APPENDIX "B"

DLD-217

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 22-2598 & 23-1263 (Cons.)

ELAINE MICKMAN,
Appellant

v.

PHILADELPHIA PROFESSIONAL COLLECTIONS LLC;
WHITE AND WILLIAMS LLP

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-21-cv-04221)
District Judge: Honorable Timothy J. Savage

Submitted by the Clerk for Possible Dismissal Due to a Jurisdictional Defect or
Possible Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
September 21, 2023

Before: JORDAN, CHUNG, and SCIRICA, Circuit Judges

(Opinion filed: October 2, 2023)

OPINION*

PER CURIAM

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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.

Pro se Appellant Elaine Mickman appeals from orders of the District Court dismissing her complaints filed in this civil action. For the following reasons, we will summarily affirm the District Court's judgment. See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.

After Mickman failed to pay legal fees owed to the law firm of White and Williams LLP (W&W), the firm assigned the debt to Philadelphia Professional Collections, LLC (PPC). In November 2014, PPC sued Mickman in Pennsylvania state court for breach of contract, and a jury later returned a judgment in its favor totaling more than $150,000. In 2021, Mickman filed suit in the District Court against W&W and PPC, alleging fraud, violations of the Fair Debt Collection Practices Act (FDCPA), see 15 U.S.C. § 1692 et seq., and claims under 42 U.S.C. § 1983, stemming from the breach of contract suit. After she amended the complaint, the defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that the claims were either time-barred or failed to state a claim for relief. In an order entered July 27, 2022, the District Court dismissed the FDCPA and § 1983 claims with prejudice, dismissed the fraud claims without prejudice, and gave Mickman 30 days to file a second amended complaint. See ECF Nos. 32 & 33.

Mickman appealed from that order and filed a second amended complaint, which included claims for fraud based on several criminal statutes, civil conspiracy and civil

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RICO claims, as well as a state law claim.[1] The second amended complaint alleged that the defendants conspired to defraud Mickman by filing a time-barred lawsuit to collect on "a fraudulently generated debt." ECF No. 34 at 2. The defendants filed a Rule 12(b)(6) motion, arguing that the claims were either time-barred or failed to state a claim for relief, or that the District Court lacked jurisdiction to consider them. In an order entered December 22, 2022, the District Court dismissed the second amended complaint with prejudice.[2] See ECF No. 44. Mickman's notice of appeal from that order was filed on February 8, 2023.[3]

We have jurisdiction pursuant to 28 U.S.C. § 1291. Our standard of review is plenary. See St. Luke's Health Network, Inc. v. Lancaster Gen. Hosp., 967 F.3d 295, 299

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[1] That appeal was docketed at C.A. No. 22-2598. Mickman subsequently filed a motion in the District Court to certify the July 27, 2022 judgment for appeal pursuant to Fed. R. Civ. P. 54(b), which the District Court denied. See ECF No. 44.

[2] The District Court refers to this complaint as the "third amended complaint," apparently including in its count a second-in-time amended complaint which was stricken. See ECF No. 14.

[3] That appeal was docketed at C.A. No. 23-1263, and although it was untimely filed, see Fed. R. App. P. 4(a)(1)(A), the District Court subsequently granted Mickman's motion to extend the time to appeal pursuant to Federal Rule of Appellate Procedure 4(a)(5)(A). See ECF No. 51. The appeal at C.A. No. 22-2598 was taken from an order that was not final and appealable when entered, see Weber v. McGrogan, 939 F.3d 232, 240 (3d Cir. 2019), but "ripened" when the District Court entered its final order, see Marshall v. Comm'r Pa. Dep't of Corr., 840 F.3d 92, 96 (3d Cir. 2016) (per curiam). In any event, because Mickman perfected her appeal from the final judgment, that appeal includes the July 27, 2022 order. See Fed. R. App. P. 3(c)(4). The appeals have been consolidated for all purposes.

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(3d Cir. 2020). We will summarily affirm if the appeal presents no substantial question. See 3d Cir. L.A.R. 27.4 and 3d Cir. I.O.P. 10.6.

We agree with the District Court that the FDCPA and § 1983 claims in the first amended complaint were subject to dismissal. The FDCPA claims are plainly time-barred. An FDCPA claim must be brought within one year from the date of the violation. See Glover v. FDIC, 698 F.3d 139, 148 (3d Cir. 2012); 15 U.S.C. § 1692k(d). Mickman's initial complaint was filed well over six years after the alleged violation here – the December 2014 filing of the breach of contract suit.[4] See Rotkiske v. Klemm, 140 S. Ct. 355, 358 (2019) (holding that the FDCPA's statute of limitations begins to run on the date on which the alleged violation occurs, not on the date of the violation's discovery). And neither defendant is a state actor for purposes of § 1983. See Benn v. Universal Health Sys., 371 F.3d 165, 169-70 (3d Cir. 2004). Contrary to Mickman's contention, W&W is not a state actor by virtue of being an "officer of the court." See Angelico v. Lehigh Valley Hosp., Inc., 184 F.3d 268, 277 (3d Cir. 1999). Because leave to amend either of these claims would have been futile, they were properly dismissed

[4] On appeal, Mickman argues that the District Court erred in concluding that her FDCPA claims were not subject to equitable tolling. Although we have recognized "the availability of equitable tolling for civil suits alleging an FDCPA violation," Rotkiske v. Klemm, 890 F.3d 422, 428 (3d Cir. 2018), cert. granted, 139 S. Ct. 1259 (2019), and aff'd, 140 S. Ct. 355 (2019), the Supreme Court declined to "decide whether the text of 15 U.S.C. § 1692k(d) permits the application of equitable doctrines." Rotkiske, 140 S. Ct. at 361 n.3. The District Court properly determined that, in any event, there was no basis for equitably tolling Mickman's claims. See ECF No. 32 at 4-5.

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with prejudice. See Jablonski v. Pan Am. World Airways, Inc., 863 F.2d 289, 292 (3d Cir. 1988) (explaining that "[a]mendment of the complaint is futile if the amendment will not cure the deficiency in the original complaint or if the amended complaint cannot withstand a renewed motion to dismiss").

The District Court also properly concluded that all of Mickman's claims in the second amended complaint were subject to dismissal. As the District Court explained in dismissing the three fraud claims, none of the criminal statutes that the defendants allegedly violated provide for a private cause of action. See 18 U.S.C. §§ 1341, 1346 & 1349; ECF No. 43 at 4. Because the criminal statutes did not give rise to civil liability, the District Court properly dismissed those claims.

We also agree that the remaining claims were time-barred. First, Mickman's claim that the defendants violated Pennsylvania's Unfair Trade Practices and Consumer Protection Law (UTPCPL) was filed outside the applicable six-year statute of limitations. See Morse v. Fisher Asset Mgmt., LLC, 206 A.3d 521, 526 (Pa. Super. Ct. 2019). The claim arose in June 2015, when she was served with notice of the breach of contract suit. Mickman raised the claim for the first time in her second amended complaint, filed in October 2022. Even assuming the claim could relate back to the original complaint filed in September 2021, as Mickman appears to suggest on appeal, see Fed R. Civ. P. 15(c), it was still untimely filed.

Second, Mickman does not dispute that her civil conspiracy claim brought pursuant to 42 U.S.C. § 1985 was filed beyond the applicable two-year statute of

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limitations. See Bougher v. Univ. of Pittsburgh, 882 F.2d 74, 79 (3d Cir. 1989) (recognizing that § 1985 claims are subject to Pennsylvania's two-year statute of limitations for personal injury actions, 42 Pa. Cons. Stat. § 5524). She argues, however, that the claim was subject to equitable tolling during the pendency of her appeal of the state suit, because the Pennsylvania Superior Court "could have reversed the outcome and mooted the effect of the [civil rights] violations." Resp. in Opp'n at 4. But there is no basis in state or federal law for equitable tolling under these circumstances. See Wallace v. Kato, 549 U.S. 384, 394 (2007) (recognizing that federal courts refer to state law for tolling rules); see also Mest v. Cabot Corp., 449 F.3d 502, 510, 516 (3d Cir. 2006) (noting that in Pennsylvania, the statute of limitations may be tolled by the discovery rule or the fraudulent concealment doctrine); Lake v. Arnold, 232 F.3d 360, 370 n.9 (3d Cir. 2000) (noting the limited scenarios in which equitable tolling is appropriate).

Finally, as the District Court explained, Mickman's RICO claim was filed beyond the applicable four-year statute of limitations. See ECF No. 43 at 6 (citing Forbes v. Eagleson, 228 F.3d 471, 484-85 (3d Cir. 2000)). "[A] RICO claim accrues when plaintiffs knew or should have known of their injury." Mathews v. Kidder, Peabody & Co., 260 F.3d 239, 250 (3d Cir. 2001) (citation omitted). As the basis for the claim, Mickman alleged that the defendants are a "liable [e]nterprise" engaged in "a pattern of intentional fraudulent debt collecting practices" for the "common purposes of securing judgments through fraudulent means." ECF No. 34 at 10-11. It was thus clear from the

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face of the complaint that Mickman knew of her injury – "the attempted collection of a fraudulent debt" – when she was served with the breach of contract suit in June 2015. ECF No. 43 at 6. The RICO claim was therefore time-barred.

Finally, we find no merit to Mickman's argument that the District Court was biased because it denied her "[Motion for] Leave to Attach Exhibits" and her "Motion to Compel Discovery." Mere disagreement with adverse rulings is insufficient evidence of judicial bias. See Arrowpoint Capital Corp. v. Arrowpoint Asset Mgmt., LLC, 793 F.3d 313, 330 (3d Cir. 2015).

Based on the foregoing, the consolidated appeals fail to present a substantial question. We therefore will summarily affirm the District Court's judgment.

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APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 22-2598 and 23-1263

ELAINE MICKMAN,
Appellant

v.

PHILADELPHIA PROFESSIONAL COLLECTIONS LLC;
WHITE AND WILLIAMS, LLP

(E.D. Pa. Civ. No. 2-21-cv-04221)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, JORDAN, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG, and SCIRICA*, Circuit Judges

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

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* As to panel rehearing only.

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/Anthony J. Scirica
Circuit Judge

Date: December 5, 2023
PDB/cc: Elaine Mickman
All Counsel of Record

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

ELAINE MICKMAN	:	**CIVIL ACTION**
v.	:	
PHILADELPHIA PROFESSIONAL COLLECTIONS, INC. and WHITE AND WILLIAMS, LLP	:	**NO. 21-4221**

ORDER

NOW, this 22nd day of December, 2022, upon consideration of defendants' Motion to Dismiss Plaintiff's Amended Complaint (Doc. No. 38) and the plaintiff's response (Doc. No. 40), it is **ORDERED** that the motion is **GRANTED**.

IT IS FURTHER ORDERED as follows:

1. Plaintiff's Amended Complaint is **DISMISSED WITH PREJUDICE**; and
2. Plaintiff's Motion to Certify Notice of Appeal under Fed.R.Civ.P. 54(b) (Doc. No. 39) is **DENIED** as moot.

TIMOTHY J. SAVAGE, J.

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

ELAINE MICKMAN	:	**CIVIL ACTION**
	:	
v.	:	
	:	
PHILADELPHIA PROFESSIONAL COLLECTIONS, INC. and WHITE AND WILLIAMS, LLP	:	**NO. 21-4221**

MEMORANDUM OPINION

Savage, J. **December 22, 2022**

After plaintiff Elaine Mickman did not pay defendant White & Williams, LLP's ("W & W") legal fees, W & W assigned the debt to defendant Philadelphia Professional Collections, Inc. ("PPC"). PPC brought suit in the Pennsylvania Court of Common Pleas to collect the debt. A jury found in favor of PPC, resulting in a judgment against Mickman.

Mickman, acting *pro se*, brought this action accusing the defendants of a conspiracy to collect a fraudulent debt. The crux of her claim is that because the debt was "too old," it was invalid and the collection lawsuit was illegal.[1] She also asserts they "perpetuated fraud" in the state court case that resulted in the judgment against her.[2]

Accepting the facts in the third amended complaint as true and drawing all reasonable inferences from them in Mickman's favor, we conclude that her claims are time-barred and she fails to state plausible claims for relief. Additionally, she is collaterally estopped from arguing that the debt was fraudulent. Therefore, we shall dismiss her third amended complaint.

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[1] Am. Compl. at 2, "Introduction," ¶ 37, ECF No. 34 ["Third Am. Compl."].

[2] *Id.* at 2, "Introduction," ¶ 21.

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The Third Amended Complaint

Mickman sued PPC and W & W for violations of the Fair Debt Collection Practices Act (FDCPA) on September 23, 2021 and filed an amended complaint the following day solely to affix a waiver of service request. She amended her complaint a second time on October 13, 2021, adding causes of action for fraud and a violation of her civil rights.

In her second amended complaint, Mickman alleged that the defendants engaged in deceptive debt collection practices, deprived her of her constitutional rights during the underlying debt collection litigation, and committed fraud. We dismissed the FDCPA claim with prejudice because it was barred by the statute of limitations, and dismissed her Section 1983 claim because the defendants are not state actors. Her fraud claims were dismissed without prejudice for lack of particularity.

Although we allowed her to amend only to supplement her factual allegations to support her fraud claim, Mickman now adds five causes of action: Count I, Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("UTPCPL"); Count II, Mail Fraud, 18 U.S.C. § 1341; Count III, Scheme or Artifice to Defraud, 18 U.S.C. § 1346; Count IV, Attempt and Conspiracy, 18 U.S.C. § 1349 and 42 U.S.C. § 1985; and Count V, The Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964(c)). Her allegations,[3] as we can discern, are summarized as follows: W & W used PPC to sue her for false, inflated, and time-barred debt; [4] PPC used the mail system to sue her for a time-

[3] A *pro se* plaintiff's pleadings must be considered deferentially, affording her the benefit of the doubt where one exists. *Dluhos v. Strasberg*, 321 F.3d 365, 369 (3d Cir. 2003) (citing *Higgins v. Beyer*, 293 F.3d 683, 688 (3d Cir. 2002)).

[4] Third Am. Compl. ¶ 10.

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barred debt;[5] and W & W and PPC misrepresented their relationship and the nature of the lawsuit in state court to "flout the law."[6]

Moving to dismiss, the defendants argue that the UTPCPL, § 1985, and Civil RICO claims are time-barred.[7] Alternatively, they contend Mickman has not alleged facts stating any cause of action. They also maintain that the mail fraud statute does not provide a private civil action.[8]

Standard of Review

To survive a Rule 12(b)(6) motion, "a complaint must contain sufficient factual matter, accepted as true, to '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)). A claim is plausible "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.* (citing *Twombly*, 550 U.S. at 556).

A conclusory recitation of the elements of a cause of action is not sufficient. *Phillips v. County of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008). The plaintiff must allege facts necessary to make out each element. *Id.* (quoting *Twombly*, 550 U.S. at 563 n.8). In other words, the complaint must contain facts which support a conclusion that a cause of action can be established.

In considering a motion to dismiss under Rule 12(b)(6), we first separate the factual and legal elements of a claim, accepting the well-pleaded facts as true and disregarding

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[5] *Id.* ¶¶ 10, 11, 37.

[6] *Id.* ¶ 20.

[7] Defs.' Mot. to Dismiss Pl.'s Second Am. Compl. at 3, 6, 7, ECF No. 38 ["Defs.' Mot. to Dismiss"].

[8] *Id.* at 5–6.

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legal conclusions. Then, we determine whether the alleged facts make out a plausible claim for relief. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210–11 (3d Cir. 2009) (quoting *Iqbal*, 556 U.S. at 679). All well-pleaded allegations in the complaint are accepted as true and interpreted in the light most favorable to the plaintiff, and all inferences are drawn in the plaintiff's favor. *See McTernan v. City of York*, 577 F.3d 521, 526 (3d Cir. 2009) (quoting *Schrob v. Catterson*, 948 F.2d 1402, 1408 (3d Cir. 1991)).

Analysis

No Private Cause of Action for 18 USC §§ 1341, 1346, 1349

In Counts II, III and IV, Mickman asserts that defendants committed fraud in violation of criminal statutes, specifically 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1346 (Scheme and Artifice to Defraud), and 18 U.S.C. § 1349 (Attempt and Conspiracy).[9] A plaintiff may not sue for violations of a federal statute unless the enabling statute creates a private cause of action. *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). The statutes upon which Mickman relies do not provide private causes of action. *Thompson v. Michels*, 574 Fed. App'x 196, 197 (3d Cir. 2014). Thus, Counts II, III, and IV will be dismissed with prejudice.

[9] Third Am. Compl. at 12, "Fraud Counts."

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Statute of Limitations

A statute of limitations is an affirmative defense that ordinarily must be pled in a responsive pleading. *Wisniewski v. Fisher*, 857 F.3d 152, 157 (3d Cir. 2017) (citing Fed. R. Civ. P. 8(c)(1)). Nevertheless, where the expiration of the limitations period appears on the face of the complaint, a statute of limitations defense may be raised in a Rule 12(b)(6) motion. *Id.* (citing *Schmidt v. Skolas*, 770 F.3d 241, 249 (3d Cir. 2014)).

It is apparent from a reading of the third amended complaint that the UTPCPL, § 1985, and RICO claims are time-barred. The statute of limitations for a UTPCPL cause of action is six years. 42 Pa.C.S.A. § 5527(b); *Morse v. Fisher Asset Mgmt., LLC*, 206 A.3d 521, 526 (Pa. Super. 2019). Mickman's UTPCPL cause of action accrued in June 2015, when she was served the complaint in the debt collection lawsuit.[10] She filed this action on August 26, 2022, seven years later.

A § 1985 federal civil rights claim is subject to the state statute of limitations for personal injury actions in the state where the injury occurred. *Dique v. N.J. State Police*, 603 F.3d 181, 185 (3d Cir. 2010) (citing *Cito v. Bridgewater Twp. Police Dep't*, 892 F.2d 23, 25 (3d Cir. 1989)). In Pennsylvania, the limitations period is two years. 42 Pa. Cons. Stat. § 5524. A §1985 claim accrues when a plaintiff knew or should have known of the alleged conspiracy that harmed her. *Dique*, 603 F.3d at 189.

Mickman alleges that defendants conspired to violate her civil rights by manipulating a Pennsylvania state court judge to render a favorable ruling on a motion in

[10] Third Am. Compl. ¶ 13. Mickman denies receiving the earlier collection letter that would have triggered the statute of limitations. *Id.* ¶ 16.

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limine on April 26, 2016.[11] Her original complaint was filed on September 23, 2021, more than five years after the alleged violation had occurred.[12]

Civil RICO has a four-year statute of limitations. *LabMD Inc. v. Boback*, 47 F.4th 164, 179 (3d Cir. 2022) (citing *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 156, (1987)). The limitations period begins when the plaintiff knew or should have known of the racketeering injury and the source of the injury. *Id.* at 181; *Forbes v. Eagleson*, 228 F.3d 471, 484-485 (3d Cir. 2000). If the injuries occurred outside the statute of limitations, the claim is time-barred even if she alleges that the wrongdoers committed independent, new acts. *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 181 (1997). "A cause of action accrues even though the full extent of the injury is not then known or predictable." *LabMD*, 47 F.4th at 180 (quoting *Kach v. Hose*, 589 F.3d 626, 634-635(3d Cir. 2009)).

The injury Mickman alleges is that the defendants pursued collection of an invalid debt.[13] She asserts that she discovered the RICO violations in December 2018, referring to the date of her debt collection trial.[14] Assuming that her injury is the attempted collection of a fraudulent debt, Mickman knew that the defendants were pursuing the collection of the debt in June 2015 when she was served with the collection lawsuit.[15] She first raised her Civil RICO claim in her second amended complaint on October 13, 2021, more than four years after she knew of her claimed injury and the source of it.[16]

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[11] Third Am. Compl. ¶¶ 30–33.

[12] *See* Compl., ECF No. 2.

[13] Third Am. Compl. ¶ 39.

[14] *Id.* ¶¶ 27, 29, 57.

[15] *Id.* ¶ 14.

[16] Second Am. Compl. ¶ 1, ECF No. 7.

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Because the UTPCPL, § 1985 and Civil RICO claims are time-barred, we dismiss them.

Failure to State a Claim

Count I (UTPCPL) Failure to State a Claim

The UTPCPL is a consumer protection law that allows consumers to sue defendants for deceptive acts in trade or commerce. 73 Pa. Stat. Ann. § 201-3. Fraudulent or deceptive conduct includes conduct that "creates a likelihood of confusion or of misunderstanding." 73 Pa. Stat. Ann. § 201-2(4)(ii-iii). The UTPCPL requires a plaintiff to show that a defendant's misrepresentation caused her to suffer some loss of money or property. 73 P.S. § 201-9.2(a). She must also show that she justifiably relied on the deceptive acts. *Weinberg v. Sun Co.*, 777 A.2d 442, 446 (Pa. 2001).

As revealed by her own allegations, Mickman did not rely on the alleged deceptive conduct. On the contrary, she was not deceived. She did not pay the debt, but disputed it. She did not rely on any representation that she owed the debt. Instead, she challenged the indebtedness in state court. Thus, she cannot satisfy the justifiable reliance element of a UTPCPL claim.

Count IV (42 U.S.C. § 1985) Failure to State a Claim

Regarding her claim under § 1985, Mickman avers that PPC and W & W conspired to violate her due process rights.[17] She contends that the defendants' illegal conduct consisted of the following: PPC filed a breach of contract suit against her and did not join W & W as a party;[18] PPC sued her for commercial debt even though she is an individual

[17] Third Am. Compl. ¶ 36.

[18] *Id.* ¶ 19.

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and not a corporation;[19] PPC filed in an improper jurisdiction;[20] and PPC won a motion in limine by pleading that they were a debt collection company with no prior involvement with her.[21]

To state a claim under § 1985(3), a plaintiff must allege: (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; (3) an act in furtherance of the conspiracy; and (4) injury to a person or property or deprivation of any right or privilege of a citizen of the United States. *Farber v. City of Paterson*, 440 F.3d 131, 134 (3d Cir. 2006) (quoting *United Bhd. of Carpenters, Local 610 v. Scott*, 463 U.S. 825, 828–29 (1983)).

State action is not required to state a claim under § 1985(3). *Id.* at 135. Unlike in a § 1983 action, a plaintiff may sue private actors in a § 1985(3) action. To state a claim against private actors, Mickman must allege that they conspired to deprive her of equal protection, and that they were motivated by racial or other class-based invidiously discriminatory animus. *Id.* (citing *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971)).

Mickman does not identify, nor could she, any racial or other class-based, invidiously discriminatory animus motivating the actions of PPC and W & W. Thus, she cannot make out a § 1985 cause of action.

Count V (Civil RICO) Failure to State a Claim

Civil RICO provides a private right of action for a plaintiff who suffered a business or property injury against defendants who committed racketeering activities. 18 U.S.C. §

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[19] *Id.* ¶ 22.

[20] *Id.* ¶ 24.

[21] *Id.* ¶ 26.

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1962(c). There are two types of racketeering activities: (1) the collection of unlawful debt and (2) chargeable or indictable conduct of an enterprise through a pattern of racketeering activity. *Id.*; *Goldenstein v. Repossessors Inc.*, 815 F.3d 142, 147 (3d Cir. 2016).

RICO defines unlawful debt as illegal gambling debt or debt incurred in connection with a usurious money lending business. 18 U.S.C.A. § 1961(6). The other type of racketeering activity—indictable or chargeable conduct—is established by showing that defendants engaged in a pattern of predicate acts designated under § 1961(1).[22]

Mickman contends as predicate acts: mail fraud;[23] suing her for time-barred or otherwise fraudulent debt;[24] conspiring to secure judgments through fraudulent means and for illegitimate debt;[25] testifying that she did not make any effort to pay the fees, [26] deceiving a state-court judge;[27] using victim-blaming tactics to win a jury trial;[28] operating an unregulated business;[29] and proffering a sham assignment agreement as legitimate.[30]

Mickman has not pleaded facts showing either type of racketeering activity. First, the debt she complains of—stale or so-called phantom debt—is not gambling or usurious debt. It is not an unlawful debt covered by Civil RICO. Second, of the offenses she alleges as predicate acts, only mail fraud is a racketeering offense. Section 1961(1)(B) lists

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[22] 18 U.S.C. § 1961(1) lists the indictable crimes that are considered "racketeering activity" under RICO.

[23] Third Am. Compl. ¶¶ 46, 52.

[24] *Id.* ¶¶ 10, 34.

[25] *Id.* ¶ 52.

[26] *Id.* ¶ 26.

[27] *Id.* ¶ 26.

[28] *Id.* ¶ 26.

[29] *Id.* ¶¶ 10–11.

[30] *Id.* ¶ 15.

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indictable offenses that constitute predicate acts for RICO. Other than mail fraud, none of the acts Mickman refers to are listed.

Even if she had shown that defendants mailed her a complaint demanding payment of an illegal debt, this single instance does not constitute a pattern of racketeering required to state a claim under Civil RICO. Section 1961(5) provides that a "pattern of racketeering activity" requires at least two acts of racketeering activity occurring within ten years of one another. 18 U.S.C. § 1961(5). The racketeering predicates must be related and amount to or pose of threat of continued criminal activity. *U.S. v. Fattah*, 914 F.3d 112, 163 (3d Cir. 2019). One instance of mail fraud is insufficient to state a claim under Civil RICO. *See H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 237 (1989) (explaining that proof of at least two predicate acts is a necessary condition to establish a racketeering pattern); *see, e.g.*, *Kolar v. Preferred Real Estate Investments, Inc.* 361 Fed.Appx. 354, 365 (3d Cir 2010) (finding that a singular fraudulent real estate transaction was not enough to constitute a racketeering pattern); *Efron v. Embassy Suits (Puerto Rico), Inc.*, 223 F.3d 12, 21 (3d Cir. 2000) (finding that eight actionable letters and faxes were part of a single effort that did not constitute a RICO pattern); *Hughes v. Consol-Pa. Coal Co.*, 945 F.2d 594, 611 (3d Cir. 1991) (finding no racketeering pattern where defendants worked a single-scheme with a single-victim lasting one year).

Mickman's racketeering claim includes an allegation that defendants fraudulently obtained a favorable ruling on the motion in limine. She asserts that the motion in limine would not have been granted had the defendants identified the debt as "Accounts Receivable" for W & W.[31] She does not allege facts to support a conclusion that

[31] Third Am. Compl. ¶ 26.

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defendants deceived the state court judge. Mickman offers nothing more than her unsupported speculation. *See Ashcroft*, 556 U.S. at 664 ("A court considering a motion to dismiss may begin by identifying allegations that, because they are mere conclusions, are not entitled to the assumption of truth.").

The factual allegations do not make out racketeering activity. Hence, Mickman has not stated a cause of action for Civil RICO.

Collateral Estoppel

The defendants have not raised issue preclusion. Nonetheless, a court may dismiss an action *sua sponte* if it is on notice that the issue presented has previously been adjudicated. *See U.S. v. 5 Unlabeled Boxes*, 572 F.3d 169, 175 (3d Cir.2009) (citing *Arizona v. California*, 530 U.S. 392, 412, (2000)). Thus, we shall determine whether Mickman's UTPCPL and Civil RICO claims are precluded because the facts supporting them have been decided against her in the underlying action.

In the interest of judicial economy, a party cannot relitigate an issue that has already been resolved in a court of competent jurisdiction. *In re Mullarkey*, 536 F.3d 215, 225 (3d Cir. 2008) (quoting *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979). Here, the state court judgment determined the validity of the debt.

Throughout her third amended complaint, Mickman refers to the state court proceedings and challenges the validity of the debt. The basis of her claims is that the debt was invalid because it was "too old." Mickman alleges the defendants violated the UTPCPL when PPC sent her a letter demanding payment of an invalid debt and threatening a lawsuit; PPC filed the collection lawsuit outside the jurisdiction where she lived; PPC and W & W misrepresented their relationship to the state court judge; and PPC

APPENDIX "C"

operated unregulated.[32] According to Mickman, these are violations of the FDCPA and show that the debt was fraudulent.

Mickman also claims the defendants violated the Civil RICO statute in their efforts to collect an unlawful debt. She accuses the defendants of the following violations: suing her for debt that was time-barred or otherwise fraudulent; conspiring to secure a judgment by deceiving a state-court judge; giving false and misleading testimony; using victim-blaming tactics to win a jury trial; operating an unregulated business; and proffering a sham assignment agreement as legitimate.[33] These allegations are premised on her core contention that the debt was invalid, rendering efforts to collect it illegal.

Federal courts must apply the law of preclusion of the state in which the judgment was rendered. 28 U.S.C. § 1738, *ADP, LLC v. Rafferty*, 923 F.3d 113, 124 n.10 (3d Cir. 2019). Under Pennsylvania law, the doctrine of issue preclusion applies where: (1) the issue decided in a prior case is identical to the issue presented in a later case; (2) there was a final judgment on the merits in the prior case; (3) the party against whom the doctrine is asserted was a party to or is in privity with a party to the prior case; (4) the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior case; and (5) resolution of the issue in the prior proceeding was essential to the judgment.[34] *In re Coatesville Area Sch. Dist.*, 244 A.3d 373, 379 (Pa. 2021).

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[32] Third Am. Compl. ¶¶ 11, 16, 21, 24.

[33] *Id.* ¶¶ 10, 11, 15, 26, 34, 52.

[34] When applying issue preclusion, all Pennsylvania courts analyze factors one through four, and some Pennsylvania courts require the fifth factor. *Id.* ("In some renditions, courts add a fifth element, namely, that resolution of the issue in the prior proceeding was essential to the judgment.") (citing, e.g., *Office of Disciplinary Counsel v. Kiesewetter*, 889 A.2d 47, 50-51 (Pa. 2005).

APPENDIX "C"

The elements of issue preclusion are satisfied. Central to Mickman's UTPCPL and Civil RICO claims is the validity of the debt. The validity of the debt has already been adjudicated. In December 2018, a jury determined that Mickman owed the debt. Judgment was entered in favor of PPC and against Mickman. The validity of the debt was essential to the judgment. Mickman had a full and fair opportunity to litigate the validity of the debt. She challenged it in state court. She did not appeal the judgment. She cannot relitigate the validity of the debt. Thus, the UTPCPL and the RICO claims cannot survive to the extent they rest upon a contention that the debt is illegal.

Conclusion

We shall dismiss Count I (UTPCPL) and Count V (Civil RICO) on the bases of the statute of limitations, failure to state a claim, and collateral estoppel. We shall dismiss Counts II (mail fraud), III (scheme or artifice to defraud), and IV (attempt and conspiracy) because the statutes upon which Mickman relies do not provide a private cause of action. We shall dismiss Count IV (42 U.S. § 1985) as untimely and for failure to state a claim.

Despite several opportunities, Mickman has failed to assert a single, coherent, particularized and plausible cause of action. Her latest amended complaint is nearly identical to her previous ones, with only insignificant and irrelevant changes to the allegations, none of which support the elements of her asserted claims. Moreover, an amendment could not overcome the time-barred claims.

Mickman will not be permitted to file a fourth amended complaint because it would be futile. *Alston v. Parker*, 363 F.3d 229, 236 (3d Cir. 2004) (explaining that leave to amend should be refused "only on the grounds of bad faith, undue delay, prejudice, or futility."). An amendment would be futile if it would still fail to state a claim upon which relief could be granted. *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d

APPENDIX "C"

Cir. 1997) (citing *Glassman v. Computervision Corp.*, 90 F.3d 617, 623 (1st Cir. 1996); *see also* 3 Moore's Federal Practice ¶ 15.08[4], at 15–80 (2d ed.1993)).

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APPENDIX "D"

UNITED STATES DISTRICT COURT for the EASTERN DISTRICT of PENNSYLVANIA

Elaine Mickman,	:	
Petitioner/Plaintiff:	:	Civil Action No.: 2:21- cv- 04221- TJS
v.	:	
Philadelphia Professional Collections, LLC,	:	
Defendant	:	
and		
White and Williams, LLP,	:	
Defendant		

MOTION REQUESTING FOR APPOINTMENT OF ATTORNEY

I, Elaine Mickman, Petitioner/Plaintiff, request appointment of counsel which may be appointed per 28 U.S.C. Section 1915(2) which authorizes a court to "request" counsel for indigent representation in civil cases.

Plaintiff is a senior citizen with permanent medical disability. Plaintiff made a diligent effort to hire counsel but is indigent with in forma pauperis status, lacks financial ability to hire an attorney, and Free Legal Aid in Plaintiff's jurisdiction does not represent clients for this matter. Plaintiff filed suit in good faith with belief that the case is meritorious, but requires experienced legal representation.

The Ninth Circuit held that 28 U.S.C. Section 1915(2) authorizes a court to "request" counsel for indigent representation in civil cases.
The Ninth Circuit determined 28 U.S.C. § 1915(d) imposes a duty on the court to assist a party in obtaining counsel willing to serve for little or no compensation.

It is respectfully requested that this Court appoint Counsel to represent Plaintiff.

Respectfully Submitted,

Elaine Mickman October 13, 2021
Elaine Mickman

IN THE U.S.DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ELAINE MICKMAN, *Plaintiff*	:	Civil Action No. 2:21-cv-04221-TJS
V	:	
PHILADELPHIA PROFESSIONAL COLLECTIONS, LLC *Defendant* and WHITE AND WILLIAMS, LLP *Defendant*	:	

CERTIFICATE OF SERVICE

This hereby verifies the foregoing was served to the following:

Philadelphia Professional Collections, LLC
1650 Market St.
One Liberty Place Suite 1800
Philadelphia, PA 19103

White and Williams, LLP
1650 Market St.
One Liberty Place Suite 1800
Philadelphia, PA 19103

Elaine Mickman October 13, 2021
Elaine Mickman
1619 Gerson Dr.
Narberth, PA 19072

APPENDIX "D"

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

ELAINE MICKMAN	:	**CIVIL ACTION**
v.	:	
PHILADELPHIA PROFESSIONAL COLLECTIONS, INC. and WHITE AND WILLIAMS, LLP	:	**NO. 21-4221**

ORDER

NOW, this 26th day of October, 2021, upon consideration of the Motion Requesting For Appointment of Attorney (Document No. 9), it is **ORDERED** that the motion is **DENIED WITHOUT PREJUDICE.**

/s/ TIMOTHY J. SAVAGE J.

APPENDIX "D"

APPENDIX "E"

IN THE U.S.DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ELAINE MICKMAN, : Civil Action No. 2:21-cv-04221-TJS
Plaintiff

V :

PHILADELPHIA PROFESSIONAL
COLLECTIONS, LLC :
Defendant
and
WHITE AND WILLIAMS, LLP
Defendant :

APPLICATION for EQUITABLE DOCTRINE to RESET TIME STATUTE

1. The doctrine of equitable tolling preserves a plaintiff's claims when strict application of the statute of limitations would be inequitable. Plaintiff seeks to proceed with actions that were thwarted by misconduct and fraud by the Defendant and lulled Plaintiff into inaction.

2. The Third Circuit Court *en banc* stated "*we recognize the availability of equitable tolling for civil suits alleging an FDCPA violation.*" ***Rotkiske v Klemm, 890 F.3d 422, 428 (3d Cir. 2018).***

3. In ***Rotkiske***, the U.S. Supreme Court left open extending the statute of limitations based on "equitable principles" in FDCPA cases.

4. Plaintiff attempted to pursue rights diligently regarding FDCPA claims, but the Defendants denied that they were a debt collection company and were not subject to FDCPA. The 3rd Circuit Court held in "*Crown Assets*" that any entity that regularly collected debts is a debt collector.

5. W/W attorney continued to deny PPC was subject to FDCPA on March 25, 2019 at which time PPC's attorney Mr. Barbera from W/W stated in Transcript pg. 20 line 22- 25 and pg. 21 lines 1-8: "*she was confusing PPC as being subject to the Fair Debt Collection Practices Act. It's not subject to the Fair Debt Collection Practices Act.*" Exhibit "A"

6. The Supreme Court defined equitable tolling when a litigant establishes they had been pursuing rights diligently and that an extraordinary circumstance stood in their way and prevented timely filing.

7. The Court also acknowledges the "equitable fraud-specific discovery rule" that dictates the limitation period does not begin to run until the plaintiff discovers the violation if the failure to discover the violation involved the defendant's fraud.

Justice Scalia concurred that "*ordinarily applicable time trigger does not apply when fraud on the creditor's part accounts for the debtor's failure to sue within one year of the creditor's violation.*" ***TRW Inc. v. Andrews, 534 U.S. 19, 37 (2001)*** (concurring judgment) (FCRA case).

There are many ways in which collectors conceal important information from consumers, and as a result their FDCPA or state statutes may not become apparent for years.

8. Plaintiff was precluded by PPC's Motion in Limine from raising FDCPA claims by PPC deceiving the Court and Plaintiff with fraudulent information that was not discovered within the 1 yr. Statute. "*Fraud-specific discovery can apply where the consumer seeks information from the collector to determine if there is a violation and the collector intentionally conceals the information.*" ***Riviera v JP Morgan Chase & Co., 2015 WL 12851710 (S.D. Fla. July 9, 2015)***

9. PPC's attorney W/W fraudulently denied PPC was a debt collector to circumvent and evade complying with the FDCPA. Plaintiff's FDCPA complaint to the C.F.P.B. was referred to the FTC because PPC would not respond to the C.F.P.B.

10. Plaintiff was further delayed in filing an FDCPA Complaint pending another court action which concluded September 8, 2021.Plaintiff has good cause for the Court to extend time statutes under the "Equitable Doctrine" and/or the "Equitable Fraud-specific Discovery Rule".

Wherefore, it is respectfully requested that this Court Grant Plaintiff's Application to Reset the Time Statute under Equitable Doctrine or Fraud Discovery Rule.

Respectfully Submitted,
Elaine MacKenzie October 13, 2021
Elaine Mickman

APPENDIX "E"

EXHIBIT "A"

IN THE COURT OF COMMON PLEAS.
OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

PHILADELPHIA PROFESSIONAL COLLECTIONS, LLC Vs. ELAINE MICKMAN	NOVEMBER TERM, 2014 NO. 02793

- - -

March 25, 2019

- - -

City Hall, Courtroom 696
Philadelphia, Pennsylvania

- - -

MOTIONS

- - -

B E F O R E:

THE HONORABLE ANGELO FOGLIETTA

REPORTED BY: Maureen McCarthy, RMR, CRR, CRC
Official Court Reporter

APPENDIX "E"

EXHIBIT "A"

MR. BARBERA: And the reason is, in this particular line of questioning, she was confusing Philadelphia Professional Collections as being subject to the Fair

Debt Collection Practices Act. It's not subject to the Fair Debt Collection Practices Act.

We're not collecting against a consumer debt and against a consumer. The Fair Debt Collection Practices Act is inapplicable in this particular circumstance.

She was referring to PPC in that context, as a debt collector under that statute, which has a specific finding which does not fit Philadelphia Professional Collections.

That's what the record testimony would show. There was no perjury, under-handed conduct or statements that were blatant falsehoods, and it's, you know, I understand Ms. Mickman is not a trained attorney.

I can sympathize that some of these concepts are difficult, but she shouldn't be permitted to impugn the credibility and integrity of Mr. Cardin who's a licensed attorney, with these types of statements. They're incorrect.

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IN THE U.S.DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ELAINE MICKMAN, *Plaintiff*	:	Civil Action No. 2:21-cv-04221-TJS
V	:	
PHILADELPHIA PROFESSIONAL COLLECTIONS, LLC *Defendant* and WHITE AND WILLIAMS, LLP *Defendant*	:	

CERTIFICATE OF SERVICE

This hereby verifies the foregoing was served to the following:

Philadelphia Professional Collections, LLC
1650 Market St.
One Liberty Place Suite 1800
Philadelphia, PA 19103

White and Williams, LLP
1650 Market St.
One Liberty Place Suite 1800
Philadelphia, PA 19103

Elaine Mickman October 13, 2021
Elaine Mickman
1619 Gerson Dr.
Narberth, PA 19072

APPENDIX "E"

APPENDIX "F"

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
C.A. No. 23-1263 (consolidated 22-2598)

ELAINE MICKMAN, *Appellant*

V.

PHILADELPHIA PROFESSIONAL COLLECTIONS, LLC, ET AL., *Defendants*
(E.D. Pa. Civ. No. 2-21-cv-04221)

APPELLANT'S RESPONSE OPPOSING SUMMARY ACTION

1. Appellant timely filed a Notice of Appeal to U.S. District Court on January 20, 2023 via the email address provided by the Court, however, Appellant learned on February 8, 2023 that the email address was discontinued. Appellant expeditiously resubmitted the Notice of Appeal on February 8, 2023 to U.S. District Court as suggested by the Clerk's Office.

2. Appellant timely responded with a memorandum to the Third Circuit Court's February 14, 2023 "Jurisdictional Letter". The Third Circuit maintains jurisdiction by a June 7, 2023 Order, but *Stayed* appeal pending the U.S. District Court's ruling on whether Appellant's Notice of Appeal would be ordered timely. **Exhibit "A"**

3. The U.S. District Court's **August 1, 2023 Order granted** Appellant's motion to extend the time for the Notice of Appeal based on good cause. **Exhibit "B"**

4. Appellant filed *Appeal as of Right* per *F.R.A.P. Rule 3.* and *Rule 4.* for the U.S. District Court's Final Order entered December 22, 2022.

5. Appellant is an aggrieved party adversely affected by the Final Order which is believed to have erred. Appellant filed an appeal in good faith and believes her appeal is meritorious. An aggrieved party generally has the right to appeal if the district court enters a final order or judgment under ***28 U.S.C. § 1291***.

"A party may not appeal or seek permission to appeal unless it is "aggrieved" by a final judgment." ***United States v. Erwin, 765 F.3d 219, 232 (3d Cir. 2014).***

"Ordinarily, a party is aggrieved if the judgment entered in the district court adversely affects it." ***United States v. Stoerr, 695 F.3d 271, 275-76 (3d Cir. 2012).***

"Under the "merger rule," the district court's interlocutory orders "merge" with the final judgment in the case and may be reviewed on appeal from the final order to the extent that they affect the final judgment." ***Camesi v. Univ. of Pittsburgh Med. Ctr., 729 F.3d 239, 244-45 (3d Cir. 2013).***

6. Appellant's October 13, 2021 "Petition to Appoint Counsel" was denied when permissible for Civil Rights actions per 28 U.S.C. 1915(2)(d). Counsel could have well-pled Appellant's Complaint, contrary to ***Buccolo, 308 F. App'x 574, 575 (3d Cir.2009 Cir.2009)...*** *"Petitioner has chosen to "proceed pro se, so the responsibility for any failure to prosecute falls on him."* **Exhibit "C"**

7. The Court denied Appellant's October 13, 2021 "Application for Equitable Doctrine to Reset Time Statute". **Exhibit "D"**

8. The U.S. District Court's Memorandum mischaracterizes and misconstrues material facts. The Third Circuit Court has jurisdiction to review the merits of Appellant's appeal including controversy and substantial questions of federal law.

APPENDIX "F"

9. **Background Summary**:

Defendant Philadelphia Professional Collections, LLC (herein PPC), colluded in a scheme with W & W as a common Enterprise to sue Appellant for an unlawful debt in Philadelphia Common Pleas Court outside her jurisdictional district, in violation of the FDCPA and UCC Code for an unverified, fraudulent, expired alleged debt. Defendant W & W was an "Officer of the Court" who deceived and misused the legal force of the Court under the *color of law* to violate and deprive Appellant substantive and procedural due process rights to a fair trial via an unwarranted *Motion in Limine* which precluded her from defending, disputing the action, counter or cross claiming and prohibited her from presenting and testifying to material facts and records of her case. The *Motion in Limine* operated to stifle and oppress Appellant, suppress material evidence and testimony, and prejudice the Court against her while the Defendants were free to testify with inflammatory and false allegations against Appellant for which she was prohibited from responding, defending and refuting. The Defendant's deprivation of Appellant's Constitutional Rights for a fair state trial in their fraudulent scheme as an Enterprise gave rise to, and created, a federal cause of action for a private right of action for Civil Rights (42 US 1983 & 42 US 1985 Conspiracy) and Civil RICO (18 U.S.C. 1964 c) with predicate acts of *Mail Fraud, Scheme and Artifice to Defraud*, and *Attempt and Conspiracy.* The Defendants orchestrated to sue indigent and medically permanently disabled Appellant out of her "house and home" by flouting and breaking laws, including the FDCPA which Appellant attempted to raise, but Defendants denied the FDCPA applied. The state Court ignored the *stare decisis* doctrine authority of the 3rd Circuit Court's Feb. 2019 ruling from ***Barbato v Greystone Alliance, LLC, No. 18-1042, 2019 WL 847920 (3rd Cir. Feb. 2019).*** Appellant suffered approximately $200,000. Civil RICO injury.

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10. The Defendants did not raise Collateral Estoppel because it doesn't apply since Appellant did not previously file an action against Defendants for UTPCPL, Civil RICO or Civil Rights. U.S. District Court erred with collateral estoppel.

11. **Time Statutes:**

a) The Defendants actions inhibited Appellant's opportunity to present the past FDCPA legal claim for which Appellant suffered an actual injury and lost a chance to pursue the non-frivolous and arguable claim. Appellant argues she has no other remedy to recompense for the lost claim other than in the U.S. District suit as in ***Monroe v Beard, 536 F.3d 198, 205 (3d Cir. 2008).***
Appellant argues she was prevented by *Younger* abstention from filing a federal claim while the state underlying action was pending and not concluded until appeals concluded September 2021, therefore it is equitable and fair to toll the statute of limitations for Appellant's FDCPA claims.

b) Appellant's Civil Rights claim could not be disputed until the September 2021 conclusion of a state Court appeal which could have reversed the outcome and mooted the effect of the violations, therefore the Civil Rights claim should be equitably tolled from September 2021. Appellant argues the Court denied her to appeal the Defendants *Motion in Limine* which violated/deprived her Civil Rights for fair state trial and Court Record. The case appeal concluded September 8, 2021. Appellant filed a U.S. District Court suit September 2021 (Amended Oct. 2021).

c) Appellant's Civil RICO claim was timely filed September 2021, and Amended October 2021, within the 4 yr. Statute from the time of the Civil RICO predicate acts and/or injury September 24, 2019.

APPENDIX "F"

d) Appellant's UTPCPL claim was timely filed September 2021, and Amended October 2021 within the 6 yr. Statute of limitations from the time of the violations.

*Noted: The state Court permitted PPC to proceed with the time-barred suit against Appellant.

12. U.S. District Court has the appearance of partiality, even if unconscious, by denial of Appellant's November 17, 2022 "Leave to Attach Exhibits" **Exhibit "E"** which substantiates material facts including, but not limited to, Defendant's responses substantiating the enterprise Civil RICO count in which they "*participated in the operation or management*" and had "*some part in directing the enterprise's affairs to be liable*" regarding required conduct construed by the Supreme Court as in ***Reves v Ernst & Young, 507 U.S. 170, 179, 183(1993)***

U.S. District Court denied Appellant's "Motion to Compel Discovery" for which truthful Defendant Responses would disclose answers admitting additional liability, inexcusable and egregious conduct and flagrant disregard for the law.

"The appellate courts may in their discretion, and sometimes do, disregard the same, in order to prevent a miscarriage of justice. .We think the substantial rights of litigants are of greater weight than the inadvertence or omissions of their attorneys." ***King Solomon v. Mary Verna Mining Co., 22 Colo. App. 528, 531-32, 127 Pac. 129, 131 (1912).***

Wherefore, the Third Circuit maintains jurisdiction over this appeal under 28 U.S.C. 1291 for which there are substantial questions of federal law and controversy requiring a fresh appellate review. Appellant opposes Summary Action and requests the appeal proceed on its merits.

Respectfully Submitted,

Elaine Mickman September 6, 2023

Elaine Mickman

APPENDIX "F"

APPENDIX "G"

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 22-258 & 23-1263 Cons.) 22-2598

ELAINE MICKMAN,
Appellant

V.

PHILADELPHIA PROFESSIONAL COLLECTIONS, LLC;
WHITE AND WILLIAMS, LLP
Appellee

RECONSIDERATION MOTION TO REINSTATE DISPOSED APPEAL

Independent causes of action against Appellees were created at a December 2018 state trial where Appellee's Enterprise knowingly brought suit against Appellant attempting to obtain an unlawful, "alleged" and unverified debt. Appellant timely filed appeal of the order which dismissed suit based on U.S. District Court directly adopting Appellee's subterfuge filings which are not credible and factually self-contradictory (perjury) substantiated by Appellee's own prior testimony and pleadings in state court, therefore law can not be properly applied, nor could the U.S. District Court make a correct or accurate assessment as a matter of law when their factual findings are clearly erroneous.

Summary disposal of appeal without review is an exception to the court's normal course and clearly undermines Appellant's right to appeal.

A discretionary remedy is inappropriate for cases with arguable legal issues, debatable facts. In ***Semmerling v. Bormann, 970 F.3d 886, 888 (7th Cir. 2020)*** "this co*urt generally disfavors motions for summary affirmance". "It ought to be employed only when the appropriateness of such a course is clear and only with great solicitude for the substantial rights of the parties."* ***Williams v. Chrans, 42 F.3d 1137, 1139 (7th Cir. 1994).***

The 3rd Circuit adopted and relied on the U.S. District Court's Opinion when the appellate court owes no deference to the trial court's legal conclusions. The appellate court has the power to determine for itself the application, interpretation, and construction of a question of law. An assessment is made whether *"the position of one party is so clearly correct as a matter of law that no substantial question regarding the outcome of the appeal exists."* citing ***Joshua v. United States, 17 F.3d 378, 380 (Fed. Cir. 1994).***

Substantial questions exist and the outcome can not be fairly determined based on the 3rd Circuit adopting the conclusion of the U.S. District Court which also abused discretion by denying Appellant's Motion to Compel Discovery when there may be an underlying issue of fact which would make review less deferential than would first appear, and if there is an underlying issue of law, review can become non-deferential.

APPENDIX "G" 1

Summary disposition is rarely appropriate in cases involving questions of first impression in that court, or where there is a conflict among the courts on a controlling legal principle, such as this instant case where the state Court ignored the 3rd Circuit's February 2019 ruling in ***Barbato v Greystone Alliance LLC, 1801042 (3rd Cir. 2019)*** concluding debt nature is irrelevant, and entities regularly collecting debts are subject to debt collection laws.

The state court relied on Appellee denying debt collection laws applied for Commercial debts regardless the "alleged" debt was not Commercial, substantiated by Appellee verifying on a state court Conference Form that the UCC Code did not apply since the suit was not Commercial, yet Appellees flagrantly disregarded all debt collection laws evidenced by their testimony that they operate unregulated. Factually, Appellee initiated suit via "sewer service" for an unverified "alleged" stale debt too old to sue since it was time-barred by Pennsylvania's 4 yr. Statute of limitations for breach of contract. Appellee (PPC) had no legal standing or grounds to sue Appellant other than holding themself out as a Debt Collection company in their Judicial Notice purporting to sue based on an Assignment which could not be proven illegitimate until their testimony at a state court December 2018 trial. The Assignment was not legitimate by Appellees not proceeding and operating under the terms of the Assignment which removed PPC's legal standing to sue.

APPENDIX "G"

PPC testified at Dec. 2018 state trial they did NOT purchase the "alleged" debt from W & W and that no other recovery division contract existed between PPC and W & W, yet any recovery would go to W & W when the Assignment specified they sold, transferred and conveyed *"rights, title, interest, and ownership of any nature whatsoever" with "non-recourse."* Appellee (PPC) rotated back and forth between identifying their entity as a debt collection company when convenient to advance their actions, but then denying they are a debt collection company to flagrantly flout the debt collection laws by asserting they are "Accounts Receivable" for W & W, LLP. If PPC is Accounts Receivable for W & W, LLP, Appellant was wrongly precluded from joining W & W, LLP as an Indispensable Party for whom Appellant could refute the "alleged" stale debt, fraud debt, and other related issues. Discovery proves Appellees are an Enterprise which violated Civil RICO laws to defraud Appellant at the December 2018 state trial where Appellant was denied a fair trial to defend and present her case, and counterclaim by Appellees repressive lawfare tactics including stifling Appellant.

The Court overlooked that Appellant's claims for independent causes of action occurred at a state trial December 2018 and at a March 2019 Post-Trial proceeding. Appellees, as an Enterprise with predicate acts, placed fraud on the court to interfere with Judicial Machinery and misled the court with deceptive testimony.

APPENDIX "G"

The facts presented in Appellant's U.S. District Court claims satisfy the statutory standard for the claims against Appellee.

The 3rd Circuit overlooked that the claims are not time-barred from the time of the cause of actions which created the independent claims in the U.S. District with exception to the FDCPA claim which could be "equitably tolled". *"Whether tolling of a statute of limitations has occurred raises an issue of law involving statutory interpretation; the issue is one of law reviewed de novo."* ***Weddel v. Sec'y, Health & Human Servs., 100 F.3d 929, 931 (Fed. Cir. 1996).*** In ***Rotkiske v Klemm,*** the Court left open extending the statute of limitations based on equitable principles, such as equitable tolling and an equitable fraud-specific discovery rule that the limitations period does not begin to run until the plaintiff discovers the violation and if the failure to discover the violation involved the defendant's fraud.

Records prove fraud by Appellees was responsible for hindering Appellant.

The court overlooked *"where a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute [of limitations] does not begin to run until the fraud is discovered."* ***Holmberg v. Armbrecht, 327 U.S. 392, 397 (1946).***

Justice Ginsburg concurred with Justice Scalia that the *"ordinarily applicable time trigger does not apply when fraud on the creditor's part accounts for the debtor's*

APPENDIX "G"

failure to sue within one year of the creditor's violation." ***TRW Inc. v Andrews, 534 U.S. 1, 37 (2001),*** and Justice Ginsburg clarified in her opinion that the consumer's claim did not have to be one for fraud, as long as fraud prevented the consumer from discovering the violation. Appellee (PPC) deceived Appellant into believing they had a basis for submitting certain records, which prevented Appellant from raising FDCPA claims when PPC filed suit without verification and inadequate knowledge of whether the amount was due. See ***Toohey v Portfolio Recovery Assoc., LLC, 2016 WL 4473016 S.D. N.Y. (2016).*** PPC intentionally concealed information from Appellant, hindering her actions. *"Fraud-specific discovery can also apply where the consumer seeks information from the collector to determine if there is a violation and the collector intentionally conceals the information." See* ***Rivera v JP Morgan Chase & Co., 2015 WL 12851710 (S.D. Fla. July 9, 2015).*** Equitable tolling can be applied due to Discovery delays which prevents a consumer such as Appellant from learning of the role of a previously unnamed defendant. Appellant was deceived by Appellee (PPC) withholding information as to their role and Appellee W & W' s role. Many courts find when there is litigation misconduct the limitations period begins to run from the filing of a lawsuit even if violations occur later in the lawsuit, as long as the violations are of a similar nature to those involving a collection suit. **NCLC's FDC § 12.3.4.3.**

APPENDIX "G"

If a collection violation is filed after the limitations period has run, but another is filed for false affidavits later in the litigation, each may have its own limitations period. **NCLC's Fair Debt Collection § 12.2.4.4**

Some courts adopt a continuing violation approach where there is a pattern of misconduct. **NCLC's Fair Debt Collection § 12.2.4.5**

In ***Bender v. Elmore & Throop, P.C.***, the 4th Circuit holds that each violation of the FDCPA gives rise to a separate claim governed by its own limitations period. Appellant timely filed suit in U.S. District Court against Appellees within the 4 yr. Civil RICO Statute from the time of the cause of action which occurred **December 2018**. Appellees fraudulently concealed their Enterprise via subterfuge which couldn't be proven until the **December 2018** state trial and March 2019 Post-Trial proceeding.

The UTPCPL claim has a 6 yr. Statute. Hindsight illustrates Appellees have an ongoing practice of violating the UTPCPL. Appellant asserts UTPCPL cause of action against Appellees by their pattern of deception including *"their acts and practices were capable of being interpreted in a misleading way"* at the December 2018 state trial by their use of business practices that are so deceptive and misleading that they deceived a court with false pleadings that they later contradicted and by self-contradictory testimony, leaving unanswered questions.

APPENDIX "G"

Civil Rights 42 US 1983 has a 2 yr. Statute which couldn't be proven until the state court appeal conclusion August 2021. Appellant was denied a November 2022 "Leave to Attach (preliminary Discovery) Exhibits" supporting the claims, and was denied an Appointment of Counsel Petition (civil rights was a claim) when an attorney could have well-pleaded claims.

The Court overlooked statutes were timely from the time of action, and there are legal issues to appeal under the de novo standard, factual questions under the clearly erroneous standard and abuse of discretion standard due to an arbitrary, unreasonable and erroneous conclusion based without record evidence.

<u>The Court overlooked statutes were timely from the time of causes of actions</u>.

It is a perversion of justice to allow Appellant, who was "crippled" by the state court, to then be "crippled" by the federal court in the infancy of the independent causes of action created by an unfair state trial, and then further be undermined by the appeal process with a summary disposal based on adopting conclusions of the U.S. District Court which is not based on records, rather relied on propagated subterfuge and self-contradictory facts of Appellees. Manifest injustice should not prevail and appeal should be reinstated for full review on the merits.

Wherefore, Reconsideration should be ***Granted*** to reinstate appeal.

Respectfully Submitted,

Elaine Mickman October 16, 2023

Elaine Mickman

APPENDIX "G"