

- APPENDIX -

Rulings by the US District Court & US Fourth Circuit Court of Appeals

1.) Davis v. El Carbonero, LLC, Bonilla, No. 1:20-cv-0992 (RDA/WEF):

US District Court. Judgment entered August 19, 2022, order adopting Magistrate Judge Buchanan's recommendation to decline default summary judgment to award compensatory & punitive damages, as well as, equitable relief, by Rossie D. Alston, Jr., District Court Judge.

2.) Davis v. Roessler, No. 22-1179: U.S. Court of Appeals for the Fourth Circuit. Judgment entered August 22, 2022, to dismiss an appeal of the US District Court's order to deny default /summary judgments for lack of jurisdiction, by Wynn, Thacker, and Heytens, Circuit Judges.

3.) Davis v. Bonilla, No. 22-2003: U.S. Court of Appeals for the Fourth Circuit. Judgment entered February 21, 2023, affirming the US District Court's order to deny default/summary judgments and denying Davis' other pending motions, by Gregory, Chief Judge, Rushing, Circuit Judge, and Floyd, Sr. Circuit Judge.

4.) Davis v. Bonilla, No. 22-2003: U.S. Court of Appeals for the Fourth Circuit. Judgment entered March 24, 2023, denying motion for rehearing and rehearing en banc, by Gregory, Rushing, and Floyd, Circuit Judges.

APPENDIX

(1)

DAVIS

v.

EI CARBONERO LLC,

PEDRO BONILLA

No. 1:20-cv-0992 (RDA/WEF)

Final Order

by

U.S. District Court, Alexandria, VA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CURTISS DAVIS III,

Plaintiff,

v.

EL CARBONERO, LLC and PEDRO
BONILLA,

Defendants.

Civil Action No. 1:20-cv-992 (RDA/WEF)

ORDER

This matter comes before the Court upon the Report and Recommendation ("Recommendation") issued by Magistrate Judge Theresa Buchanan on August 4, 2022. Dkt. 68.¹ In this case involving claims brought by *pro se* Plaintiff Curtiss Davis III under 42 U.S.C. § 1983, the Fourteenth Amendment's Equal Protection Clause, Title VI of the Civil Rights Act of 1964, conspiracy to defraud the federal government in violation of 18 U.S.C. § 371, and state-law claims of civil conspiracy and defamation, Judge Buchanan recommends that this Court deny Plaintiff's Motion for Default Judgment, decline to award Plaintiff compensatory damages, punitive damages, and the requested equitable relief affecting Defendant Bonilla's immigration documentation. On August 18, 2022, Plaintiff objected to Judge Buchanan's Recommendation, filing a Motion to Overturn Decision to Deny Default Judgment Hearing. Dkt. 70.

In his motion objecting to the Recommendation, Plaintiff asks the Court to reject Judge Buchanan's Recommendation and instead order a default judgment hearing. Judge Buchanan's Recommendation states that Plaintiff's default judgment motion should be denied for three

¹ After Judge Buchanan entered the August 4, 2022 Order, this case was reassigned to Magistrate Judge Fitzpatrick.

reasons. First, even assuming Defendants El Carbonero and Bonilla were properly served, Plaintiff has still failed to describe the Court's basis for personal or subject matter jurisdiction or that venue is proper, even though the Court on March 28, 2022 ordered Plaintiff to file a motion establishing that these jurisdictional are met. Second, Plaintiff has yet to establish how the allegations in his Complaint support any of the claims he asserts, including Virginia law claims of civil conspiracy and defamation, a federal constitutional claim under the Fourteenth Amendment's Equal Protection Clause, and conspiracy to defraud the federal government. *See* Dkt. 70 at 6-10.² Even if he had included this information, however, this Court finds that the allegations in Plaintiff's complaint are so far-fetched that they would fail to meet Federal Rule of Civil Procedure 12(b)(6)'s plausibility standard. Finally, Plaintiff has not marshaled any evidence suggesting he is entitled to the monetary or equitable relief he seeks. Because Plaintiff's most recent filing (Dkt. 70) does not cure his failure to comply with the Court's March 28, 2022 Order in these respects, his objection styled as a Motion to Overturn the magistrate judge's decision must be denied.

Plaintiff also brings a Motion for Reconsideration and two requests for summary judgment. No provision in the Federal Rules of Civil Procedure expressly authorizes a motion for reconsideration. The Fourth Circuit has held, however, that a motion challenging a court judgment should be treated as either a motion "to alter or amend" under Federal Rule of Civil Procedure 59(e), or as a motion for "relief from judgment" under Rule 60(b), depending on the time in which the motion is served. *Downing v. Lee*, No. 1:16-CV-1511, 2018 WL 10247588, at *1 (E.D. Va.), *aff'd*, *Downing v. Matal*, 724 F. App'x 226 (4th Cir. 2018); *Fugit v. United States*, No. 4:07-CR-065, 2018 WL 9811691, at *1 (E.D. Va. Sept. 4, 2018), *aff'd*, 749 F. App'x 212 (4th Cir.

² It is unclear whether Plaintiff asserts each of these claims against Defendants El Carbonero and Bonilla or whether his objection merely restates the federal law claims that he originally brought against defendants who have since been dismissed from this action.

2019) (citing *Lee-Thomas v. Prince George's Cty. Pub. Schs.*, 666 F.3d 244, 247 n.4 (4th Cir. 2012)). A motion served within twenty-eight days of the Court's judgment is construed under Rule 59(e), and a motion served after that time falls under Rule 60(b). *Downing*, No. 1:16-CV-1511, 2018 WL 10247588, at *1. This Court granted Defendants' Motion to Dismiss on January 21, 2022. *See* Dkt. 45. Plaintiff filed his Motion for Reconsideration on February 9, 2022, which was nineteen days later. Therefore, this Court construes Plaintiff's Motion as one brought under Federal Rule of Civil Procedure 59(e).

Motions for reconsideration may be granted on certain limited grounds: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not previously available; or (3) to correct a clear error of law or prevent manifest injustice. *See United States ex rel. Becker v. Westinghouse Savannah River Co.*, 305 F.3d 284, 290 (4th Cir. 2002) (citing *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998)). The motion "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." *Pac. Ins. Co.*, 148 F.3d at 403 (quoting 11 Wright *et al.*, Federal Practice and Procedure § 2810.1, at 127-28 (2d ed. 1995)). "In general, 'reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.'" *Id.* (quoting *Wright et al.*, *supra*, § 2810.1, at 124); *Mayfield v. Nat'l Ass'n for Stock Car Auto Racing*, 674 F.3d 369, 378 (4th Cir. 2012).

Plaintiff fails to identify a single specific finding of fact or legal conclusion that demonstrates a mistake in the Court's Order dismissing certain Defendants from this action. Plaintiff also does not cite any intervening change in the law that would justify the extraordinary relief he requests. Moreover, the Motion principally seeks to relitigate old issues. Parties cannot use a motion to reconsider "to put a finer point on [their] old arguments and dicker about matters

decided adversely' to them." *Evans v. Trinity Indus., Inc.*, 148 F. Supp. 3d 542, 546 (E.D. Va. 2015) (quoting *Shanklin v. Seals*, No. 3:07-cv-319, 2010 WL 1781016, at *3 (E.D. Va. May 3, 2010)). Re-argument is precisely what Plaintiff attempts in his Motion, yet a litigant who fails "to present his strongest case in the first instance generally has no right to raise new theories or arguments in a motion to reconsider." *Wootten v. Commonwealth of Virginia*, 168 F. Supp. 3d 890, 893 (W.D. Va. 2016) (quoting *United States v. Duke Energy Corp.*, 218 F.R.D. 468, 474 (M.D.N.C. 2003)). No exception to that general rule is warranted here, and Plaintiff's Motion for Reconsideration must be denied.

As for Plaintiff's filings that have been styled as requests for summary judgment, neither comply with Federal Rule of Civil Procedure 56 or Local Civil Rule 56. *See* Dkt. Nos. 59; 61. Specifically, the filings fail to "include a specifically captioned section listing all material facts as to which the moving party contends there is no genuine issue and citing the parts of the record relied on to support the listed facts as alleged to be undisputed." E.D. Va. Loc. Civ. R. 56(B). Entering summary judgment in Plaintiff's favor is therefore disallowed under this Court's rules.

After performing a de novo review of the record and Judge Buchanan's Recommendation, the Court hereby APPROVES and ADOPTS the Recommendation (Dkt. 68). Accordingly, it is hereby ORDERED that Plaintiff's Motion for Default Judgment (Dkt. 64) DENIED; and it is

FURTHER ORDERED that Plaintiff's Motion for Reconsideration (Dkt. 50) is DENIED. and it is

FURTHER ORDERED that Plaintiff's requests for summary judgment (Dkt. Nos. 59; 61) are DENIED; and it is


FURTHER ORDERED that Plaintiff's Motion to Overturn Decision to Deny Default Judgment Hearing (Dkt. 70) is DENIED.

To appeal this decision, Plaintiff must file a written notice of appeal with the Clerk of Court within 30 days of the date of entry of this Order. A notice of appeal is a short statement indicating a desire to appeal, including the date of the order Plaintiff wants to appeal. Plaintiff need not explain the grounds for appeal until so directed by the court of appeals. Failure to file a timely notice of appeal waives Plaintiff's right to appeal this decision.

The Clerk is directed to forward copies of this Order to counsel of record and to Plaintiff, *pro se*, and close this civil action.

It is SO ORDERED.

Alexandria, Virginia
August 19, 2022

/s/ 

Rossie D. Alston, Jr.
United States District Judge

APPENDIX

(2)

DAVIS

v.

ROESSLER

No. 22-1179

Dismissal of Appeal

by

U.S. Fourth Circuit Court

FILED: August 22, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1179
(1:20-cv-00992-RDA-TCB)

CURTISS DAVIS, III

Plaintiff - Appellant

v.

EDWIN C. ROESSLER, JR., Chief of Police; WUSA9 NEWS; THE
WASHINGTON POST; CLINTON E. BEACH, Officer; JEREMY HOFFMAN,
Officer

Defendants - Appellees

and

SUSAN PEREZ; ANA ELIZABETH RIVERA-CRUZ; PEDRO BONILLA; EL
CARBONERO, LLC

Defendants

J U D G M E N T

In accordance with the decision of this court, this appeal is dismissed.

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

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 22-1179

CURTISS DAVIS, III,**Plaintiff - Appellant,****v.****EDWIN C. ROESSLER, JR., Chief of Police; WUSA9 News; THE WASHINGTON
POST; CLINTON E. BEACH, Officer; JEREMY HOFFMAN, Officer,****Defendants - Appellees,****and****SUSAN PEREZ; ANA ELIZABETH RIVERA-CRUZ; PEDRO BONILLA; EL
CARBONERO, LLC,****Defendants.**

**Appeal from the United States District Court for the Eastern District of Virginia, at
Alexandria. Rossie David Alston, Jr., District Judge. (1:20-cv-00992-RDA-TCB)**

Submitted: August 18, 2022**Decided: August 22, 2022**

Before WYNN, THACKER, and HEYTENS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Curtiss Davis, III, Appellant Pro Se. Brent J. Schultheis, FAIRFAX COUNTY ATTORNEY'S OFFICE, Fairfax, Virginia; Laurin Howard Mills, SAMEK, WERTHER & MILLS, LLC, Alexandria, Virginia; Perry F. Austin, Nicholas G. Gamse, WILLIAMS & CONNOLLY LLP, Washington, D.C., for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Curtiss Davis, III, seeks to appeal the district court's order granting the motions to dismiss filed by certain Defendants in Davis' pro se civil action.* This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291, and certain interlocutory and collateral orders, 28 U.S.C. § 1292; Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). The order that Davis seeks to appeal is neither a final order, given that litigation on his remaining claims against other Defendants is ongoing, nor is it an appealable interlocutory or collateral order. Accordingly, we dismiss this appeal for lack of jurisdiction. 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.

DISMISSED

* As noted in the district court's order, three of the individual Defendants did not file motions to dismiss.

APPENDIX

(3)

DAVIS

v.

BONILLA

No. 22-2003

Affirmation of District Court's Order

by

U.S. Fourth Circuit Court

FILED: February 21, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-2003
(1:20-cv-00992-RDA-WEF)

CURTISS DAVIS, III

Plaintiff - Appellant

v.

PEDRO BONILLA; EL CARBONERO, LLC

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

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 22-2003

CURTISS DAVIS, III,

Plaintiff - Appellant,

v.

PEDRO BONILLA; EL CARBONERO, LLC,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at
Alexandria. Rossie David Alston, Jr., District Judge. (1:20-cv-00992-RDA-WEF)

Submitted: February 16, 2023

Decided: February 21, 2023

Before GREGORY, Chief Judge, RUSHING, Circuit Judge, and FLOYD, Senior Circuit
Judge.

Affirmed by unpublished per curiam opinion.

Curtiss Davis, III, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Curtiss Davis, III, appeals the district court's order accepting the recommendation of the magistrate judge, denying Davis' motion for default judgment, and denying Davis' other pending motions.* We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Davis v. Bonilla*, No. 1:20-cv-00992-RDA-WEF (E.D. Va. Aug. 19, 2022). 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

* We observe that Davis' informal brief does not address the other rulings in either the appealed-from dispositive order or in any of the court's earlier orders. Because we limit our review to the issues raised in an appellant's informal brief, *see* 4th Cir. R. 34(b), Davis has forfeited appellate review as to these rulings, *see Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014) ("The informal brief is an important document; under Fourth Circuit rules, our review is limited to issues preserved in that brief.").

APPENDIX

(4)

DAVIS

v.

BONILLA

No. 22-2003

Motion Denying Rehearing

by

U.S. Fourth Circuit Court

FILED: March 24, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-2003
(1:20-cv-00992-RDA-WEF)

CURTISS DAVIS, III

Plaintiff - Appellant

v.

PEDRO BONILLA; EL CARBONERO, LLC

Defendants - Appellees

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Chief Judge Gregory, Judge Rushing, and Senior Judge Floyd.

For the Court

/s/ Patricia S. Connor, Clerk

NO. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

**CURTISS DAVIS III,
Petitioner,**

v.

**PEDRO BONILLA, ET AL,
Respondent(s).**

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth
Circuit

Supplemental Appendix

**PETITION FOR WRIT OF CERTIORARI
SUPPLEMENTAL APPENDIX**

**CURTISS DAVIS, III
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TABLE OF SUPPLEMENTAL APPENDICES *

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Davis v. El Carbonero, LLC, Bonilla, No. 1:20-cv-0992 (RDA/TCB): US District Court.

Report and Recommendation to decline default summary judgment to award compensatory & punitive damages, as well as, equitable relief by Magistrate Judge Buchanan entered August 4, 2022

*** This Supplemental Appendix is in addition to the Appendix at the end of the Petition for Certiorari and is denoted as "Appendix E"**

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SUPPLEMENTAL APPENDIX

Civil Action 1:20-cv-992 (RDA/TCB)

08-04-2022

CURTISS DAVIS III, Plaintiff, v. EL CARBONERO,
LLC and PEDRO BONILLA, Defendants.

THERESA CARROLL BUCHANAN UNITED
STATES MAGISTRATE JUDGE

REPORT AND RECOMMENDATION

THIS MATTER is before the Court on *pro se* Plaintiff Curtis Davis III's ("Plaintiff") Motion to Set Default Judgment Hearing as to Defendants El Carbonero, LLC and Pedro Bonilla ("Defendants"). (Dkt. 64.) For the reasons articulated below, the undersigned U.S. Magistrate Judge recommends that Plaintiffs Motion be DENIED.

The relevant filings before the undersigned include Plaintiffs Complaint (Dkt. 1) ("Compl."); Plaintiffs Motion to Set Default Judgment Hearing ("Mot. Default J.") (Dkt. 64); and all attachments and exhibits submitted with those filings.

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I. Background

A. Procedural Posture

Plaintiff filed his Complaint on August 25, 2020, his second federal lawsuit arising from Plaintiffs arrest on December 23, 2015 for abduction, extortion, indecent exposure and attempted forcible sodomy following an incident at the Lorton, Virginia restaurant, El Carbonero. Liberally construing Plaintiffs Complaint, he alleges a claim against the Fairfax County Police Department ("FCPD") Defendants under 42 U.S.C. § 1983 for violating his Fourth Amendment rights. Plaintiff also brings claims against the FCPD Defendants under the Fourteenth Amendment's Equal Protection Clause and Title VI of the Civil Rights Act of 1964. Plaintiff alleges a conspiracy to defraud the federal government, in violation of 18 U.S.C. § 371, against the FCPD Defendants and the restaurant employees, including Pedro Bonilla, who reported him to the police. He also alleges state-law claims of civil conspiracy and defamation pursuant to Va. Code Ann. §§ 18.2-499 and 18.2-500. *Id.* at 1, 12-19.

Defendants Edwin C. Roessler, Jr., Clinton E. Beach, Jeremy Hoffman, The Washington Post, and WUSA-TV filed Motions to Dismiss Plaintiffs Complaint in November 2020. (Dkts. 13, 16, 21.) On February 17, 2021, Plaintiff filed a Motion for Entry of Default

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Judgment as to Defendants El Carbonero, Susan Perez, Ana Elizabeth Rivera-Cruz, and Pedro Bonilla. (Dkt. 32.) Plaintiff filed a second Motion for Entry of Default Judgment on April 13, 2021. (Dkt. 34.) The Clerk entered the default of Susan Perez, Ana Elizabeth Rivera-Cruz, and Pedro Bonilla on May 3, 2021. (Dkt. 35.) On August 4, 2021, the Honorable District Judge Rossie D. Alston directed Plaintiff to file a motion for default judgment as to those three defendants. (Dkt. 36.)

Plaintiff filed a Motion for Default Judgment on August 9, 2021, which the Honorable Magistrate, now District, Judge Michael S. Nachmanoff denied because Plaintiff failed to properly serve the Defendants. (Dkts. 37, 41.) Plaintiff moved to correct a clerical error and for entry of default as to El Carbonero. (Dkt. 43.) The undersigned granted the motion as to the clerical error but denied the motion as to the entry of default as service on El Carbonero was not proper. (Dkt. 44.) Plaintiff also moved for permission to reserve summonses on Defendants Perez, Cruz, and Bonilla, which Judge Alston granted. (Dkt. 42, 46.)

On January 21, 2022, Judge Alston granted Defendants' Motions to Dismiss, dismissing Plaintiffs Complaint without leave to amend as to Defendants Edwin C. Roessler, Jr., Clinton E. Beach, Jeremy Hoffman, the Washington Post, and WUSA-TV. (Dkt. 45.) On February 2, 2022, Plaintiff filed a Motion for Entry of Default

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Judgment as to El Carbonero and Bonilla, which the Court granted and directed Plaintiff to file a motion for default judgment pursuant to Federal Rule of Civil Procedure 55(b), an accompanying memorandum, and a notice of hearing. (Dkt. 48, 62.) The Clerk entered default against El Carbonero and Bonilla on March 28, 2022. (Dkt. 63.) On April 6, 2022, Plaintiff filed the instant Motion for Default Judgment and noticed a hearing for April 29, 2022. (Dkt. 64.) Finding oral argument unnecessary, the undersigned cancelled the Friday, April 29, 2022 hearing and took Plaintiffs Motion for Default Judgment (Dkt. 64) under advisement to issue this Report and Recommendation.

B. Failure to Comply with Judge Alston's Order

Judge Alston's order directing the Plaintiff to file a motion for default judgment as to Defendants El Carbonero and Bonilla included specific directions and guidance for Plaintiff. Judge Alston's order specifically directed Plaintiff to:

file a motion for default judgment pursuant to Federal Rule of Civil Procedure 55(b) and an accompanying memorandum setting forth the factual and legal support for findings that (a) this Court has subject matter and personal jurisdiction, including how the defaulting Defendants were served and why that service was proper; (b) the

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Complaint alleges facts establishing all the necessary elements of one or more claims on which relief can be granted; and (c) Plaintiff can receive the damages and relief sought, with specific references to affidavits, declarations, or other evidence supporting such relief.(Dkt. 46.)

Plaintiffs Motion fails to include the three elements listed in Judge Alston's Order. First, Plaintiff does not explain how the Court has subject matter or personal jurisdiction and fails to include a description of whether the Defendants were properly served. Before the Court can render default judgment, it must have subject-matter and personal jurisdiction over the defaulting party, and venue must be proper. The Plaintiff must also show that the Defendants received service of process. As such, without this information, the undersigned cannot evaluate whether the Court has the power over these two defendants to recommend an order of default judgment against these Defendants. Second, Plaintiff failed to discuss how the Complaint alleges facts establishing the elements for any one of the claims listed in Plaintiffs Complaint. And even if Plaintiff included such information, an elaboration of Plaintiff's Complaint would fail to support an entry of default judgment as discussed in further detail below. And finally, Plaintiff failed to set forth evidence demonstrating why he is entitled to his requested monetary and equitable relief.

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Upon further review of Plaintiffs filings in this matter, the undersigned issues this Report and Recommendation to address fundamental deficiencies in Plaintiffs claims against these Defendants.

II. *Analysis*

When a defendant has defaulted, the well-pleaded allegations of facts set forth in the plaintiffs complaint are deemed admitted. *JTH Tax, Inc. v. Grabert*, 8 F.Supp.3d 731, 736 (E.D. Va. 2014) (citing *Ryan v. Homecomings Fin. Network*, 253 F.3d 778, 780 (4th Cir. 2001)). However, the defaulting party is not deemed to admit conclusions of law or "allegations regarding liability that are not well-pleaded." *Balt. Line Handling Co. v. Brophy*, 771 F.Supp.2d 531, 540 (D. Md. 2011) (internal quotation marks and citations omitted)). Consequently, before entering default judgment, the Court must evaluate the plaintiffs complaint against the standards of Federal Rule of Civil Procedure 12(b)(6) to ensure that the complaint properly states a claim upon which relief can be granted. *GlobalSantaFe Corp. v. Globalsantafe.com*, 250 F.Supp.2d 610, 612 n.3 (E.D. Va. 2003) (citations omitted).

Plaintiffs Complaint alleges three claims against Defendants Bonilla and El Carbonero: (1) conspiracy to defraud the United States under 18 U.S.C. § 371 (Count IV), (2) defamation under Virginia law

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(Count III), and (3) conspiracy to defame under Virginia law (Count V). (Dkt. 1; see dkt. 45 at 3.) Judge Alston's memorandum opinion granting a handful of Defendants' Motions to Dismiss methodically analyzes how each count fails to state a claim against any of the Defendants. (See dkt. 45.) While Pedro Bonilla and El Carbonero, LLC were not parties to these Motions to Dismiss, Judge Alston's reasoning applies equally here.

First, as to Count IV, Judge Alston found that Plaintiff lacked standing as a private individual to bring a claim under 18 U.S.C. § 371, a federal criminal statute. (See dkt. 45 at 13) (citing *Bey ex rel Graves v. Richmond Redevelopment & Hous. Auth.*, No. 3:13-cv-464, 2013 WL 4066945, at *5 (E.D. Va. Aug. 9, 2013) ("18 U.S.C. § 371 criminalizes the act of conspiring to commit a crime against the United States; it does not create a cause of action for individuals alleging conspiracy."); *Rockefeller v. U.S. Cl. of Appeals Off, for Tenth Cir. Judges*, 248 F.Supp.2d 17, 23 (D.D.C. 2003) (collecting cases). Accordingly, the undersigned finds that Plaintiff also failed to state a claim upon which relief can be granted against Defendants Bonilla and El Carbonero under Count IV.

Second, as to Count III, Judge Alston found that Plaintiffs defamation claim was brought far outside of Virginia's one-year statute of limitations for

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defamation cases. (See dkt. 45) ("Plaintiffs injuries accrued when the criminal proceedings against him ended in October of 2016-or, arguably, when his record was expunged on August 22, 2017.") Plaintiff filed this Complaint on August 25, 2020. Therefore, Plaintiff brought this claim against Defendants at least three years after his claims accrued, which is far outside of Virginia's one-year statute of limitations for reputational injuries. Accordingly, the undersigned finds that Plaintiff failed to state a defamation claim against Defendants Bonilla and El Carbonero under Count III.

Third, as to Count V, Judge Alston found that Plaintiff's conspiracy to defame claim was deficient because, as discussed above, the underlying defamation claim was brought far outside of the statute of limitations. Judge Alston reasoned that these claims are inextricably tied and therefore the conspiracy claim must also be dismissed. Accordingly, the undersigned finds that Plaintiff failed to state a conspiracy defame claim (Count V) against Defendants Bonilla and El Carbonero.

III. Recommendation

For the reasons articulated above, the undersigned recommends that the Court enter an order denying Plaintiffs Motion for Default Judgment. (Dkt. 64.) Further, the undersigned recommends that the Court decline to award Plaintiff compensatory

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damages, punitive damages, and the requested equitable relief affecting Defendant Bonilla's immigration documentation.

IV. Notice

The parties are advised that objections to this Report and Recommendation, pursuant to 28 U.S.C. § 636 and Rule 72(6) of the Federal Rules of Civil Procedure, must be filed within fourteen (14) days of its service. Failure to object to this Report and Recommendation waives appellate review of any judgment based on it.

THERESA CARROLL BUCHANAN UNITED
STATES MAGISTRATE JUDGE *Davis v. EL*
Carbonero, LLC, Civil Action 1:20-cv-992
(RDA/TCB), 2 (E.D. Va. Aug. 4, 2022)