (2) compensatory damages of \$1,000,000.00 against all the defendants; (3) punitive damages in the amount of \$7,000.00 against each defendant for each state tort claim; and "Nine (9xs) of whatever the

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<sup>1</sup> In the Previous Case, the allegations of the Amended Complaint included conspiracy, and violations of the Eighth Amendment (deliberate indifference), First Amendment (retaliation) and violations of the Americans with Disabilities Act and the Rehabilitation Act. As a result of the Court's ruling on Defendants' motions for summary judgment, all claims except his retaliation claim were dismissed.

(ECF No. 6), and the Complaint thereafter was filed. (ECF No. 7). It is now the Court's statutory responsibility to review the Complaint before service to determine if it states a valid claim for relief.

B. Applicable Legal Principles

This Court has a statutory responsibility to review complaints filed by prisoners and by those who have been granted *in forma pauperis* to determine if the complaint states a valid claim for relief. The Court is required to identify cognizable claims and to *sua sponte* dismiss any claim that is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A.

Moreover, not only is a court permitted to *sua sponte* dismiss a complaint which fails to state a claim, but it is required to do so by the mandatory language of "the court shall dismiss" utilized by § 1915(e)(2). In performing a court's mandated function of *sua sponte* reviewing complaints under 28 U.S.C. §§ 1915(e) and 1915A to determine if they fail to state a claim upon which relief can be granted, a federal district court applies the same standard as applied to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See, e.g., Powell v. Hoover*, 956 F. Supp. 565, 568 (M.D. Pa. 1997) (applying Rule 12(b)(6) standard to claim dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii)).

In reviewing complaints as mandated by 28 U.S.C. § 1915(e) and § 1915A and, consequently, utilizing the standards for a 12(b)(6) motion to dismiss, the complaint must be read in the light most favorable to the plaintiff and all well-pleaded, material allegations of fact in the complaint must be taken as true. *See Estelle v. Gamble*, 429 U.S. 97 (1976). Because Plaintiff is

medical records when he filed a grievance alleging that he had been injured). Disclosure of Plaintiff's medical records to the attorneys defending the Previous Case was a direct byproduct of Plaintiff's lawsuit.

E. Claims Arising Under State Law

Plaintiff states he also is bringing a number of state tort claims, i.e., conspiracy, legal malpractice, invasion of privacy, and intrinsic fraud / extrinsic fraud.

A district court may decline to exercise supplemental jurisdiction over state law claims if “the district court has dismissed all claims over which it has original jurisdiction.” 28 U.S.C. § 1367. However, the Court of Appeals for the Third Circuit has recognized, “where the claim over which the district court has original jurisdiction is dismissed before trial, the district court must decline to decide the pendent state claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so.” *Hedges v. Musco*, 204 F.3d 109, 123 (3d Cir. 2000) (quoting *Borough of West Mifflin v. Lancaster*, 45 F.3d 780, 788 (3d Cir. 1995)) (emphasis in original). Here, it is recommended that all of Plaintiff's federal claims - that is, all claims over which the district court had original jurisdiction be dismissed. Considerations of judicial economy, convenience, and fairness do not provide an affirmative justification for maintaining Talley's state law claims. *Shaffer v. Bd. of Sch. Dir. of Albert Gallatin Area S.D.*, 730 F.2d 910, 912-13 (3d Cir. 1984) (noting that “time already invested in litigating the state cause of action is an insufficient reason to sustain the exercise of pendent jurisdiction” and that “decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law”). As such, the Court recommends that Talley's state law claims be

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 19-2074

QUINTEZ TALLEY,  
Appellant

v.

PA. DEPT. OF CORRECTIONS; MATIS, BAUM, O'CONNER, P.C;  
CASSIDY L. NEAL; OFFICE OF ATTORNEY GENERAL;  
KELI M. NEARY; BRUCE R. BEEMER; TIMOTHY MAZZOCCA;  
ROBERT D. GILMORE; MICHAEL ZAKEN; WALLACE LEGGETT;  
MCCOMBIE; SHELLY MANKEY; MARK DIALESANDRO; DANIEL CARO;  
JOHN WETZEL; JOHN BURT; AMY ANKROM; DR. LUCAS MALISHCHAK,  
CONNEY WETTGEN

(W.D. Pa. No. 2-18-cv-01685)

Present: AMBRO, Circuit Judge

1. Motion by Appellant to File Petition for Rehearing Out of Time.

Respectfully,  
Clerk/tmm

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**ORDER**

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The foregoing Motion by Appellant to file Petition for Rehearing out of time is granted.

By the Court,

s/Thomas L. Ambro, Circuit Judge

Dated: January 7, 2020  
Lmr/cc: Quintez Talley

**APPENDIX E**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 19-2074

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QUINTEZ TALLEY,  
Appellant

v.

PA. DEPT. OF CORRECTIONS; MATIS, BAUM, O'CONNER, P.C;  
CASSIDY L. NEAL; OFFICE OF ATTORNEY GENERAL;  
KELI M. NEARY; BRUCE R. BEEMER; TIMOTHY MAZZOCCA;  
ROBERT D. GILMORE; MICHAEL ZAKEN; WALLACE LEGGETT;  
MCCOMBIE; SHELLY MANKEY; MARK DIALESANDRO; DANIEL CARO;  
JOHN WETZEL; JOHN BURT; AMY ANKROM; DR. LUCAS MALISHCHAK,  
CONNEY WETTGEN

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On Appeal from the United States District Court  
for the Western District of Pennsylvania  
(D.C. Civil Action No. 2-18-cv-01685)  
District Judge: Honorable Nora B. Fischer

---

Before: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN,  
HARDIMAN, GREENAWAY, Jr., SHWARTZ, KRAUSE, RESTREPO,  
BIBAS, PORTER, MATEY and PHIPPS, Circuit Judges

**SUR PETITION FOR REHEARING**

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 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: January 16, 2020  
Lmr/cc: Quintez Talley

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA  
CIVIL ACTION

QUINTEZ TALLEY,  
Plaintiff,

v.

PA. DEPT. OF CORRECTIONS; MATIS, BAUM, O'CONNOR,  
P.C.; CASSIDY L. NEAL; OFFICE OF ATTORNEY  
GENERAL; KELI M. NEARY; BRUCE R. BEEMER;  
TIMOTHY MAZZOCCA; ROBERT D. GILMORE; MICHAEL  
ZAKEN; WALLACE LEGGETT; M<sup>C</sup>COMBIE; SHELLEY  
MANKEY; MARK DIALEGANDRO; DANIEL CARD; JOHN  
WETZEL; JOHN BURT; AMY ANKROM; DR. LUCAS  
MALISHCHAK; CONNIE WETTEGEN,

Defendants.

COMPLAINT

I. INTRODUCTION

1. This lawsuit is a detailed documentation of how an employee for the Attorney General's Office (AGO), Timothy Mazzocca, and an employee of Matis, Baum, O'Connor, P.C., Cassidy L. Neal, worked in cohesion with one another and/or on behalf of the Pennsylvania Department of Corrections (DOC) and others whom the DOC contracts with for psychiatric services, to rob an unseasoned pro se litigant, Quintez Talley, of his property and privacy, through a fraudulently prepared "declaration"; a "declaration" prepared with no other purpose aside from strategically **IMPEDING** Mr. Talley's ability to object to the robbery/extortion by submitting Mr. Talley's "property" (i.e., confidential medical records) "under seal" to the Honorable Cynthia Reed Eddy, Chief United States **MAGISTRATE** Judge for the Western District of Pennsylvania, with the intent of

1.

APPENDIX G

RECEIVED

DEC 20 2018

CLERK, U.S. DISTRICT COURT  
WEST. DIST. OF PENNSYLVANIA

CIVIL ACTION No.

18-1685

JURY TRIAL DEMANDED

gaining an advantage for their clients, themselves, and ultimately, their enterprises in defending against the claims raised by Mr. Talley in Talley v. Gilmore, et al., Civ. Act. No. 16-1318 (W.D. Pa.).

2. Yet and still, this civil action speaks of something far more despicable than mail/wire fraud. Than deceit. Even more than extortion! Robbery!...
3. The collective, under color of both official authority and state law, turning government entities - supported by the accumulated tax dollars of the general public - and "Professional Corporations" into Racketeering Influenced Corrupt Organizations ungrudgingly engaging in conduct (defined under 18 USC § 1961(1) as "predicate acts") carried out with expert precision by "masters of the trade" against the inexperienced; all the while employing one of OUR judicial sanctuaries (the United States District Court for the Western District of Pennsylvania) as a medium for carrying out these lamentable acts - IS WHAT THIS LAWSUIT IS ABOUT!

## II. JURISDICTION AND VENUE

4. Plaintiff's Racketeering Influenced Corrupt Organization (RICO) Act claims are brought pursuant to 18 USC § 1961 and 1964(c). Plaintiff's Civil Rights Act claims are authorized by 42 USC § 1983 to redress the deprivation, under color of state law, of rights secured by the United States Constitution. Plaintiff seeks declaratory relief pursuant to 28 USC § 2201 and 2202. Plaintiff's claims for injunctive relief are authorized by 28 USC § 2283, 2284 and Rule 65 of the Federal Rules of Civil Procedure.
5. This Court has jurisdiction under 28 USC § 1331, 1343(a)(3) and (4), and 1367.
6. The Western District of Pennsylvania is an appropriate venue under 28 USC § 1391(b)(2) because it is LITERALLY where the events giving rise to these claims occurred.

## III. PARTIES

7. Plaintiff Quintez Talley was at all times relevant to this Complaint the sole & prose Plaintiff in Talley v. Gilmore, et al., Civ. Act. No. 16-1318 (W.D. Pa.).
8. Defendant Pa. Department of Corrections (DOC) was at all times relevant to this Complaint one of the twelve (12) Defendants named in Talley v. Gilmore, et al., Civ. Act. No. 16-1318 (W.D. Pa.) (herein after Talley v. Gilmore);

as well as the "enterprise" responsible for the employment of Defendants Robert D. Gilmore, Michael Zaken, Wallace Leggett, McCombie, Mark Dialesandro, Daniel Caro, Shelley Markey, John Wetzel, John Burt, Conney Wettgen<sup>1</sup>, who themselves were also Defendants in Talley v. Gilmore, et al.; (as well as Dr. Lucas Malishchak, <sup>2</sup>too).

9. Defendant Matis, Baum, D'Connor, P.C. was at all times relevant to this Complaint the enterprise responsible for the employment of Defendant Cassidy L. Neal, who represents Defendant Anna Ankrom in Talley v. Gilmore, et al.,.

10. Defendant Office of Attorney General (OAG) was at all times relevant to this Complaint the enterprise responsible for the employment of Defendants Bruce R. Beemer (Attorney General), Keli M. Nearn (Chief Deputy Attorney General), and Timothy Mazzocca (Deputy Attorney General).

## IV. FACTS

11. In July of 2010, Defendant Mazzocca entered an appearance on behalf of the DOC Defendants in Talley v. Gilmore, et al.; a civil action initially commenced in the Greene County, Pennsylvania (state Courthouse) under the caption Talley v. Gilmore, et al., AD 553-2010;

12. Defendant Neal entered her appearance on behalf of Defendant Ankrom.

13. On August 25th of 2010, the DOC Defendants removed Talley v. Gilmore, et al., AD 553-2010 from Greene County, Pennsylvania (state court) to the Western District of Pennsylvania; which subsequently became Talley v. Gilmore, et al., 110-1318 (W.D. Pa.).

14. On 8/30/2010 Talley v. Gilmore was reassigned to Magistrate Judge, Cynthia Reed Eddy.

15. On 9/11/2010 Defendant Neal re-entered an appearance on behalf of Defendant Ankrom.

16. On 10/27/2010 the DOC Defendants Answered Plaintiff's Complaint.

17. On 12/21/2010 Defendant Ankrom filed a Motion to Dismiss for failure to state a claim.

## FOOTNOTES

1. This collective, as well as Defendant Malishchak, will herein after be referred to as "DOC Defendants".

2. Defendant Ankrom, while the twelfth (12th) Defendant named in Talley v. Gilmore, is employed by a private contractor who contracts it's services to Defendant DOC.

18. On 12/28/2016 the Court struck said Motion to Dismiss with leave to re-file.
19. On January 5th of 2017 Defendant Ankrom re-filed said Motion to Dismiss with Brief In Support filed contemporaneously.
20. On January 9th of 2017 Defendant Ankrom consented to the jurisdiction of then Magistrate Judge Cynthia Reed Eddy.
21. On February 6th of 2017 the DOC Defendants all consented to the jurisdiction of Magistrate Judge Cynthia Reed Eddy.
22. On February 13th of 2017, Plaintiff filed an Amended Complaint, which added Defendant DOC as a Defendant (to Talley v. Gilmore).
23. \* Plaintiff (who was the Plaintiff in Talley v. Gilmore) also consented to the jurisdiction of Magistrate Judge Cynthia Reed Eddy.
24. On February 27th of 2017 the DOC Defendants Answered Plaintiff's Amended Complaint.
25. On February 27th of 2017 Defendant Neal filed a third Motion to Dismiss on behalf of Defendant Ankrom.
26. On March 22nd of 2017 Defendant Mazzocca entered his appearance on behalf of Defendant DOC.
27. On May 2nd, 2017, Defendant DOC Answered Plaintiff's Amended Complaint (by and through Defendant Mazzocca).
28. On June 7th of 2017 Magistrate Judge Eddy issued a Memorandum Decision denying Defendant Ankrom's Motion to Dismiss.
29. On June 22nd of 2017 Defendant Ankrom, by and through Defendant Neal, Answered Plaintiff's Amended Complaint;
30. The same day (6/22/2017) Magistrate Judge Eddy issued a "Case Management Order"; within which Magistrate Eddy ORDERED the Defendants (in Talley v. Gilmore) to provide Plaintiff with all evidence relevant to Talley v. Gilmore.
31. On July 25th of 2017 the DOC Defendants and Defendant DOC, by and through Defendant Mazzocca, filed a "Notice to the Court Regarding Documents Provided to Plaintiff";
32. On July 26th of 2017 Defendant Neal filed a similar "Notice to the Court Regarding Documents Provided to Plaintiff," on behalf of her client, Defendant Ankrom.
33. None of Plaintiff's medical records - redacted or unredacted - were ever provided to Plaintiff within the two sets of documents provided

41. The greater majority of the documents attached to Defendants Summary Judgment ("Appendix"), i.e., exhibits "1" through "3", either pre-dated or was so far distanced from the 5/13/2015 retaliatory changing of Plaintiff's D stability Code to a "C" that Plaintiff wrote a "notice to the Court" on February 23rd, 2018 bringing into question the purpose of the documents;
42. In Plaintiff's 2/23/2018 "Notice to the Court" he questions:  
 "How does a decision made in a report written by Stacy Harp on 6/13/2016 have any relevance to a decision. Retaliatory decision made by the PRC and PRT on 5/13/2015?"
43. NOTE: On 2/28/2018, DDC Defendants and Defendant DDC, by and through Defendant Mazzocca, filed a sealed copy of their "Appendix" (with un-redacted copies of the Appendix's documents/contents) with the Clerk's of Office of W.D.Pa.; included was over one hundred and eighty (180) pages of Plaintiff's confidential communications with and/or made to licensed psychiatrists, psychologists, and clinical social workers in the course of psychotherapy, i.e., confidential business information. 4/5/6
44. Defendant DDC and the DDC Defendant, by and through Defendant Mazzocca, gave Defendant Ankrom, by and through Defendant Neal, access to Plaintiff's confidential communications with licensed psychiatrist, psychologist, and clinical social workers - far in excess of what ANYONE could've possibly believed to be reasonable in defending Plaintiff's claims in Tallen v. Gilmore.
45. At all times in which Plaintiff's confidential information was either filed in the W.D.Pa. or provided to Defendant Ankrom (by and through Defendant Neal), Defendant DDC and the DDC Defendants employed either the W.D.Pa. "electronic court filing" (ECF) system or first-class mail to carry out these acts of fraud/robbery and extortion (by and through Defendant Mazzocca).
46. Throughout the Summary Judgment Proceedings (in Tallen v. Gilmore), Plaintiff argued vehemently the inadmissibility of his confidential communications made to licensed psychiatrist, psychologist, and clinical social workers during in the course of psychotherapy.
47. In Defendant Ankrom's "Brief in Opposition to Plaintiff's Summary Judgment Motion" (filed on May 30th, 2018), by and through Defendant Neal, Defendant Ankrom herself acknowledges "...the medical records... were clearly kept in the normal course of business..." (on page 7, n.5).

4. It should be noted that it was first Defendant Ankrom, by and through Defendant Neal, who advanced the position that "...the medical records produced by CRNP Ankrom and the DDC co-Defendants were clearly kept in the normal course of business..." (Tallen v. Gilmore); BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, p.7, n.5;
5. Carpenter v. United States, 484 US 19, 27, 98 L Ed 2d 275, 108 S Ct 316 (1987) (finding that confidential business information constitutes "property" for purposes of the federal mail fraud statute);
6. See also, ADVISORY COMMITTEE NOTES, 1974 Enactment (regarding "psychotherapist-patient").

- to Plaintiff (on 7/15/2017 and 7/16/2017) by Defendants.
34. On 11/28/2017 the DOC Defendants and Defendant DOC filed a Motion for an Extension of Time to file Response/Reply to Interrogatories and to file Motion for Summary Judgment, which was subsequently GRANTED by the Court.
35. \* It should be important to note that until Plaintiff received the interrogatories responded to by Defendant DOC, he had no clue of the fact that Defendant Malishchak was the "Person"/"Individual" Acting on behalf of Defendant DOC.
36. On 2/2/2018, by and through Defendant Mazzocca, both Defendant DOC as well as the DOC Defendants file a Motion for Leave to file Documents Under Seal (i.e., the documents that were attached to their Motion for Summary Judgment).
37. Defendant DOC and the DOC Defendants (on 12/20/2017) argued in their Response to Plaintiff's Motion for Leave to file Amended/Supplemental Complaint that Plaintiff's "... Eighth and First Amendment retaliation claims arising from a May 2015 change in his mental health stability code classification from D to C ...";
38. Defendant DOC and the DOC Defendants electronically filed Motion for Leave to file Documents under Seal - simultaneously mailed to Plaintiff - had within it and/or attached to it, an fraudulently prepared "Declaration", Prepared by Defendant Malishchak, which was subsequently Granted by the Court.
39. On 2/15/2018, the DOC Defendants and Defendant DOC, by and through Defendant Mazzocca, electronically filed with the Clerk's office in the Western District of Pennsylvania (W.D. Pa.) - simultaneously mailing to Plaintiff a Motion for Summary Judgment, Brief in Support, with a Redacted Concise Statement and Appendix;
40. When Defendants, by and through Defendant Mazzocca, filed these fraudulent documents, then attached to both their Concise Statement and Appendix, Certificates of Service, Alleging to have served Plaintiff with true and correct copies of both of these documents, though the copy of the Appendix provided to Plaintiff was missing exhibits "1" through "3";
- ~~NOTE:~~ This is a fact to which Defendants, by and through Defendant Mazzocca, ~~con~~cided on March 7th, 2018).

3. Since Talley v. Gilmore is a Public document. Judicial notice can be take of ECF 73; filed by Defendant DOC and the DOC Defendants, by and through Defendant Mazzocca, on 3/17/2018.

48. Defendant Ankrone, by and through Defendant Neal, also filed (electronically) in the W.D.Pa. Portions of Plaintiff's Confidential Communications with licensed Psychiatrist, Psychologist, and Clinical Social Workers, in excess of what any reasonable Professional could've possibly believe to have been necessary to defend against Plaintiff's claims in Talley v. Gilmore.
49. ALL of the herein named defendants worked in cohesion to deny/deprive/rob/extract Plaintiff of his Property (Confidential business information) with the intent to defraud - all the while knowingly using mail and wire to obtain their common goal/scheme; also knowing that they would have to use the mail and wire Communications to carry out it's foreseeable furtherance!;
50. Defendants have strategically employed mail and wire Communications to humiliate and defame Plaintiff's Character in both the opinion of the Court and the general public.
51. In Response to a "Notice to the Court" Plaintiff had filed, on 3/17/2018 the DDC Defendants and Defendant DDC, by and through Defendant Mazzocca, conceded that they had only provided Plaintiff with exhibits "4" through "8" of their "Appendix". At which time they bolstered their failure to provide Plaintiff with redacted copies of exhibit's "1" through "3" by stating: "...the documents are publicly available on PACER...": implying that if Plaintiff wished to possess a copy of these documents - he could purchase them!
52. Defendant DDC and the DDC Defendants, by and through Defendant Mazzocca - in that same 3/17/2018 Response to Plaintiff's Notice to the Court - references the the fraudulent prepared "Declaration" from in Defendant Malishchak alleged that there was powerful Penological reasons why Plaintiff couldn't possess/access his mental health records, to circumvent providing Plaintiff with evidence both material and favorable to prosecuting his civil action against Defendants;
53. Defendant Malishchak's fraudulent prepared "Declaration", electronically filed in the W.D.Pa. (on three (3) different occasions, to date; 2/21/2018, 11/8/2018, and 11/13/2018) by Defendant DDC and the DDC Defendants, by and through Defendant Mazzocca, was created with no other intent than to coerce Magistrate Judge Cynthia Reed Eddy to allow the the defendants to circumvent providing documentation of which they should've provided to Plaintiff on 10/22/2017, when Her Honor ORDER it.
54. On 3/15/2018, when the Court entered an ORDER that the Court wouldn't consider ANY documentation not provided to Plaintiff - ALL of the herein named Defendants filed a Notice .... Alleging they'd given Plaintiff access to the very documents Defendant Malishchak's fraudulent prepared "declaration" had alleged COULDN'T be given/reviewed by

Plaintiff.

55. (NOTE: This "notice" would come to be brought into /under question by the Court itself (on 11/30/2018), as defendants tried to AGAIN perpetrate and use Defendant Malushchak's fraudulent Prepared "declaration" as justification for not providing Plaintiff with access to his medical records in preparation of the February 25th, 2019 scheduled trial for Talley v. Gilmore).

56. All of the herein named defendants have worked in concert to first, rob! Extort Plaintiff for Property (Confidential Communication created in the course of Psychotherapy) converted for their own use, while simultaneously making it available for public consumption (through PACER and purchase from ANY United States District Court in the NATION!), of which Plaintiff will receive no financial benefit! - nor have these defendants given Plaintiff ANY just compensation, either;

57. This deprivation of Property (Plaintiff's) has been largely carried out by mail and wire communication between Defendants Neal and Mazzocca; a fact made clear by the March 22nd, 2018 jointly filed "Notice to the Court Regarding Documents Provided to Plaintiff" (in Talley v. Gilmore); achieving the successful objective, i.e., Common goal of All the defendants of, defrauding both Plaintiff and the Court, to gain an unfair advantage in defending themselves against Plaintiff's claims.

## V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

58. Since the Prison Litigation Reform Act (PLRA) requires that Prisoners must exhaust administrative remedies filed in Civil action in Federal Court about "Prison Conditions", though Plaintiff is indeed a "Prisoner" at the time of the incidents, exhaustion isn't an issue in this case for it doesn't fit within the Supreme Court's definition of "Prison conditions".<sup>8</sup>

## VI. LEGAL CLAIMS

### RACKETEERING INFLUENCED CORRUPT ORGANIZATION (RICO) ACT

59. When the DOC Defendants<sup>9</sup> provided Defendant Mazzocca with Plaintiff's confi-

<sup>7</sup> 42 USC § 1997e(a).

<sup>8</sup> The Supreme Court has said that the phrase ("prison conditions") applies "to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." Porter v. Nussle, 534 U.S. 510, 532, 122 S.Ct. 983 (2002).

<sup>9</sup> For the purpose of this "Legal Claims" section, "DOC Defendants" is inclusive of "Defendant DOC," too.

Confidential communications with Psychiatrist, Psychologist, and Clinical social workers, far in excess of what was needed to defend themselves in Talley v. Gilmore (i.e., against Plaintiff's claims);

- ➡ • Subsequently, finding DDC Defendants, by and through Defendant Mazzocca both electronically filing said communications in the W.D.Pa. - far in excess of what was need to defend the DDC Defendants in Talley v. Gilmore;
- ➡ • When DDC Defendants, by and through Defendant Mazzocca, mailed a tangible copy of Plaintiff's "Unredacted" Confidential communications to the Clerk of Court (in the W.D.Pa.), far in excess of the relevant 5/14/2015 changing of Plaintiff's stability code, on 2/18/2018;
- ➡ • When the DDC Defendants, by and through Defendant Mazzocca, attached a fraudulent prepared "Declaration" (Prepared by Defendant Malishchak) alleging that Plaintiff's mental health records couldn't be provided to him; later providing them to Plaintiff when the Court stated it wouldn't consider any documents Plaintiff didn't have access to; Defendant committed an "predicate act" of mail and wire fraud (when it was filed with the Court as well as mailed to Plaintiff);
- ➡ • \*NOTE: This "Declaration" has been used by the DDC Defendants, by and through Defendant Mazzocca TWICE! (on 2/12/2018 and 11/28/2018;  $2 \times 2 = 4$  ("predicate acts"));
- ➡ • When the DDC Defendants, by and through Defendant Mazzocca, provided Defendant Ankrom, by and through Defendant Neal, with Plaintiff's Confidential communication with licensed Psychiatrist, Psychologist, and Clinical social workers, far in excess of what could've been thought reasonable to defend herself against Plaintiff's claims in Talley v. Gilmore, Using both mail and wire communications to carry out this extortion;
- ➡ • Finding Defendant Ankrom, by and through Defendant Neal, also electronically filing (in the W.D.Pa.) Plaintiff's Confidential medical records in excess of what was necessary to defend against Plaintiff's claims in Talley v. Gilmore;
- ➡ • ALL of the herein named Defendants caused Plaintiff to suffer injuries in both his business (Prosecuting of this civil action, ect.) and "Property"

10. Wherever there is an "arrow" ("➡") and/or "dot" ("•"), Plaintiff intends for it signify an allegation of at least one - or more - predicate acts (as defined by 18 USC § 1961(1)).

(i.e., confidential communications, ect.) through a "pattern of racketeering activity" as defined by 18 USC §1961(5), in violation of the RICO Act.

#### FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION

60. When the DOC Defendants, by and through Defendant Mazzocca, were ORDERED to provide Plaintiff with ALL evidence and/or "documents", i.e., medical/mental health records, ect.) relevant to the claims that made up Plaintiff's Amended Complaint (on 6/22/2017), yet, withheld these documents until they filed a Motion for Leave to file - these very - Documents Under Seal, gaining for themselves an advantage in defending themselves against Plaintiff's claims (in Talley v. Gilmore), in violation of the First Amendment.

61. When the DOC Defendants, by and through Defendant Mazzocca, submitted a fraudulently prepared (by Defendant Malishevsk) "Declaration", alleging that Plaintiff's own medical records - subsequently made public by the Defendants once filed with the Court - were too dangerous to provide to Plaintiff, successfully gaining for themselves an unfair advantage in defending themselves against Plaintiff's claims (in Talley v. Gilmore) in violation of the First Amendment.

#### FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION

62. When the DOC Defendants (by and through Defendant Mazzocca) and Defendant Ankrom (by and through Defendant Neal) filed the confidential communications between Plaintiff and numerous Psychiatrist, psychologist, and Clinical Social workers in the W.D.Pa. without Plaintiff's consent, they violated the Fourth Amendment's "secure in his papers" and "privacy" clause.

63. When the DOC Defendants, by and through Defendant Mazzocca, filed a "Certificate of Service" (with their "Appendix") alleging to have furnished a true and correct copy of the "Appendix" upon Plaintiff, yet withheld exhibits "1" through "3", Defendants violated Plaintiff's Fourth Amendment right to be secure in his papers and effects.

#### FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION

When the DOC Defendants, Mazzocca, Ankrom and Neal made Plaintiff's confidential communications with licensed Psychiatrist, psychologist, and Clinical Social workers available for "public" consumption (by filing them in the W.D.Pa.), neither providing Plaintiff with any compensation in the past, present, or in the future, Defendants violated the Fifth Amendment.

## FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

65. When the DDC Defendants, by and through Defendant Mazzocca, filed Plaintiff's Property (confidential "business" information) in the W.D.Pa. with: (1) a Motion to File Documents Under Seal, (2) never providing Plaintiff with a copy, ultimately undermining Plaintiff's ability to make ANY objections. Defendants violated Plaintiff's Fourteenth Amendment "Due Process" rights.

66. Defendants Ankrom, Mazzocca, Neal, as well as the DDC Defendants' unjustified dissemination of Plaintiff's confidential communications violated Plaintiff's Fourteenth Amendment "Privacy" and/or "Property" rights.

→ This claim, as stated, is ALSO<sup>12/13</sup> "an state tort claim for 'Invasion of Privacy', authorized by 28 USC § 1367.

## CONSPIRACY<sup>12/13</sup>

67. ALL of the herein named Defendants have conspired to (1) deprive Plaintiff of his Property while acting under color of their authority and state law; (2) carried out their "meeting of the minds" through both mail and wire communications over the course of a near two year period of time; (3) impeded Plaintiff's "access to court" rights by (a) filing back-faith "declaration", (b) and withholding documentation defendants alleged serving upon Plaintiff; using fraud to accomplish the common goal of gaining an unfair advantage in the defending of Plaintiff's claims in Tallen v. Gilmore.

## LEGAL MALPRACTICE

68. When Defendants Mazzocca (acting on behalf of the DDC Defendants) and Defendant Neal (acting on behalf of Defendant Ankrom): (1) filed Plaintiff's confidential communication with licensed Psychiatrist, Psychologist and Clinical Social workers far in excess of what a reasonable professional in their field would've thought reasonable; as well as when Defendant Mazzocca withheld the redacted documents that should've been attached to the "Appendix" he mailed to Plaintiff. All of the herein named Defendants - Except the DDC - are liable to Plaintiff for "Legal Malpractice".

## INVASION OF PRIVACY

69. When the DDC Defendants provided Plaintiff confidential communications to Defendant Mazzocca, finding Defendant Mazzocca subsequently

11. Rule 8(d)(2) and (3) of the Federal Rules of Civil Procedure.

12. Plaintiff brings his "Conspiracy" claim under both "state law" and 42 § 1983. See Dice v. Johnson, 711 F.Supp. 2d 340, 358, n.12 (M.D.Pa. 2010);

13. Plaintiff's state tort "conspiracy" - NOT 42 USC § 1983 - is inclusive of Defendant Neary, Mathis, Baum, O'Connor, ~~Agg~~ and Beemer (under the doctrine of "respondent superior").

furnishing Defendant Ankrom with a true and correct copy as well, the Doc Defendants and Mazzocca as well as Defendant AGO, under the doctrine of "respondent superior") ALL committed a state tort of "invasion of privacy".

#### INTRINSIC FRAUD/EXTRINSIC FRAUD

70. When the Doc Defendants and Mazzocca and Malishchak filed a fraudulent bad faith "Declaration" professing that Providing Plaintiff with a copy of his medical records, which became (1) public knowledge (once filed in the U.D. Pa.), and (2) were also served upon their co-defendant (Defendant Ankrom), in a successful attempt at convincing the Court to allow them not to provide Plaintiff with a true and correct copy of the Motion for Summary Judgment, Defendants committed intrinsic and extrinsic.

#### VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Honorable Court shall enter judgment:

##### INJUNCTIVE

71. GRANTING Plaintiff an injunction striking the excessively filed confidential communications between Plaintiff and licensed Psychiatrist, psychologist, and clinical social workers filed in Tallen v. Gilmore, Civ. Act. No. 2:18-cv-1318; in a way that it will cease being "Public".

##### COMPENSATORY

72. GRANTING Plaintiff an one million dollar compensatory damage award against ALL of the herein named Defendants.

##### PUNITIVE

73. GRANTING Plaintiff a punitive damage award in the amount of \$7,000.00 against EACH Defendant for EACH state tort claim;
74. GRANTING Plaintiff a punitive damage award of Nine (9x's) of whatever the compensatory damage award is (after in-trial); As to Plaintiff's 42 USC § 1983 claims. see State Farm Mutual Automobile Ins. Co. v. Campbell, 538 U.S. 408, 425, 123 S.Ct. 1513 (2003).

MISCELLANEOUS

75. GRANTING Plaintiff treble relief as to an monetary amount awarded to Plaintiff in connection with his RICO Act Claims;
76. Plaintiff seeks recovery of all costs and fines associated with the prosecuting of this civil action;
77. Any additional relief Judge or jury deems just, equitable, or proper.

Respectfully submitted,

VERIFICATION

In accordance with 28 USC § 1746: "I declare under Penalties of perjury that the statements made herein are true and correct to the best of my knowledge and belief. Executed this 27th day of November, 2018."

5/ November 27th, 2018

31 Quintez Tallen

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