UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1989

SEAN SHALLOW,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA; OCTAPHARMA PLASMA, INC.,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Arenda L. Wright Allen, District Judge. (2:20-cv-00389-AWA-LRL)

Submitted: January 20, 2022 Decided: January 24, 2022

Before WILKINSON, DIAZ, and THACKER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Sean Shallow, Appellant Pro Se. Christopher Kendal Jones, SANDS ANDERSON, PC, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Sean Shallow appeals the district court's order dismissing his civil action and denying relief on his related motions. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Shallow v. United States*, No. 2:20-cv-00389-AWA-LRL (E.D. Va. Aug. 16, 2021). We deny Shallow's motion for summary judgment and we dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: January 24, 2022

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THE FOURTH CIRCUIT

No. 21-1989
(2:20-cv-00389-AWA-LRL)

SEAN SHALLOW

Plaintiff - Appellant

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Defendants - Appellees

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

SEAN SHALLOW,

Plaintiff,

v. ACTION NO. 2:20cv389

UNITED STATES, *et al.*,

Defendants.

DISMISSAL ORDER

This matter is before the Court on the following motions filed by *pro se* Plaintiff Sean Shallow ("Plaintiff"), Defendant United States ("USA"), and Defendant Octapharma Plasma, Inc. ("Octapharma") (collectively "Defendants"):

(i) Plaintiff's "Motion to Stop All Retaliation[,] Intimidation[,] Coercion[,] Discrimination & Harassment" ("Motion to Stop Wrongdoing"), ECF No. 7;

(ii) Plaintiff's "Emergency Supplemental Motion for the Return of Plaintiff['s] Personal Property" ("Motion for Return of Property"), ECF No. 14;

(iii) USA's Motion to Dismiss, ECF No. 25;

(iv) Octapharma's Motion to Dismiss, ECF No. 16;

(v) Plaintiff's Motion for Summary Judgment, ECF No. 24;

(vi) Plaintiff's "Motion for Pretrial Conference & Management" ("Motion for Pretrial Conference"), ECF No. 20;

(vii) Plaintiff's "Supplemental Motion for Pretrial & Management Conference" ("Supplemental Motion for Pretrial Conference"), ECF No. 23; and

(viii) Octapharma's Motion for Prefiling Injunction, ECF No. 11.

Oral argument regarding these matters is unnecessary because the facts and legal arguments are adequately presented in the parties' briefs. For the reasons set forth below, Plaintiff's Motion to Stop Wrongdoing, ECF No. 7, is **DENIED**; Plaintiff's Motion for Return of Property, ECF No. 14, is **DENIED**; USA's Motion to Dismiss, ECF No. 25, is **GRANTED**; Octapharma's Motion to Dismiss, ECF No. 16, is **GRANTED**; Plaintiff's Motion for Summary Judgment, ECF No. 24, is **DENIED**; Plaintiff's Motion for Pretrial Conference, ECF No. 20, is **DISMISSED as moot**; Plaintiff's Supplemental Motion for Pretrial Conference, ECF No. 23, is **DISMISSED as moot**; and Octapharma's Motion for Prefiling Injunction, ECF No. 11, is **DENIED**.

I. Relevant Procedural Background

A. Plaintiff's Initial Complaint

On July 27, 2020, Plaintiff, appearing *pro se*, submitted an application to proceed *in forma pauperis* ("IFP Application"), along with a proposed Complaint and a proposed "Emergency Motion for the Return of Plaintiff['s] Personal Property" ("Emergency Motion"). IFP Appl., ECF No. 1; Proposed Compl., ECF No. 1–1; Proposed Emergency Mot., ECF No. 1–2. In an Order to Show Cause dated August 21, 2020, the Court granted Plaintiff's IFP Application and directed the Clerk to file Plaintiff's Complaint and Emergency Motion. Order Show Cause at 1, ECF No. 2. Upon review of Plaintiff's Complaint, the Court determined that dismissal of this action was warranted under 28 U.S.C. § 1915(e)(2)(B)(i) and (ii). *Id.* at 4.

Plaintiff's Complaint appeared to allege that former United States Attorney General William Barr was involved in a conspiracy to alter the results of Plaintiff's HIV test and to frame Plaintiff for crimes that Plaintiff did not commit. Compl. at 1, ECF No. 3. Plaintiff further alleged that he was subjected to "conversion therapy" and given "excessive female hormones" in an attempt to alter his heterosexual preferences. *Id.* at 2. In the remainder of his Complaint, Plaintiff alleged, in part, that: (i) police targeted Plaintiff because of his heterosexuality; (ii) Defendants "left a dead rat in the pathway of the Plaintiff" on July 23, 2020; (iii) Plaintiff's toothpaste was poisoned; (iv) a bomb was implanted in Plaintiff's head in October 2013, after he was kidnapped in Trinidad based on orders from the Obama Administration and Robert Mueller; (v) Plaintiff was injected with coronavirus and other organisms while he was sleeping in his vehicle in May 2020; (vi) United States government workers deflated Plaintiff's bicycle tires on a daily basis; (vii) Plaintiff's co-worker stole Plaintiff's personal property; (viii) a floor manager at Plaintiff's work, who performed devil worship, voodoo, and "African Black Magic," produced "African tribal marks" on Plaintiff's hand and caused moles on Plaintiff's genitals; (ix) a number of male and female co-workers made sexual advances toward Plaintiff; (x) Plaintiff was falsely arrested for public intoxication by an officer with ties to Senator Chuck Schumer and United States Supreme Court Justice Clarence Thomas; (xi) a nurse implanted a device in Plaintiff's carotid artery; (xii) Defendants performed illegal surgeries on Plaintiff while he slept in his vehicle at night; (xiii) Plaintiff was sexually assaulted by unknown individuals while he slept at a shelter in New York; (xiv) Plaintiff was assaulted while serving in the United States Army in the 1990's; (xv) Plaintiff was

assaulted by a "DEA/World Agent" while attending junior high school in 1988; (xvi) explosives were planted in Plaintiff's vehicles approximately ten years ago; (xvii) Plaintiff was subjected to food poisoning at various international and domestic locations since 2009; (xviii) after Plaintiff ate at a Dunkin' Donuts restaurant in New Jersey, Plaintiff's lip became swollen and Plaintiff broke out with pimples; and (xix) Plaintiff was subjected to sexual harassment and retaliation while employed by Octapharma. *Id.* at 1–20. In its August 21, 2020 Order to Show Cause, the Court explained: When a plaintiff is granted authorization to proceed *in forma pauperis*, the Court is obligated, pursuant to 28 U.S.C. § 1915(e)(2), to screen the plaintiff's complaint to determine, among other things, whether the complaint is frivolous, and whether the complaint states a claim on which relief may be granted. *See* 28 U.S.C. § 1915(e)(2) (explaining that "the court shall dismiss the case at any time if the court determines that . . . the action . . . is frivolous . . . [or] fails to state a claim on which relief may be granted"). A claim is legally frivolous if it is based on an "indisputably meritless legal theory," or if a plaintiff would not be entitled to relief under any arguable construction of law or fact. *Neitzke v. Williams*, 490 U.S. 319, 327 (1989); *Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *Boyce v. Alizaduh*, 595 F.2d 948, 952 (4th Cir. 1979). A complaint is considered factually frivolous if it contains "clearly baseless" allegations, which means allegations that are "fanciful," "fantastic," or "delusional." *Neitzke*, 490 U.S. at 325, 327–28. In determining whether a complaint states a claim upon which relief may be granted, the Court must analyze whether the complaint sets forth "enough facts to state a claim to relief that is *plausible* on its

face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (emphasis added). Order Show Cause at 2. The Court determined that dismissal of Plaintiff's Complaint was warranted under 28 U.S.C. § 1915(e)(2)(B)(i) and (ii).[2] *Id.* at 4. However, in deference to Plaintiff's *pro se* status, the Court provided Plaintiff with an opportunity to file an Amended Complaint within thirty days. *Id.* B. Plaintiff's Amended Complaint Although the Court granted Plaintiff's request to proceed *in forma pauperis*, Plaintiff chose to voluntarily pay the filing fees on September 9, 2020. Filing Fee, ECF No. 5. On the same day, Plaintiff filed an unsigned Amended Complaint. Unsigned Am. Compl., ECF No. 4. Because Plaintiff paid the filing fees, the screening [2] The Court notes that Plaintiff filed a similar Complaint against the United States and Octapharma in the Alexandria Division of this Court on April 7, 2020 ("*Shallow I*"). Compl. at 1–13, *Shallow v. United States*, No. 1:20cv383 (E.D. Va. Apr. 7, 2020), ECF No. 1. In an Order dated June 29, 2020, the Court granted a Motion to Dismiss filed by Octapharma in *Shallow I*, and stated therein: The *pro se* Complaint is composed of numerous paragraphs of rambling, fragmented sentences. Throughout this lengthy discourse, however, Plaintiff fails to allege facts sufficient to support any decipherable cause of action that is within the Court's jurisdiction. The Court finds that Plaintiff has failed to meet the relaxed pleading standards required of *pro se* litigants and has not sufficiently alleged a case against Octopharma. Order at 1, *Shallow v. United States*, No. 1:20cv383 (E.D. Va. June 29, 2020), ECF No. 28. In an Order dated July 1, 2020, the Court granted a Motion to Dismiss filed by USA in *Shallow I*, and stated therein: "Plaintiff's *pro se* Complaint against [USA] fails to allege facts sufficient to support any decipherable cause of action that is within this Court's jurisdiction." Order at 1, *Shallow v. United States*, No. 1:20cv383 (E.D. Va. July 1, 2020), ECF No. 29. obligation imposed by 28 U.S.C. § 1915(e)(2) no longer applied to Plaintiff's action.

However, in an Order dated October 21, 2020, the Court advised Plaintiff that the Clerk could not issue summonses until Plaintiff filed a signed Amended Complaint. Order at 3, ECF No. 8 (explaining that Rule 11(a) of the Federal Rules of Civil Procedure requires that "[e]very pleading, written motion, and other paper . . . be signed . . . by a party personally if the party is unrepresented"). On November 6, 2020, Plaintiff filed a signed Amended Complaint. Am. Compl., ECF No. 15. Plaintiff's Amended Complaint appears to contain factual allegations that largely mirror the factual allegations of Plaintiff's initial Complaint, which the Court summarized above. *Id.* at 1–22. USA and Octapharma each filed a Motion to Dismiss and provided *pro se* Plaintiff with a proper *Roseboro* Notice pursuant to Rule 7(K) of the Local Civil Rules of the United States District Court for the Eastern District of Virginia. USA's Mot. Dismiss, ECF No. 25; USA's *Roseboro* Notice, ECF No. 27; Octapharma's Mot. Dismiss at 1–2, ECF No. 16; *see* E.D. Va. Loc. Civ. R. 7(K). Additionally, Plaintiff filed a Motion to Stop Wrongdoing, a Motion for Return of Property, a Motion for Summary Judgment, a Motion for Pretrial Conference, and a Supplemental Motion for Pretrial Conference. Mot. Stop Wrongdoing, ECF No. 7; Mot. Return Property, ECF No. 14; Mot. Summ. J., ECF No. 24; Mot. Pretrial Conference, ECF No. 20; Suppl. Mot. Pretrial Conference, ECF No. 23. Octapharma also filed a Motion for Prefiling Injunction. Mot. Prefiling Inj., ECF No. 11. All pending motions are ripe for adjudication. II. Plaintiff's Motion to Stop Wrongdoing and Motion for Return of Property Plaintiff filed a Motion to Stop Wrongdoing in which he claims in part that: his "[F]ire 7 tablet" was recently stolen, and "homosexual text[s] were sent via [Plaintiff's] social media;" Plaintiff confronted a "black male" about the theft, and the "black male" "got violent and tried to entrap the Plaintiff into a violent alt[er]cation;"

- a "big hole" was put in the "exhaust area" of Plaintiff's vehicle, "most likely done with control explosives;"
- "substance[s] were being put in [Plaintiff's] body" during work, which "cause[d] temporary pain[,] tiredness[,] and back spasms;"
- Defendants have been "selling or switching the Plaintiff['s] deodorant and giving him female hormones;" and
- "a young white girl working the register" at a Food Lion "grabb[ed] items out of the [P]laintiff['s] hands.

Mot. Stop Wrongdoing at 1–2, ECF No. 7. Plaintiff asks the Court to "order the [D]efendants . . . to stop all unlawful and [c]onstitution[al] violation[s] against the [P]laintiff." *Id.* at 2.

In his Motion for Return of Property, Plaintiff claims that the "state po[l]ice" and a "special agent" in New York were involved in "seizing" Plaintiff's "personal property." Mot. Return Property at 1, ECF No. 14. Plaintiff asks the Court to order the return of his property. *Id.*

Upon review, the Court finds that Plaintiff has not established an adequate legal or factual basis for the relief requested in his Motion to Stop Wrongdoing and Motion for Return of Property. The Court further finds that Plaintiff has not adequately shown that the misconduct alleged in Plaintiff's motions can be properly attributed to the named Defendants in this action. Accordingly, Plaintiff's Motion to Stop Wrongdoing, ECF No. 7, and Plaintiff's Motion for Return of Property, ECF No. 14, are **DENIED**.

III. Defendants' Motions to Dismiss

A. Standards of Review Under Federal Rules 12(b)(1) and 12(b)(6)

USA and Octapharma seek dismissal of this action pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil Procedure. Dismissal is warranted under Federal Rule 12(b)(1) for any claims over which the Court lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Plaintiff bears the burden of proving that subject matter jurisdiction exists by a preponderance of the evidence. *United States ex rel. Vuyyuru v. Jadhav*, 555 F.3d 337, 347–48 (4th Cir. 2009). A Rule 12(b)(1) motion to dismiss should be granted "only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law." *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999) (quoting *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991)).

A motion to dismiss under Federal Rule 12(b)(6) should be granted if a complaint fails to "allege facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A Rule 12(b)(6) motion "tests the sufficiency of a complaint and 'does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.'" *Johnson v. Portfolio Recovery Assocs., LLC*, 682 F. Supp. 2d 560, 567 (E.D. Va. 2009) (quoting *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992)). "Although the truth of the facts alleged is assumed, courts are not bound by the 'legal conclusions drawn from the facts' and 'need not accept as true unwarranted inferences, unreasonable conclusions, or arguments.'" *Id.* (quoting *E. Shore Mkts., Inc. v. J.D. Assocs. Ltd. P'ship*, 213 F.3d

175, 180 (4th Cir. 2000)). B. Analysis In their Motions to Dismiss, USA and Octapharma first argue that the Court should dismiss Plaintiff's Amended Complaint on jurisdictional grounds. Mem. Supp. USA's Mot. Dismiss at 4–10, ECF No. 26; Mem. Supp. Octapharma's Mot. Dismiss at 6, ECF No. 17. Specifically, USA argues that Plaintiff's Amended Complaint "contains the same rambling string of seemingly unrelated fanciful and delusional allegations that led the Court to conclude that the initial complaint was frivolous and subject to dismissal under 28 U.S.C. § 1915(e)(2)(B)(i) and (ii)." Mem. Supp. USA's Mot. Dismiss at 5. USA argues that "[c]ourts routinely dismiss complaints of this ilk for lack of subject matter jurisdiction." *Id.* at 6–7 (citing *Greene v. Obama*, No. RDB– 15–658, 2015 WL 13055577, at *1 (D. Md. Mar. 25, 2015); *Brunson v. United States*, No. 3:14–2540, 2014 WL 4402803, at *4–5 (D.S.C. Sept. 3, 2014); *Rosenzweig v. U.S. Dep't of Homeland Sec.*, No. ELH–12–2204, 2012 WL 3237880, at *1 (D. Md. Aug. 2, 2012); *Austin v. United States Gov't*, No. CCB–12–1065, 2012 WL 6879359, at *1 (D. Md. May 1, 2012)). Similarly, Octapharma argues that the allegations of Plaintiff's Amended Complaint "are not well-pleaded," and provide the Court with "virtually no facts on which to conclude that its exercise of jurisdiction is proper." Mem. Supp. Octapharma's Mot. Dismiss at 6. Additionally, USA argues that Plaintiff has not adequately established that USA has waived sovereign immunity for any claims that Plaintiff intends to assert against USA in this action. Mem. Supp. USA's Mot. Dismiss at 7–10; *see Workman v. United States*, 711 F. App'x 147, 148 (4th Cir. 2018) (explaining that a claim against the United States should be dismissed for lack of

subject matter jurisdiction if the plaintiff does not establish a waiver of sovereign immunity). Even if the Court could properly exercise jurisdiction over this action, USA and Octapharma argue that dismissal would nevertheless be warranted under Federal Rule 12(b)(6). Mem. Supp. USA's Mot. Dismiss at 10–11; Mem. Supp. Octapharma's Mot. Dismiss at 5–6, 7–13. USA argues that Plaintiff's Amended Complaint "'leaves the reader to speculate as to the facts that subject the [defendant] to liability,' and 'fails to identify any clear legal claim or any facts sufficient' to permit the inference that 'he has pled a claim upon which relief may be granted.'" Mem. Supp. USA's Mot. Dismiss at 11 (citation omitted). Similarly, Octapharma argues that Plaintiff's Amended Complaint "does not provide Octapharma fair notice of any claim against it," and "fails to meet even the relaxed pleading standards required for *pro se* litigants." Mem. Supp. Octapharma's Mot. Dismiss at 6. The Court finds that Plaintiff's Amended Complaint fails to allege sufficient facts to support any decipherable cause of action against USA or Octapharma that is within the Court's jurisdiction. The Court finds that this action must be dismissed in its entirety pursuant to Federal Rule 12(b)(1). Dismissal is warranted alternatively under Federal Rule 12(b)(6). Accordingly, USA's Motion to Dismiss, ECF No. 25, is **GRANTED**, and Octapharma's Motion to Dismiss, ECF No. 16, is **GRANTED**. IV. Plaintiff's Motion for Summary Judgment Plaintiff filed a Motion for Summary Judgment in which he claims that there is "no genuine dispute as [to] the material facts." Mot. Summ. J. at 1, ECF No. 24. Plaintiff asks the Court to grant summary judgment against Defendants "on all counts." *Id.* In their Oppositions, USA and

Octapharma argue that Plaintiff's Motion for Summary Judgment must be denied because (i) "the Court lacks subject matter jurisdiction over [Plaintiff's] Amended Complaint;" and that (ii) even if the Court could exercise jurisdiction over Plaintiff's Amended Complaint, "Plaintiff has failed to state any cognizable claim" for relief. USA's Opp'n at 1, ECF No. 28; Octapharma's Opp'n at 1, ECF No. 29. Summary judgment is appropriate only when the Court determines that there exists no genuine dispute "as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see* Fed. R. Civ. P. 56(a); *Seabulk Offshore, Ltd. v. Am. Home Assur. Co.*, 377 F.3d 408, 418 (4th Cir. 2004). Plaintiff has not established that summary judgment is warranted in his favor. To the contrary, the Court has determined, as summarized in detail above, that this action must be dismissed in its entirety pursuant to Federal Rule 12(b)(1), or alternatively, Federal Rule 12(b)(6). Plaintiff's Motion for Summary Judgment, ECF No. 24, is **DENIED**. V. Plaintiff's Motions for Pretrial Conference In his Motion for Pretrial Conference and Supplemental Motion for Pretrial Conference, Plaintiff asks the Court to schedule this case for a pretrial conference and to facilitate the exchange of certain discovery-related documents. Mot. Pretrial Conference at 1, ECF No. 20; Suppl. Mot. Pretrial Conference at 1, ECF No. 23. Because USA's Motion to Dismiss and Octapharma's Motion to Dismiss must be granted in their entirety, Plaintiff's requests for a pretrial conference and discoveryrelated documents are rendered moot. Plaintiff's Motion for Pretrial Conference, ECF No. 20 and Plaintiff's Supplemental Motion for Pretrial Conference, ECF No. 23 are **DISMISSED as moot**. VI.

Octapharma's Motion for Prefiling Injunction Octapharma filed a Motion for Prefiling Injunction seeking an Order that would require Plaintiff to "first obtain leave from this Court before filing any new actions in the United States District Court for the Eastern District of Virginia." Mem. Supp. Mot. Prefiling Inj. at 6, ECF No. 12; *see* Mot. Prefiling Inj., ECF No. 11. To support its request, Octapharma summarizes five other cases from the past four years that were either (i) filed by Plaintiff in this Court; or (ii) filed by Plaintiff in state court and subsequently removed to this Court. Mem. Supp. Mot. Prefiling Inj. at 2– 4. Octapharma states that all five cases were ultimately dismissed. *Id.* Octapharma argues that Plaintiff's litigation has been "vexatious and duplicative," filed in bad faith, and has created a "large and unnecessary burden" on the Court and the named Defendants. *Id.* at 4–5. Octapharma argues that "an injunction is the only appropriate remedy" to curb Plaintiff's inappropriate filings. *Id.* at 5–6. The issuance of a prefiling injunction is a drastic remedy that must be used sparingly; however, such measures may be appropriate in the face of "exigent circumstances, such as a litigant's continuous abuse of the judicial process by filing meritless and repetitive actions." *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 818 (4th Cir. 2004) (citation omitted). With respect to *pro se* plaintiffs, the United States Court of Appeals for the Fourth Circuit has explained that the decision to impose a prefiling injunction "should be approached with particular caution," and should "remain very much the exception to the general rule of free access to the courts." *Id.* (citation omitted). The Court finds that the imposition of a prefiling injunction against Plaintiff is not warranted at this time.

Octapharma's Motion for Prefiling Injunction, ECF No. 11, is **DENIED**. Plaintiff is ADVISED strongly that continued filing of meritless litigation in this Court may lead to the imposition of a prefiling injunction against Plaintiff in the future. VII. Conclusion For the reasons set forth above, Plaintiff's Motion to Stop Wrongdoing, ECF No. 7, is **DENIED**; Plaintiff's Motion for Return of Property, ECF No. 14, is **DENIED**; USA's Motion to Dismiss, ECF No. 25, is **GRANTED**; Octapharma's Motion to Dismiss, ECF No. 16, is **GRANTED**; Plaintiff's Motion for Summary Judgment, ECF No. 24, is **DENIED**; Plaintiff's Motion for Pretrial Conference, ECF No. 20, is **DISMISSED as moot**; Plaintiff's Supplemental Motion for Pretrial Conference, ECF No. 23, is **DISMISSED as moot**; and Octapharma's Motion for a Prefiling Injunction, ECF No. 11, is **DENIED**. Plaintiff may appeal this Dismissal Order by forwarding a written notice of appeal to the Clerk of the United States District Court, Norfolk Division, 600 Granby Street, Norfolk, Virginia 23510. The written notice must be received by the Clerk within sixty days from the date of entry of this Dismissal Order. If Plaintiff wishes to proceed *in forma pauperis* on appeal, the application to proceed *in forma pauperis* shall be submitted to the Clerk of the United States District Court, Norfolk Division, 600 Granby Street, Norfolk, Virginia 23510. The Clerk is **DIRECTED** to please send a copy of this Dismissal Order to Plaintiff Sean Shallow and all counsel of record. IT IS SO **ORDERED**.

/s/ Arenda L. Wright Allen

FILED: April 26, 2022

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SEAN SHALLOW

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O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

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Submitted: January 20, 2022 Decided: January 24, 2022

Before WILKINSON, DIAZ, and THACKER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Sean Shallow, Appellant Pro Se. Christopher Kendal Jones, SANDS ANDERSON, PC, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.