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APPENDIX A

MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA (MARCH 23, 2022)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

ROGER SWARTZ, ET AL.
Plaintiffs

v.

THE BOARD OF TRUSTEES AT THE
UNIVERSITY OF PENNSYLVANIA, ET AL.
Defendants

[COMPLAINT FILED: SEPTEMBER 30, 2021]

D.C. NO. 2:21-CV-04330-ER

Before: Eduardo Robreno Senior United States
District Court Judge

MEMORANDUM

Before the Court are three motions to dismiss the complaint filed by pro se Plaintiff, Roger Swartz, which he filed on his own behalf and on behalf of his children. The motions to dismiss were filed by the three groups of Defendants: (1) "the Penn Defendants," consisting of the Board of Trustees at the University of Pennsylvania, Amy Gutmann, and Scott Diamond; (2) "the RBC Defendants," consisting of Reaction Biology Corporation, Haiching Ma, Kurumi Horiucki, Robert Hartman, and Conrad Howitz; and (3) "the Princeton Defendants," consisting of the Trustees of Princeton University, David MacMillan, Abigail Doyle, and Diane Carrera.

Swartz's September 30, 2021 complaint and November 30, 2021 sealed additional count[1] span 82 pages and 25 claims,[2] and allege a broad if unclear conspiracy between the Defendants to ruin Swartz's and his family's lives. The actual legal theories raised by Swartz are largely indiscernible or legally incognizable. This alone warrants dismissal under Federal Rule of Civil Procedure 8 for failure to provide a "short plain statement" which fits the allegations to the elements of recognized causes of action. Fed. R. Civ. P. 8(a)(2). However, Swartz's complaint must

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[1] The parties dispute whether the sealed additional count was properly served. However, as discussed below, because Swartz brought the additional count on behalf of his child, he cannot maintain it.

[2] Swartz lists twenty-seven counts, however, the complaint lacks counts twelve and twenty-six.

also be dismissed for a several of other reasons, most importantly because his claims are time-barred.

I. FACTUAL AND PROCEDURAL HISTORY[3]

In July 2008, Swartz enrolled as a graduate student at Princeton University and was assigned to Defendant David MacMillan as a lab assistant. Swartz and MacMillan had various disagreements and, in November 2008, MacMillan asked Swartz to leave the lab and find a new advisor. While moving his belongings from the lab, Defendant Mark Scott, another student, told Swartz that there would be trouble if Swartz did not beg MacMillan to take him back. Swartz viewed this as a threat.

Rather than beg MacMillan, Swartz agreed to work in the lab of Defendant Abigail Doyle, who was also a professor at Princeton. Defendant Diana Carrera, a student working with MacMillan, had lunch with Doyle one afternoon and, according to Swartz, turned her against Swartz pursuant to MacMillan's directions. Swartz contends that Doyle then sought to undermine him and his work in Doyle's lab.

Swartz further contends that Doyle told him that she would only recommend him for jobs at labs. Swartz perceived this to mean that: (1) "Abigail Doyle essentially was stating to Roger Swartz that she

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[3] The facts in the complaint are taken as true and viewed in the light most favorable to Swartz. DeBenedictis v. Merrill Lynch & Co., 492 F.3d 209, 215 (3d Cir. 2007).

would make misrepresentations or fraud . . . by controlling how Roger Swartz would be portrayed;" (2) "Abigail Doyle essentially told Roger Swartz that he could try to apply and interview for other employment opportunities, but they would not result in an actual job;" and (3) "Abigail Doyle essentially stated to Roger Swartz that she would only present him in a light to get specific [job] types clearly implying that she would portray him in a different light to prevent him from obtaining another type of job." Compl. ¶ 52, ECF No. 1. Swartz contends that Doyle last reiterated this position to him on March 26, 2019.

In 2010, after a disagreement regarding Swartz's thesis, Doyle told him that she could no longer be his advisor. Swartz further claims that Doyle and other unspecified individuals at Princeton spread false information about Swartz that hindered him from finding employment.

Swartz enrolled at Drexel University in the fall of 2010, but claims "the situation at Princeton found its way into the graduate program at Drexel University. This ultimately caused Roger Swartz to have to leave the University. . . ." Compl. ¶ 33, ECF No. 1. Drexel is not a Defendant in the case. Thereafter, Swartz began a test prep and tutoring business. Swartz claims that his clients often acted suspiciously and suggests they were planted by the Princeton Defendants or the University of Pennsylvania ("Penn") to injure Swartz.

Swartz was not a student at Penn nor did he work there. However, he claims that Doyle's mother, Defendant Amy Gutmann, who was the president of Penn, acted to further Doyle's grudge and to injure Swartz and his family. Swartz also contends that individuals at Penn hacked his computer and phone to obtain unspecified personal information. Swartz further alleges that the Penn Defendants blocked his employment opportunities in unspecified ways.

In 2011, Swartz's ex-wife, E.S., was hired by Reaction Biology Company ("RBC"). Swartz claims that RBC hired her in order to injure Swartz and his family. Specifically, Swartz alleges that Defendant Scott Diamond, a faculty member at Penn and co-founder of RBC, directed Defendant Haiching Ma to hire E.S. to work at RBC on a "bogus" project at Gutmann's behest. At RBC, Swartz alleges that E.S. was verbally abused by Defendant Kurumi Horiuchi and sexually harassed by Defendant Robert Hartman. Swartz styles these allegations as "employment rape." Swartz further claims that Defendant Conrad Howitz also engaged in unspecified "employment rape" activities against E.S. while working at RBC. E.S.'s employment at RBC ended in 2012.

Swartz contends that all of these events occurred prior to the end of 2013 with the exception that Doyle last told Swartz on March 26, 2019 that she would only provide him recommendations for lab-based jobs.

Swartz filed his complaint on his own behalf and on behalf of his children on September 30, 2021. E.S., Swartz's ex-wife, is not a party. Thereafter, the Defendants filed their three motions to dismiss.

II. LEGAL STANDARD

A party may move to dismiss a complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). When considering such a motion, the Court must "accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the non-moving party." DeBenedictis, 492 F.3d at 215 (internal quotation marks omitted).

To withstand a motion to dismiss, the complaint's "[f]actual allegations must be enough to raise a right to relief above the speculative level." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). The pleadings must contain sufficient factual allegations so as to state a facially plausible claim for relief. See, e.g., Gelman v. State Farm Mut. Auto. Ins. Co., 583 F.3d 187, 190 (3d Cir. 2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (quoting Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009)).

III. DISCUSSION

A. Preliminary Matters

The Court concludes that Swartz's claims are time-barred. But, before discussing that conclusion, the Court must address two other matters that are detrimental to the complaint.

First, as a pro se plaintiff, Swartz may not bring claims on behalf of his children.

> The right to counsel belongs to the children, and, under the cases from the Second and Tenth Circuits . . . the parent cannot waive this right.
>
> In accord with [these decisions], we hold that Osei–Afriyie was not entitled, as a non-lawyer, to represent his children in place of an attorney in federal court.

Osei-Afriyie by Osei-Afriyie v. Med. Coll. of Pa., 937 F.2d 876, 883 (3d Cir. 1991). Thus, the claims Swartz purports to raise on behalf of his children must be dismissed.

Second, Swartz's overarching claim seems to be that the Defendants' actions violated his Thirteenth and Fourteenth Amendment rights. However, Swartz has failed to adequately allege that any of these Defendants are state actors, which is required to

maintain constitutional claims under 42 U.S.C. § 1983. Rendell-Baker v. Kohn, 457 U.S. 830, 835 (1982) ("A claim may be brought under § 1983 only if the defendant acted 'under color' of state law").

Swartz merely alleges that the Princeton and Penn Defendants receive funds from the government which allows them "unbridled liberty" to "to wield power they would not otherwise have." See Resp. to Princeton Def.s' Mot. at 42-43, ECF No. 68-1. The Court concludes that such allegations are insufficient to pursue a claim under Section 1983 for a constitutional violation. The Supreme Court has repeatedly held that extensive regulation or even total public funding do not necessarily make otherwise private actors into public actors. See Blum v. Yaretsky, 457 U.S. 991, 1004-05 (1982); Rendell-Baker, 457 U.S. at 840-43; Jackson v. Metro. Edison Co., 419 U.S. 345, 358–59 (1974). Thus, Swartz's constitutional claims must be dismissed.

B. Statutes of Limitations

Swartz filed his complaint on September 30, 2021. It is difficult to divine the legal theories under which Swartz is attempting to proceed. However, under any reasonably imaginable theory, Swartz's claims are time-barred because he alleges that the underlying acts occurred before the end of 2013. The only allegation after this time period is that Doyle reiterated to Swartz on March 26, 2019 that she would only provide him recommendations for lab-based jobs.

To the extent Swartz is alleging claims of fraud or negligent misrepresentation, computer hacking, defamation, intention infliction of emotional distress, or another personal injury tort, all of the alleged conduct, except the 2019 statement, fall outside of any possible statute of limitations.[4]

Moreover, and as discussed more fully below, Doyle's 2019 reiteration of her position that she would only recommend Swartz for employment in labs does not affect the timeliness of that claim since Swartz first learned of this alleged harm in 2010, when Doyle first informed him of her position.

In his complaint, Swartz asserts that "[t]his case is within the statute of limitations since Roger Swartz has only recently within the last 6 months

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[4] Penn and RBC are located in Pennsylvania while Princeton is located in New Jersey. Under either state's laws, Swartz's claims are time-barred. Pennsylvania and New Jersey have a two-year statute of limitations for personal injury claims, including intentional infliction of emotional distress. 42 Pa. Cons. Stat. Ann. § 5524(7); N.J. Stat. Ann. § 2A:14–2. Defamation has a one-year statute of limitation in both states. 42 Pa. Cons. Stat. Ann. § 5523; N.J. Stat. Ann. § 2A:14-3. The Computer Fraud and Abuse Act has a two-year statute of limitations. 18 U.S.C. § 1030(g). Finally, Pennsylvania has a two-year statute of limitations for fraud while New Jersey's limit is six years. 42 Pa. Cons. Stat. Ann. § 5524(7); N.J. Stat. Ann. § 2A:14–1. Assuming New Jersey law applies to Swartz's claim regarding Doyle's 2019 statement, which Swartz has clarified is a species of fraud claim, it is the only allegation that is not facially time-barred.

Moreover, while the Court has already explained why Swartz's constitutional claims fail, the Court notes that it.

become familiar with the law (see sealed document for a more extensive explanation) as it pertains to this suit."[5] Compl. ¶ 23, ECF No. 1. Ignorance of the law, however, does not toll the statute of limitations. Ross v. Varano, 712 F.3d 784, 799–800 (3d Cir. 2013) ("The fact that a petitioner is proceeding pro se does not insulate him from the 'reasonable diligence' inquiry and his lack of legal knowledge or legal training does not alone justify equitable tolling.").

In his response briefs, Swartz also erroneously argues that Section 1983 claims, and their underlying tort claims, have no statute of limitations. This theory is simply incorrect. Randall, 919 F.3d at 198 ("Section 1983 has no statute of limitations of its own . . . . Rather, it borrows the underlying state's statute of limitations for personal-injury torts.")

Finally, Swartz argues generally that the discovery rule, continuing violations doctrine, or equitable tolling should apply to his claims, but fails to argue these theories with any specificity. Nonetheless, the Court will briefly address the three doctrines.

"[U]nder the discovery rule the statute of limitations begins to run 'when the plaintiff discovers,

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would have applied the applicable statute of limitations for personal injury torts to the constitutional claims since Section 1983 does not provide its own statute of limitations. Randall v. City of Phila. Law Dep't, 919 F.3d 196, 198 (3d Cir. 2019).

[5] The Court notes that Swartz's sealed additional count does not expand on this theory.

or with due diligence should have discovered, the injury that forms the basis for the claim.'" Stephens v. Clash, 796 F.3d 281, 288 (3d Cir. 2015) (quoting William A. Graham Co. v. Haughey, 568 F.3d 425, 433 (3d Cir. 2009)). Swartz unconvincingly argues that he could not have been aware of his injuries prior to filing the suit because "[i]n some sense there was a loss of full consciousness by plaintiff Roger Swartz and by E.S. because full consciousness is something that is enabled through having ones [sic] 42 U.S.C. § 1983 rights fully accessible." Resp. to Penn Def.s' Mot. at 14, ECF No. 13.

Despite this claim, the Court concludes that based on the allegations in his complaint, Swartz knew or should have known of the alleged injuries before the end of 2013. " A plaintiff's ignorance regarding the full extent of his injury is irrelevant to the discovery rule's application, so long as the plaintiff discovers or should have discovered that he was injured." Stephens, 796 F.3d at 288. This maxim also explains why Doyle's 2019 reiteration does not save Swartz's claim: Swartz knew of Doyle's position, and, thus, the alleged injury, since 2010.

"To establish that a continuing violation theory should apply to their case, the Plaintiffs must show (1) that at least one act occurred within the statutory period, and (2) that prior conduct was not isolated or sporadic, but was part of a continuing, ongoing pattern." King v. Twp. of E. Lampeter, 17 F. Supp. 2d 394, 416 (E.D. Pa. 1998), aff'd, 182 F.3d 903 (3d Cir. 1999) (citing West v. Phila. Elec. Co., 45 F.3d 744, 754–755 (3rd Cir. 1995)). "However, if the prior events

should have alerted a reasonable person to act at that time, the continuing violation theory will not overcome the relevant statute of limitations." Id. (citing Hicks v. Big Brothers/Big Sisters of America, 944 F. Supp. 405, 408 (E.D. Pa. 1996)). Here, the only alleged act arguably inside a relevant statutory period is Doyle's 2019 statement. As discussed, the statement is a reiteration of a position Doyle gave Swartz in 2010. Doyle's prior statements on this issue, to the extent actionable, should have "alerted a reasonable person to act." Id.

"Equitable tolling of a statute of limitations may apply where a complaint succeeds a filing deadline through either the complainant's benign mistake or an adversary's misconduct." United States v. Midgley, 142 F.3d 174, 178–79 (3d Cir. 1998) (citing Irwin v. Dept. of Veterans Affairs, 498 U.S. 89, 96 (1990)). "[E]quitable tolling may be appropriate if (1) the defendant has actively misled the plaintiff, (2) if the plaintiff has 'in some extraordinary way' been prevented from asserting his rights, or (3) if the plaintiff has timely asserted his rights mistakenly in the wrong forum." *Id.* at 179 (quoting Kocian v. Getty Refining & Marketing Co., 707 F.2d 748, 753 (3d Cir. 1983)).

Swartz argues that his prior ignorance of the law and the fact that the alleged Fourteenth Amendment violations robbed him of his "will to act," similar to "a person that has been knocked unconscious and placed in a coma without any legal representation. . . . That is[,] Plaintiff's perception of these rights were in a state of coma—even though

other aspects of their consciousness were active—due to their rights being curtailed by [the] Defendants." Resp. to Penn Def.s' Mot. at 13-14, ECF No. 13. Again, ignorance of the law will not act to trigger equitable tolling. See Ross, 712 F.3d at 799–800. Moreover, the Court finds no merit in Swartz's theory that Fourteenth Amendment injuries create an extraordinary situation where individuals are stripped of their volition to seek redress. Instead, the Court finds that Swartz has not diligently pursued his rights, allowing any applicable statutes of limitation to run out on his claims.

C. Fraud Claim based on Doyle's 2019 Statement

As stated, Swartz has failed to adequately plead any of his claims. However, the Court finds it unnecessary to delve into the merits of most of Swartz's claims given that they are time-barred. Nonetheless, since Doyle's 2019 statement is facially within the six-year New Jersey statute of limitations for fraud (but still not actionable as discussed above), and out of an abundance of caution, the Court will briefly discuss the merits of this claim, which is found in Count II of the complaint. Count II is entitled:

> After no longer being an employee or paid graduate Student of Princeton University Abigail G. Doyle undermined the employment rights of Roger B. Swartz by verbally stating to him that she would confine him to particular jobs opportunities restricting

> recommendations that were limited to working in a lab thereby undermining the legal rights of Roger Swartz and also verbally stating that she would fradulently [sic] misrepresent Roger Swartz and subject him to a form of involuntary servitude violating his 13th amendment rights.

Compl. at p. 41, ECF No. 1.

Swartz alleges in Count II that "[w]hen Roger Swartz requested Abigail Doyle write him a letter of recommendation for employment opportunities Abigail Doyle verbally told Roger Swartz she would only support him to work in a lab restricting him from other opportunities." Id. ¶ 51. Swartz perceived this to mean that: (1) "Abigail Doyle essentially was stating to Roger Swartz that she would make misrepresentations or fraud . . . by controlling how Roger Swartz would be portrayed;" (2) "Abigail Doyle essentially told Roger Swartz that he could try to apply and interview for other employment opportunities, but they would not result in an actual job;" and (3) "Abigail Doyle essentially stated to Roger Swartz that she would only present him in a light to get specific [job] types clearly implying that she would portray him in a different light to prevent him from obtaining another type of job."[6] Id. ¶ 52. Swartz alleges that Doyle last reiterated this stance

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[6] That Swartz uses the word "essentially" in connection with these three statements indicates to the Court that Doyle did not actually make these utterances.

on March 26, 2019. Id. In his response briefs, Swartz has clarified that this is a fraud claim.[7]

The parties agree that under New Jersey law, common-law fraud requires: "(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages." Gennari v. Weichert Co. Realtors, 691 A.2d 350, 367 (N.J. 1997). Moreover, Federal Rule of Civil Procedure 9(b) requires that, "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). Rule 9(b) requires a plaintiff to plead the "who, what, when, where and how" underlying the allegedly fraudulent conduct. In re Rockefeller Ctr. Properties, Inc. Sec. Litig., 311 F.3d 198, 217 (3d Cir. 2002) (quoting In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1422 (3d Cir. 1997)).

Swartz unsuccessfully attempts to shoehorn his allegations into these factors by arguing that Doyle's statement that she would only recommend him for lab-based jobs is a material

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[7] See Resp. to Princeton Def.s' Mot. at 18, ECF No. 68-1 ("Princeton University defendants' motion can leave one with the impression that the fraud claim is limited to 'Doyle informed him she would only recommend him for lab work — the basis for his fraud claim' (Dkt. No. 51-1 pp. 6 ¶¶ 2). But that does not capture the other element of this specific instance of fraud . . . ." Case 2:21-cv-04330-ER Document 70 Filed 03/23/22 Page 14 of 16

misrepresentation. It is not. Swartz has not alleged that Doyle knew he was qualified for non-lab positions, that Doyle ever told a specific prospective employer that Swartz was not qualified for non-lab positions, or that the prospective employer relied on this misrepresentation and did not give Swartz a job because of the misrepresentation. Without such allegations, Swartz's fraud claim is futile. To the extent that Doyle's opinion was that Swartz was best suited for positions in a lab, a legitimate opinion cannot be fraud. See, e.g., Alexander v. CIGNA Corp., 991 F. Supp. 427, 435 (D.N.J.), aff'd, 172 F.3d 859 (3d Cir. 1998) (providing that "[s]tatements as to future or contingent events, to expectations or probabilities, or as to what will or will not be done in the future, do not constitute misrepresentations, even though they may turn out to be wrong" and "statements that can be categorized as 'puffery' or 'vague and ill-defined opinions' are not assurances of fact and thus do not constitute misrepresentations.").

IV. CONCLUSION

Swartz's claims against all the Defendants are time-barred and, thus, any amendment to his claims would be futile. Therefore, the Court will grant the Defendants' motions and dismiss Swartz's complaint with prejudice.

An appropriate order follows.

APPENDIX B
NON PRECEDENTIAL
PUR CURIAM OPINION OF THE
UNITED STATES COURTS OF APPEALS
FOR THE THIRD CIRCUIT
(OPINION FILED DECEMBER 15, 2022)

No. 22-1568
ROGER SWARTZ, ET AL.
Plaintiffs-Appellants
v.

THE BOARD OF TRUSTEES AT THE
UNIVERSITY OF PENNSYLVANIA, ET AL.
Defendants-Respondents

[PRINCIPAL BRIED FILED: MAY 9, 2022]

Appeal from the United States District Court
for the Eastern District of Pennsylvania
USDC No. 2:21-CV-04330-ER

Submitted Pursuant to Third Circuit LAR 34.1(a)
November 4, 2022

Before: Circuit Judges GREENAWAY, JR.,
PORTER, And NYGAARD

OPINION*

PER CURIAM

Roger Swartz appeals from an order of the District Court dismissing his complaint with prejudice. For the reasons that follow, we will affirm.

In September 2021, Swartz filed a complaint seeking $260,000,000 in damages on behalf of himself and his minor children, A.S. and E.A.S., against numerous parties, grouped and identified by the District Court as "The Penn Defendants," "The Princeton Defendants," and "the Reaction Biology Corporation ("RBC") Defendants." As the procedural history and facts of the claims are familiar to the parties, we need not recite them here. In sum, Swartz's suit alleges a litany of problems stemming from his time as a graduate student at Princeton University, where he worked in the lab of Princeton defendant Abigail Doyle, then a Professor of Chemistry. In 2011, Doyle asked Swartz to leave the lab and advised him that she would confine her letters of recommendations for Swartz to laboratory based jobs. The complaint alleges that Doyle and the other Defendants, acting alone or in concert, undermined his ability to obtain a Ph.D., sabotaged his subsequent tutoring business, and/or undermined his well-being and "employment rights," including his ability to find a job, maintain an income, and support his family. Swartz

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

maintained that Defendants also acted to undermine the well-being of his wife, E.S., particularly while she was employed at RBC, and their two minor children.[1] As a basis for his action, Swartz listed numerous federal statutes, including 42 U.S.C. § 1983, as well as the Thirteenth and Fourteenth Amendments to the U.S. Constitution. He also claimed that the Defendants violated several state laws.

The Defendants filed motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), arguing, inter alia, that the claims were time-barred. The District Court granted the motions, first determining that the claims brought on behalf of A.S. and E.A.S. were subject to dismissal because Swartz could not represent his minor children. Next, it concluded that Swartz failed to adequately allege that any of the defendants were state actors and that, therefore, the constitutional claims brought pursuant to § 1983 also must be dismissed. Finally, the District Court determined that all of Swartz's remaining claims were barred by the applicable statutes of limitations. This appeal ensued.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We exercise plenary review over the District Court's dismissal of the complaint for failure to state a claim, see AT&T Corp. v. JMC Telecom, LLC, 470 F.3d 525, 530 (3d Cir. 2006), including the ruling that the complaint was filed beyond the statute of limitations, see Kach v. Hose, 589 F.3d 626, 633 (3d Cir. 2009). Dismissal for failure to state a claim is proper if a party fails to allege sufficient factual

[1] Swartz filed an additional cause of action under seal on behalf of his minor child A.S. See ECF Nos. 11.

matter, which if accepted as true, could "state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

First, it is well established in this Circuit that Swartz, a non-attorney proceeding pro se, could not bring claims on behalf of his minor children. Osei Afriyie by Osei-Afriyie v. Med. Coll. of Pa., 937 F.2d 876, 882-83 (3d Cir. 1991) (holding that a non attorney parent must be represented by counsel to bring an action on behalf of his minor child). Accordingly, the District Court properly dismissed those claims.[2]

Next, we agree with the District Court that Swartz's § 1983 claims fail because he does not adequately allege that any of the defendants were state actors when they allegedly deprived him of his constitutional rights. Leshko v. Servis, 423 F.3d 337, 339 (3d Cir. 2005) (recognizing that "to state a claim of liability under § 1983, [the plaintiff] must allege that [he] was deprived of a federal constitutional or statutory right by a state actor"). The complaint contains no facts supporting a reasonable inference that any of the defendants were state actors. Swartz argues that the Princeton and Penn Defendants are state actors because "the financial source of the

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[2] For the same reason, Swartz was advised by Clerk Order that he could not prosecute an appeal on behalf of his children and that, therefore, the appeal would proceed in this Court only as to him. See April 1, 2022 Clerk Order. Swartz's Motion to Review that Order is denied. Contrary to his argument, this case does not implicate the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et. seq. ("IDEA"), or any claim which he might be authorized to litigate on his children's behalf.

conduct" was "extensive funding" from the State[3] "without a check and balance in place," and the RBC defendants are state actors because they aided and abetted the Penn defendants. See Appellant's Br. at 46-48 (citing 18 U.S.C. § 2).[4] But a private actor does not become a state actor for purposes of § 1983 merely because the state provides funding. See Rendell–Baker v. Kohn, 457 U.S. 830, 840 (1982) (recognizing that receipt of government funds is insufficient to convert a private university into a state actor, even where "virtually all of the school's income [i]s derived from government funding"); Krynicky v. Univ. of Pittsburgh, 742 F.2d 94, 102 (3d Cir. 1984) (noting that "state contributions to otherwise private entities, no matter how great those contributions may be, will not of themselves transform a private actor into a state actor"); Heineke, 965 F.3d at 1013. Thus, because his § 1983 claims fail to state a claim for relief, they were appropriately dismissed.

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[3] To the extent that Swartz alleged in his complaint that the government funding came from the federal government, he cannot show state action. See Heineke v. Santa Clara University, 965 F.3d 1009, 1013 n.3 (9th Cir. 2020).

[4] Although Swartz cited Title 18 to support a number of his claims, federal criminal statutes generally do not provide a private cause of action. See Cent. Bank of Denver v. First Interstate Bank of Denver, 511 U.S. 164, 190 (1994) (refusing to infer a private right of action from a "bare criminal statute"); Andrews v. Heaton, 483 F.3d 1070, 1076 (10th Cir. 2007); see also Diamond v. Charles, 476 U.S. 54, 64-65 (1986) (noting that private citizens cannot compel enforcement of criminal law). To the extent Swartz argued otherwise in the District Court, the complaint did not allege a civil RICO action, see 18 U.S.C. § 1961 et seq.

Even assuming that there is an independent basis for subject matter jurisdiction over the remaining claims, Swartz does not contest the District Court's conclusion that those claims are time-barred under any plausible legal theory. See ECF No. 70 at 8-10; see also Robinson v. Johnson, 313 F.3d 128, 135 (3d Cir. 2002) (recognizing that a limitations defense may be raised by a motion under Rule 12(b)(6) "if the time alleged in the statement of a claim shows that the cause of action has not been brought within the statute of limitations"). He argues, however, that the District Court erred in determining that the claims were not subject to equitable tolling.[5] Dubose v. Quinlan, 173 A.3d 634, 644 (Pa. 2017) (recognizing that a statute of limitations is tolled "when a litigant has pursued his rights diligently but some extraordinary circumstance prevents him from bringing a timely action") (citation omitted); see also Bustamante v Borough of Paramus, 994 A.2d 573, 588 (N.J. Super. Ct. 2010) (explaining that equitable tolling applies if the plaintiff has been "induced or tricked by his adversary's misconduct into allowing the filing deadline to pass"). Like the District Court, we are unconvinced that any of the reasons Swartz proposes as a basis for equitable tolling undermines the

[5] Because the remaining claims are based on state law, we look to principles governing the statutes of limitations in New Jersey and Pennsylvania, where the events giving rise to the claims occurred. See generally Bd. of Regents v. Tomanio, 446 U.S. 478, 485-86 (1980) (recognizing that a federal court applying a state's limitations period must also apply the "interrelated" rules of the state's tolling provisions).

conclusion that his complaint is time-barred on its face.

As the District Court explained, Swartz's claim that he had "only recently" become familiar with both the law and his rights is not a basis for tolling the statute of limitations. See Pastierik v. Duquesne Light Co., 526 A.2d 323, 327 (Pa. 1987) (recognizing that ignorance of the law is not a basis for tolling the statute of limitations); Freeman v. State, 788 A.2d 867, 874 (N.J. Super. Ct. 2002) (same). Swartz argues that the District Court ignored the defendants' "misconduct" and the extraordinary events which prevented him from timely filing his claims. Not so. Rather than point to any specific instance of misconduct or an extraordinary circumstance that might warrant equitable relief, Swartz repeated general claims of ignorance about his rights, or of an inability to act on his rights, based solely on the alleged underlying violation of his constitutional rights. See, e.g., ECF No. 13 at 13-14, 56 at 33-34 (describing the "suppressed state that results from having one's 14th Amendment Right[s] violated," "loss of full consciousness, " and that "the will to act has been taken" and the "perception of [his] rights were in a state of coma"). Nor did he persuasively argue that the accrual date of the claims should be delayed because he could not have foreseen the extent of the injury or the damages wrought by the defendants' actions. See, e.g., ECF No. 56 at 24-25; see Dubose, 173 A.3d at 638 n.4 (explaining that "[u]nder the "discovery rule," a cause of action does not accrue until the plaintiff discovers, or should have discovered, the injury); Bustamante, 994 A.2d at 588

(same). The District Court did not err in concluding, based on the allegations in the complaint, that Swartz was aware of the key facts underlying his claims well before the limitations period expired and, based on the foregoing, that he did not pursue his claims diligently. Accordingly, the claims were properly dismissed as time-barred.[6]

We find no merit to Swartz's final argument that the District Court was biased against him. The record does not support his claim that the District Court ignored his arguments or mischaracterized the facts. Overall, Swartz's complaints amount to mere dissatisfaction with the District Court's rulings. See Securacomm Consulting, Inc. v. Securacom Inc., 224 F.3d 273, 278 (3d Cir. 2000) (noting that "a party's displeasure with legal rulings does not form an adequate basis for recusal").

Finally, the District Court did not err in declining to invite additional amendment of the complaint. As it noted, to the extent that the claims are time-barred, leave to amend would be futile. See

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[6] Swartz does not challenge the District Court's conclusion that his claim for fraud against Doyle (the second cause of action) was barred by the statute of limitations, and that it was not subject to the equitable exception of the continuing violation doctrine. See ECF No. 70 at 11; see also M.S. by & through Hall v. Susquehanna Twp. Sch. Dist., 969 F.3d 120, 124 n.2 (3d Cir. 2020) (noting that arguments not raised in an opening brief on appeal are forfeited); see also Mala v. Crown Bay Marina, Inc., 704 F.3d 239, 245 (3d Cir. 2013) (noting that pro se litigants "must abide by the same rules that apply to all other litigants"). Because we affirm the District Court's judgment on this basis, we need not address its alternative holding – which Swartz contests – that he did not adequately plead a claim for fraud.

Grayson v. Mayview State Hosp., 293 F.3d 103, 114 (3d Cir. 2002). We also note that a liberal reading of the complaint gives no indication that Swartz could assert anything that would show that the defendants had the kind of relationship with the state that would give rise to an inference that they should be considered state actors under § 1983.

Based on the foregoing, we will affirm the District Court's judgment. Appellee Penn Defendants' motion to seal Volume Two of the Supplemental Appendix is granted. Swartz's motions to "seal indefinitely" (1) his "Motion for Review" of the Clerk's Osei Order, Letter with Exhibits, and Addendum in Support and (2) Volume Two of the Supplemental Appendix are denied as presented. We direct the Clerk's Office to seal these documents for twenty-five years, as they contain highly sensitive and personal information about Swartz's minor child. See 3d Cir. L.A.R. 106.1(a); In re Cendant Corp., 260 F.3d 183, 194 (3d Cir. 2001).

APPENDIX C

Racketeer Inspired Corrupt Organizations (RICO) 18 U.S.C. § 1961 – Provides the Partially Pertinent Text

"(1)"racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter,... ..."(B) any act which is indictable under any of the following provisions of title 18, United States Code:"... ..."section 1341 (relating to mail fraud), section 1343 (relating to wire fraud)"... ..." sections 1461–1465 (relating to obscene matter)"... ..." sections 1581–1592 (relating to peonage, slavery, and trafficking in persons)."... ..."section 1951 (relating to interference with commerce, robbery, or extortion),"... ..."section 1952 (relating to racketeering)"

"(5)"pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;"

APPENDIX D

U.S. Const. Amend. XIII, § 1

> "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."