No.

IN THE

SUPREME COURT OF THE UNITED STATES

MATTHEW O'REILLY

Petitioner, Pro Se

v.

ADAM TSOTTLES and WASTE MANAGEMENT,

Respondents

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

MOTION TO DIRECT THE CLERK TO DOCKET AN APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI OR IN THE ALTERNATIVE TO DIRECT THE CLERK TO DOCKET A PETITION FOR CERTIORARI OUT-OF-TIME

Matthew O'Reilly
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Petitioner

Motion To Direct The Clerk To Docket An Application For Extension Of Time To File A Petition For A Writ Of Certiorari

Or In The Alternative To Direct The Clerk To Docket A Petition For Certiorari Out-Of-Time

On 5 December 2023, I submitted a *Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit* to review that court's decision in *Matthew O'Reilly* v. *Adam Tsottles & Waste Management*, 21-1194, (4th Cir. 2021). On 12 December, I was informed by the Clerk that by this Court's calculation, the Petition was submitted one day late. In response on 18 December, I submitted an *Application for an Extension of Time to File a Petition for a Writ of Certiorari* to Chief Justice Roberts, which the Clerk, citing incorrect jurisdictional grounds, refused to docket.

For the reasons set forth below, I humbly ask this Court to direct the Clerk to docket the *Application*; grant the extension directly; or direct the Clerk to docket my *Petition for Writ of Certiorari* out-of-time.

I. The application deadline for time extensions is a claims-processing rule, rather than a jurisdictional bar.

28 U.S. Code § 2101(c) does not specify when an application for extension of time to file a petition for certiorari may be made; the time limit to submit applications for extension is prescribed only by Sup. Ct. R. 13.5 and 30.2, Thus the deadline may be equitably tolled, and a Justice of this Court may grant an extension to the time to petition for certiorari beyond the initial 90-day certiorari period. In this case, that authority extends until 01 February, 2024.

In the letter refusing docketing (*see* Appendix C), the Clerk stated "the Court no longer has the power [...] to consider an application for an extension of time to file the

petition." But this Court treats "a procedural requirement as jurisdictional only if Congress 'clearly states' that it is" (*Boechler, P.C.* v. *Commissioner of Internal Revenue,* 596 U.S._____ (2022)); and "[...] a time limit prescribed only in a court-made rule is not jurisdictional. It is a mandatory claim-processing rule [...]" (*Hamer* v. *Neighborhood Housing Servs. Of Chicago,* 583 U.S._____ (2017)). Therefore it is inherently – and *solely* – within the power of the Justices to consider and/or grant applications outside that time.

II. Blatant District and Appellate Court disregard for *stare decisis* is a matter of extraordinary importance and circumstance

Pursuant to the requirements of Sup. Ct. R. 13.5 and 30.2, this is an extraordinary circumstance, in part because the *Petition* presents a substantial and critically important question of Constitutional and procedural law: whether District Courts and Courts of Appeal are permitted to knowingly and deliberately disregard or ignore precedent from this Court and state high courts when adjudicating *pro se* cases. The District Court of Maryland has selectively ignored *stare decisis* in dozens of cases (including this one), and the Fourth Circuit has now split from all of its sister Circuits and this Court by deciding that continuing to do so constitutes "no reversible error". These decisions will continue to unfairly harm innumerable litigants if not quickly curbed.

III. Application for an Extension of Time to File a Petition for a Writ of Certiorari

The *Application for an Extension of Time to File a Petition for a Writ of Certiorari,* as filed on 18 December 2023 and required by Sup. Ct. R. 30.3, is fully incorporated by reference herein (the full *Application* is attached as Appendix B).

I hand-delivered the printed copies of the *Petition* to the Court within an hour of their completion on 05 December. The writing of the *Petition* was finished before the deadline, but due to errors by the printers (and compounded by personal illness), the booklets and associated papers required multiple re-printings in the final week and arrived late. Service on Respondents was nevertheless timely, and the Clerk acknowledged personal possession of the *Petition* within the three-day courier grace period provided for by Sup. Ct. R. 29.2.

Granting an extension will cause no unfair prejudice to Respondents. While the Court ordinarily requires that an application for extension be submitted "at least 10 days before the date the petition is due except in extraordinary circumstances" (*Sup. Ct. R. 13.5, 30.2*), I request that due to a severe illness and substantial and unforeseeable printing issues within the final ten days of the petition period, the Court grant a one-day *nunc pro tunc* extension out-of-time, and/or whatever other relief the Court finds equitable.

IV. If the Court does not see fit to docket or grant my Application for Extension, please direct the Clerk to docket my Petition out-of-time

It appears that this Court has never granted a motion to direct the Clerk to docket a petition out-of-time, but the Clerk has refused to docket this motion unless it contained such a request in both title and body. Per this requirement, if the Court does not grant my Application for Extension, I request that the Court direct the Clerk to docket my Petition for Writ of Certiorari out-of-time.

For the foregoing reasons, I beg the Court's indulgence to direct the Clerk to docket my *Application for an Extension of Time to File a Petition for a Writ of Certiorari* as timely filed, or in the alternative to grant the extension out-of-time, or direct the Clerk to docket the *Petition for Writ of Certiorari* out-of-time. I have provided copies of both the *Petition* and *Application* to the Clerk as required by Rule 33.1 and Rule 33.2, respectively.

Thank you for your time and consideration.

Respectfully submitted this 17th day of January, 2024.

Matthew O'Reilly, *Petitioner Pro Se*

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Petitioner

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APPENDIX A – Timeline of this Petition for Certiorari

05 September 2023:	Denial of petition for rehearing (Fourth Circuit)
24 November 2023:	Application for Extension due (per Rules 13.5 & 30.2)
26 November 2023:	Severe respiratory illness (continues for several weeks)
27 November 2023:	Scheduled Petition filing date; Printer fails to deliver booklets
28 November 2023:	Printer cannot complete booklets; Printing canceled
28 November 2023:	Second printer engaged to complete booklet printing
04 December 2023:	Petition for Certiorari due; Second printer fails to deliver
05 December 2023:	1:05 PM - Second printer delivers booklets
05 December 2023:	1:48 PM – Booklets are hand-delivered to the Court
12 December 2023	Clerk informs me that Cert Petition was late
18 December 2023:	Application for Extension hand-delivered to the Court
22 December 2023:	Clerk returns Application for Extension undocketed
26 December 2023:	Motion to Docket Application or Petition out-of-time
13 January 2024:	Clerk returns Motion to Docket undocketed (for incorrect title)
17 January 2024:	This Motion is Filed.

APPENDIX B – Application For Extension Of Time To File A Petition For A Writ Of Certiorari (Filed 18 December 2023)

TO THE HONORABLE JOHN G. ROBERTS, JR.
CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES
AND CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT

Pursuant to Supreme Court Rules 13.5, 22, and 30, I respectfully request an extension of time to re-file my Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit to review that court's decision in *Matthew O'Reilly v. Adam Tsottles & Waste Management*, 21-1194, (4th Cir. 2021).

I hand-delivered the printed copies of the Petition to the Court within an hour of receiving them on 05 December. The writing of the Petition was finished before the deadline, but due to errors by the printers (and compounded by personal illness), the booklets and associated papers required multiple re-printings in the final week and arrived late. Service on Respondents was nevertheless timely, and the Clerk acknowledged personal possession of the Petition within the Rule 29.2 three-day courier grace period. Granting this extension will cause no unfair prejudice to Respondents, and I am prepared to re-file immediately.

The jurisdiction of this Court for the Petition is invoked under 28 U.S.C. §1254(1). Your Honor has the authority and jurisdiction to grant this extension until 01 February 2024 under Rule 13.5 and 28 U.S. Code § 2101(c), though I request only until 22 December (or any date the Court finds reasonable) to re-file.

1. The Petition presents a substantial and important question of Constitutional and procedural law: whether District Courts and Courts of Appeal are permitted to knowingly and deliberately disregard or ignore precedent from this Court and state High Courts

when adjudicating *pro se* cases. I ask the Court to grant this minor (although admittedly extraordinary) extension to address the lower Courts' fundamental and far-reaching error.

Below, citing only local "custom" and its own unreported opinions as precedent, the District Court of Maryland dismissed this case in its entirety, stating – without notice and with prejudice – that I, a first-time *pro se* plaintiff, "abandoned" twenty-five causes of action I did not re-plead in response to a motion to dismiss, *even though* I had already fully pleaded the facts and allegations in the complaint. It dismissed the remaining causes of action as time-barred, citing case law from 2004 that this Court over-ruled in 2010. Reconsideration and leave to amend were both denied.

The District Court has used "abandonment" to dismiss all or part of more than a dozen cases; in just the last three years, it has cited its opinion in *this* case as sole approving authority on at least nine occasions, even as it was being appealed.

The Fourth Circuit, also disregarding its own and this Court's precedent, upheld the dismissal with a single sentence: "We have reviewed the record and find no reversible error." It then denied re-hearing without comment.

2. I had planned to file my Petition more than a week before the deadline, but a severe respiratory illness substantially impeded my ability to do so. In addition, the booklets had to be re-printed several times due to errors by two separate printers. At the eleventh hour, the first could unexpectedly not perform the task; and despite attesting delivery ability by 01 December, the second printer did not complete printing until 05 December, the day I filed.

3. I sincerely thought I had filed on time. Until the Clerk of this Court returned my filings to me, undocketed, I was not aware that I had missed the filing deadline by a single

day. Denial of re-hearing by the Fourth Circuit was sent to me by mail on 05 September, and I calculated 05 December as Day 90. While I do not doubt that the Clerk's interpretation is correct, the combined wording of Rules 13.1 and 30.1 is ambiguous and confusing to a lay person[1].

I understand that extensions are disfavored and rarely granted, but I humbly plead that you allow me to re-file my Petition. Ultimately, the just and fair disposition of this entire matter hinges on Your Honor's clemency and discernment.

If you cannot see yourself to that end, I implore you to read the text of the Petition itself so that you might at least be aware of the persistent and continuing injustices below. Even if it is too late for my work over the past six years to be of any benefit to me, please do not let it be of benefit to no one.

Thank you, most sincerely, for your time and consideration.

Respectfully submitted this 18th day of December, 2023.

/s/

Matthew O'Reilly, *Petitioner Pro Se*

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Petitioner

[1] For example, I reasoned that "within two days after" the 5th would mean by the 7th, but "within two days after, but not including" the 5th would mean by the 8th. Thus, "within 90 days after [13.1], but not including [30.1]" 05 September would include 05 December, the date I filed.

APPENDIX C – Clerk's letter refusing to docket the Application for Extension of Time to File a Petition for a Writ of Certiorari (Received 22 December 2023)

The Clerk's letter, as delivered on 22 December, 2023:

Dear Mr. O'Reilly:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was postmarked December 18, 2023 and received December 20, 2023. The application is returned for the following reason(s):

The application is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was September 5, 2023. Therefore the application for an extension of time was due on or before December 4, 2023. Rules 13.1, 30.1 and 30.2. When the time to file a petition for a writ of certiorari in a civil case has expired (including any habeas action), the Court no longer has the power to review the petition or to consider an application for an extension of time to file the petition.

You may submit your petitions along with a motion to direct the Clerk to file out-of-time.

Sincerely,

Scott S. Harris, Clerk

By: _____/s/_____

Redmond K. Barnes

(202) 479-3022

APPENDIX P – Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit (Filed 05 December 2023)

QUESTIONS PRESENTED

"*We have reviewed the record and find no reversible error.*"

With this single sentence and without further discussion, the Court of Appeals affirmed the District Court's dismissal of this entire case. Petitioner respectfully requests that this Honorable Court thus also review the decisions so affirmed.

I. The District Court dismissed the majority of Petitioner's causes of action, citing as authority – without notice – its own unreported case, *Muhammad v. Maryland*, ELH-11-3761, (D.Md. 2012), requiring that *pro se* plaintiffs re-plead facts and allegations already contained in the Complaint in response to a 12(b)(6) motion. Was this decision in error, considering the proper standard under FRCP Rule 12 does not require re-pleading?

II. The District Court found *sua sponte*, without evidence, and contrary to unopposed pleadings, that at some unspecified time Petitioner *could have* become aware of Respondents' scienter, beginning the running of the limitations period by "inquiry notice". Does this Court's decision in *Merck & Co. v. Reynolds*, 559 U.S. 633 (2010) mandate that making such a determination requires factual support?

III. Was the Court of Appeals in error when it affirmed that the District Court's decisions that are in conflict with binding precedent by this Court, the Maryland Supreme Court, and its own prior panels, were not "reversible error", when those same issues have mandated reversal in other recent, undistinguished – and indistinguishable – cases?

RULE 14 STATEMENTS

PARTIES

All parties are listed in the caption.

RELATED PROCEEDINGS

There have been no proceedings in this case; all decisions and opinions have been determined "on the papers" by written motion.

The following opinions are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *O'Reilly v. Tsottles & Waste Management*, 1:18-cv-03622, (D.Md. 2018) (Memorandum Opinion dismissing the case in full entered 30 March, 2020 (App. 2); Motion to Reconsider denied 08 February, 2021) (App. 1)

- *Matthew O'Reilly v. Adam Tsottles & Waste Management*, 21-1194, (4th Cir. 2021) (Affirmed *per curiam* 01 May 2023 (App. 4); Motion for En Banc Re-hearing denied 05 September 2023) (App. 3)

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PETITION FOR A WRIT OF CERTIORARI

I, Matthew O'Reilly, respectfully petition for a writ of certiorari to review the decisions of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The panel's opinion in the Court of Appeals (App. 2) was unpublished. The opinions of the District Court of Maryland (App. 3,4) were not reported.

The cases may be found by citation as *Matthew O'Reilly v. Adam Tsottles & Waste Management*, 21-1194, (4th Cir. 2021) and *O'Reilly v. Tsottles & Waste Management*, 1:18-cv-03622, (D.Md. 2018).

CURRENT JURISDICTION

The United States Court of Appeals for the Fourth Circuit denied re-hearing on 05 September, 2023, providing this Court with jurisdiction under 28 U.S.C. §1254(1).

ORIGINAL JURISDICTION

The United States District Court for the District of Maryland possessed original jurisdiction over this action pursuant to 28 U.S. Code §1332, as there existed complete diversity of citizenship; the amount in controversy exceeded $75,000; and the causes of action arose in the District of Maryland. Venue was proper for Defendants pursuant to 28 U.S.C. §1391(b)(1); 28 U.S.C. §1391(c)(1) and (2); and 28 U.S.C. §1391(d).

CONSTITUTIONAL PROVISIONS

The Equal Protection Clause of the Fourteenth Amendment provides that no person shall be denied "the equal protection of the laws" U.S. Const. amend. XIV, § 1. The Due Process Clauses of the Fifth and Fourteenth Amendment provide that no person shall be deprived "of life, liberty, or property, without due process of law".

This Court has held that access to the Courts of the United States; fair notice of procedure and expectations therein; and the application of *stare decisis* by lower courts are all fundamental aspects of these amendments and deserving of heightened protection.

STATEMENT OF THE CASE

I. Brief Factual Background

Just before dawn one October morning in Baltimore, Maryland, two employees of Waste Management, Inc. assaulted and battered me; one employee going so far as to deliberately drive their 40-ton waste removal truck into my body, knocking me to the ground. I summoned the Baltimore Police to the scene, who convinced all three of us to shake hands and walk away, and I considered the incident put to rest.

The following day, unbeknownst to me, the employees' manager, Adam Tsottles, who had not been present for the incident, filed an "Application for Statement of Charges" with a Magistrate in Baltimore District Court, falsely claiming that *I* had assaulted his employees and "attempted to steal" the truck that had hit me, writing on the Application that "all this was caught on video" in his possession.

Because Tsottles' actual statement was in the sole possession of the prosecutor, it was inaccessible to me until Discovery commenced in December of 2017, and I therefore could not have known of the scienter of Tsottles' fraudulent statements until that time.

A criminal trial was scheduled, but Tsottles and Waste Management secretly withheld all of the exculpatory video, including video from dash cameras in the truck showing the truck running into me. In fact, I was not made aware of the possible existence of these recordings until nearly a year later.

As a direct result of this lack of access to exculpatory Brady[2] evidence, I could not receive a fair trial and was forced to accept a plea bargain, albeit one that did not include a conviction.

II. In the District Court of Maryland

Once I finally learned of Tsottles' fraud, I began preparing a lawsuit, alleging defamation, malicious prosecution, civil rights offences, assault and battery, and other related causes of action. Partly due to the damage done to my professional reputation as a result of the false criminal allegations (I was terminated from my employment as a cryptographic systems specialist shortly after accepting the plea bargain), I did not have the resources to hire an attorney and was forced to compose the suit *pro se*.

I filed suit against Tsottles and Waste Management in the US District Court of Maryland on 27 November 2018, far less than a year after I first could have discovered

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[2] *Brady v. Maryland*, 373 U.S. 83

Tsottles' dishonesty and defamation, and more than two years *before* the statutes of limitation would have expired on most of the causes of action in the Complaint[3].

Counsel for Tsottles and Waste Management did not file a responsive pleading, instead filing a motion to dismiss, in which they included matter far outside the "four corners of the pleadings". I defended against the motion vigorously, also filing several of my own motions, including a motion for judgment on the pleadings[4] and an unopposed motion for partial summary judgment.

The District Court issued a dismissal order on 30 March, 2020, the day before the start of the COVID lockdown, dismissing 25 causes of action – including *all* of the three-year limitations causes of action – through "abandonment", a "custom" in Maryland that gives the Court the discretion to dismiss any cause of action not re-pleaded in a response to a motion to dismiss – even if the facts and allegations are well-pleaded in the original Complaint.

The Court further decided, contrary to the plain text in the Complaint and without any further factual determination, that I "would have" discovered Tsottles' scienter at some indeterminate time more than a year before suit was filed, and therefore all causes of action with a one-year limitation were similarly dismissed. The case was then closed.

On 20 July 2020, three months *before* the third anniversary of the incident, I timely filed a motion for reconsideration, including a motion to amend the complaint. More than six months later, on 2 February 2021, the Court denied amendment, stating that – though they had not been when the motion to amend was filed – "many" of my causes of action were beyond the statute of limitations.

II. In the Fourth Circuit Court of Appeals

I timely appealed to the Fourth Circuit on 23 February 2021. The appeal was fully briefed on 27 May 2021.

Almost two full years later, on the first of May 2023, an unpublished *per curiam* panel decision was issued, simply stating, "We have reviewed the record and find no reversible error. Accordingly, we affirm."

I timely moved for a hearing en banc, but "No judge requested a poll", so the request was denied.

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[3] Maryland law provides a one-year statute of limitation on defamation, and three years on most other torts

[4] FRCP Rule 12(d) states that if "matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56". Because Rule 56 does not toll the time for pleadings, Respondents waived their right to file a responsive pleading.

This petition now follows.

II. Additional Facts

The Court of Appeals affirmed the dismissal with barely a passing glance. I offer the following to shed light on the parade of horribles this failure of oversight invites if they are not reversed:

1. The District Court, citing only itself as authority, routinely surprises unsuspecting plaintiffs, using "abandonment" to grant dismissal, which is plainly contrary to the Federal Rules of Civil Procedure and fairness in general.

2. If District Courts are allowed to cite their own decisions as *stare decisis* while simultaneously ignoring binding precedent from this Court, the Circuit Courts, and State Courts, the entire concept of precedent will become untenable.

3. If District Courts, as here, may simply state that any pleaded statement with which they disagree is "implausible" to discard it, they by necessity fail to "consider the factual allegations in the complaint as true", and "construe the factual allegations in the light most favorable to the plaintiff", in direct conflict with binding precedent from both this Court[5] and the Fourth Circuit[6].

3. This Court has routinely reversed Courts that have considered statutes of limitations to have expired based on the date of their opinion, rather than on the date of filing. Allowing the District Court to sit on a filing until the statute of limitations has passed makes a mockery of the entire concept.

4. Waste Management does business in Maryland, despite not being registered in the state. By Maryland Law[7], statutes of limitation do not apply to unregistered businesses, yet the District Court dismissed a majority of this case as time-barred. If courts may also safely ignore state law and the Erie Doctrine, the careful balance of power and responsibility this Court strives to maintain between the States and the Federal Courts will be eroded until nothing is left.

Granting a writ of certiorari and reversing the lower court is the only way to curtail the abuses of the District Court and encourage proper oversight by the Court of Appeals.

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[5] *Albright v. Oliver*, 510 U.S. 266, 268 (1994)
[6] *Ray v. Roane*, 948 F.3d 222, 226 (4th Cir. 2020)
[7] MD Cts & Jud Pro Code § 5-204

ARGUMENT

I. The Panel Opinion Silently Sets a Dangerous Precedent

Though the District Court has been employing "abandonment" for more than a decade[8], this is the first time the practice has been challenged on appeal. By refusing to engage with or address any part of the issues on appeal, the Panel has, for the first time, tacitly approved of the District Court's practices, encouraging further and bolder abuses. In fact, the District Court has already cited *this* case as approving authority on nine occasions[9] to continue this egregious "custom" in violation of the Rules of Procedure and what should be binding precedent.

II. The Panel Failed to Distinguish This Case

Even to a layman, a cursory glance through the District Court's opinions reveals a myriad of errors that have mandated reversal in other cases, yet the Panel did not even attempt to distinguish this case while affirming. If the Panel truly "reviewed the record", but found "no reversible error", it can only be because it was determined not to.

III. Courts May Not Use Their Own Decisions to Overcome Binding Precedent

District Courts may not choose to ignore binding precedent in favor of their own decisions to the contrary. In the Fourth Circuit, only the Court sitting en banc may overturn a prior decision by a three-judge panel, and only this Court may overturn its own decisions.

But the District Court regularly elevates its own "custom" over the Federal Rules of Civil Procedure to dismiss cases, and the Court of Appeals failure to address this impropriety, much less enforce the decisions of this Court, is judicial abdication of the most severe sort.

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[8] *Wingler v. Fid. Invs.*, WDQ-12-3439 (2013); *Grinage v. Mylan Pharm., Inc.*, 840 F.Supp. 2d 862, 867 (2011); *Grice v. Colvin*, 97 F.Supp.3d 684, 707 (2015); *Cox v. U.S. Postal Serv. Fed. Credit Union*, GJH-14-3702 (2015); *Muhammad v. Maryland*, ELH-11-3761 (2012); *Stewart Title Guar. Co. v. Sanford Title Servs* ELH-11-620 (2011)

[9] *Temescal Wellness of Maryland, LLC v. Faces Human Capital, LLC*, 1:20-cv-03648; *Allen v. One Stop Staffing, LLC.*, 1:19-cv-02859; *Jarrells v. Anne Arundel County, Maryland*, 1:21-cv-02902; *Robinson v. Wells Fargo Bank, N.A.*, 1:22-cv-02731-JMC; *Waheed v. State of Maryland*, 1:20-cv-01931-GLR; *Davis v. LaClair*, 1:21-cv-01582; *Jackson v. State of Maryland*, 8:20-cv-00270; *Pinson v. Maryland*, 1:20-cv-01155; *Cooper v. Mr. Timmins*, 1:22-cv-00857-JMC

IV. Courts May Not Use Older Precedent in Lieu of Current Precedent

Here, the District Court applied "inquiry notice" from outdated case law[10] that conflicts with newer precedent by both the Supreme Court of Maryland[11] and this Court[12]. Again, the very concept of binding precedent is in jeopardy if District Courts are allowed to engage in this practice un-checked.

V. The District Court Did Not Correctly Apply "Inquiry Notice"

Respondents made no showing before the District Court that I could have, much less would have, discovered Tsottles' scienter more than one year prior to the filing of suit. In fact, the Complaint contained the only evidence on the Record about the issue, stating that it would have been impossible.

The District Court openly admitted it was obliged, under both Fourth Circuit[13] and this Court's[14] precedent, to consider the allegation "as true". yet immediately presumed – having done no fact finding or further development – that I did not undertake a "reasonable inquiry", as evidenced solely by my failure to uncover the falsehoods sooner.

The Maryland Supreme Court in *Benjamin* specifically rejected this approach, devising a two-prong test[15] for determining the predicates for inquiry notice.

Similarly, this Court in *Merck* concluded that "the limitations period does not begin to run until the plaintiff thereafter discovers or a reasonably diligent plaintiff would have discovered 'the facts constituting the violation' including scienter—irrespective of whether the actual plaintiff undertook a reasonably diligent investigation", which required the District Court to determine, factually, when a "reasonably diligent" investigation could or would have revealed the scienter itself.

The circular logic of the District Court – that I did not diligently investigate, because if I had, clearly I would have uncovered Tsottles' lies sooner – comports with neither the holding of Maryland Supreme Court nor that of this Court.

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[10] *Dual Inc. v. Lockheed Martin Corp.*, 857 A.2d 1095, 1104 (Md. 2004)
[11] *Georgia Pacific Corp. v. Benjamin*, 904 A.2d 511 (Md. 2006)
[12] *Merck & Co. v. Reynolds*, 559 U.S. 633 (2010)
[13] *Lambeth v. Bd. of Comm'rs of Davidson Cty.*, 407 F.3d 266, 268 (4th Cir. 2005)
[14] *Albright v. Oliver*, 510 U.S. 266, 268 (1994)
[15] *Georgia Pacific Corp. v. Benjamin*, at *529

REASONS TO GRANT THE PETITION

While outrageous and horrifying, the facts of this case are not unique; as you have just seen, a multitude of cases in the District of Maryland alone have been unfairly dismissed, and the cancer is growing. This Petition presents a clear opportunity for this Court to act decisively to remind District Courts in every Federal Circuit that precedent set by this Court, the Circuit Courts, and the State High Courts is actually meaningful and may not be considered like the Pirates' Code – "more like guidelines than actual rules".

Failure to do so will continue to erode this Court's authority, damaging the entire Judicial structure and allowing the idea that this is a "Money System", where those without deep pockets cannot expect to have their rights upheld against those who do, to grow further and fester in the minds of the public.

CONCLUSION

The Court should grant a writ of certiorari and summarily reverse the decisions below.

Respectfully submitted,

Matthew O'Reilly, *pro se*

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APPENDICES

APPENDIX P1 - Denial of Re-hearing En Banc by the United States Court of Appeals for the Fourth Circuit (05 September, 2023)

USCA4 Appeal: 21-1194 Doc: 30 Pg: 1 of 1

FILED: September 5, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1194
(1:18-cv-03622-GLR)

MATTHEW O'REILLY

Plaintiff - Appellant

v.

ADAM TSOTTLES, Route Manager, Waste Management; WASTE MANAGEMENT, INC.

Defendants - Appellees

O R D E R

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

For the Court
/s/ Nwamaka Anowi, Clerk

APPENDIX P2 - Opinion of the United States Court of Appeals for the Fourth Circuit (01 May, 2023)

USCA4 Appeal: 21-1194 Doc: 26 Filed: 05/01/2023

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1194

MATTHEW O'REILLY,
Plaintiff - Appellant,

v.

ADAM TSOTTLES, Route Manager, Waste Management; WASTE MANAGEMENT, INC.,
Defendants - Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore., George L. Russell, III, District Judge. (1:18-cv-03622-GLR)

Submitted: April 20, 2023 Decided:May 1, 2023

Before KING and AGEE, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Matthew O'Reilly, Appellant Pro Se. Geoffrey M. Gamble, SAUL EWING LLP, Baltimore, Maryland; John F. Stoviak, SAUL EWING LLP, Philadelphia, Pennsylvania, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM

Matthew O'Reilly appeals the district court's orders dismissing his civil action for failure to state a claim under Fed. R. Civ. P. 12(b)(6) and denying reconsideration. We have reviewed the record and find no reversible error. Accordingly, we affirm. *O'Reilly v. Tsottles*, No. 1:18-cv-03622-GLR (D. Md., Mar. 30, 2020 & Feb. 8, 2021). We deny O'Reilly's motion for partial summary affirmance. 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

APPENDIX P3 - Denial of Reconsideration Motion by the United States District Court for the District of Maryland (08 February, 2021)

Case 1:18-cv-03622-GLR Document 79 Filed 02/08/21

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. GLR-18-3622

MATTHEW O'REILLY,
Plaintiff,

v.

ADAM TSOTTLES, et al.,
Defendants.

***

MEMORANDUM OPINION

THIS MATTER is before the Court on Plaintiff Matthew O'Reilly's Motion to Reconsider, Vacate Dismissal, Reopen Case, and for Leave to Amend Complaint ("Motion to Reconsider") (ECF No. 75). The Motion is ripe for disposition, and no hearing is necessary. See Local Rule 105.6 (D.Md. 2018). For the reasons outlined below, the Court will deny the Motion.

I. BACKGROUND

A. Factual Background

The relevant facts underlying O'Reilly's claims are set forth in detail in the Memorandum Opinion supporting the Court's dismissal of O'Reilly's Complaint. (March 30, 2020 Mem. Op. ["Dismissal Order"] at 2–5, ECF No. 73). In brief, on November 27, 2018, O'Reilly sued Defendants Adam Tsottles and Waste Management, Inc. ("WMI") (collectively, "Defendants"). (ECF No. 1). On April 26, 2019, O'Reilly filed an Amended Complaint. (ECF No. 12). Within the Amended Complaint, O'Reilly alleged that he became engaged in a verbal and, eventually, physical altercation with two WMI employees. (Am. Compl. ¶¶ 19, 32–44, ECF No. 12). O'Reilly alleged that following the encounter, Tsottles "filed a Criminal Information ('CI') against Plaintiff O'Reilly with the Baltimore City District Court alleging assault, malicious destruction of property, and attempted theft of the Defendants' property." (Id. ¶ 45). As a result, O'Reilly received a summons, was charged

with multiple crimes, and eventually entered an Alford plea[16] to the second-degree assault charge. (Id. ¶¶ 57, 63); (Mot. Dismiss Pl.'s Am. Compl. ["Mot. Dismiss"] at 2, ECF No. 17-1); see also Maryland v. O'Reilly, No. 6B02363577 (Dist.Ct.Balt.City filed Oct. 17, 2017).

B. Procedural Background

O'Reilly's thirty-three count Amended Complaint alleged: common law defamation per se (Count 1); civil conspiracy to defame (Count 2); aiding and abetting defamation (Count 3); violation of Maryland Transportation Code § 22-602 (Count 4); violation of Code of Maryland Regulation 11.14.07 (Count 5); violation of Health Code of Baltimore City § 9-206 (Count 6); violation of Health Code of Baltimore City § 7-221 (Count 7); promissory estoppel (Count 8); intentional infliction of emotion distress (Count 9); negligent infliction of emotional distress (Count 10); civil conspiracy to inflict emotional distress (Count 11); aiding and abetting the infliction of emotional distress (Count 12); assault (Count 13); negligent assault (Count 14); battery (Count 15); negligent battery (Count 16); malicious prosecution (Count 17); civil conspiracy to prosecute maliciously (Count 18); aiding and abetting malicious prosecution (Count 19); abuse of process (Count 20); civil conspiracy to abuse process (Count 21); obstruction of justice (Count 22); civil conspiracy to obstruct justice (Count 23); aiding and abetting the obstruction of justice (Count 24); fraud (Count 25); civil conspiracy to defraud (Count 26); aiding and abetting fraud (Count 27); deprivation of due process (Count 28); civil conspiracy for deprivation of due process (Count 29); aiding and abetting the deprivation of due process (Count 30); spoliation of evidence (Count 31); civil conspiracy to despoil evidence (Count 32); and aiding and abetting the spoliation of evidence (Count 33). (Am. Compl. ¶¶ 73–116). O'Reilly sought $25 million in damages. (Id. ¶ 124).

On May 13, 2019, Defendants filed a Motion to Dismiss the Amended Complaint. (ECF No. 17). On June 5, 2019, O'Reilly filed a Motion to Treat Defendants' Amended Motion to Dismiss as a Motion for Summary Judgment ("Motion to Convert") (ECF No. 27). O'Reilly filed an Opposition to the Motion to Dismiss on June 7, 2019.[17] (ECF No. 31). On June 24,

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[16] An Alford plea "lies somewhere between a plea of guilty and a plea of nolo contendere" because it contains a "protestation of innocence." Bishop v. State, 7 A.3d 1074, 1085 (Md. 2010) (internal quotation marks and citations omitted). Individuals who enter into this plea may be "unwilling or unable" to admit their participation in the acts constituting the crime. Id. (quoting North Carolina v. Alford, 400 U.S. 25, 36 (1970)).

[17] O'Reilly attached a "Memorandum of Restatement of the Elements of Plaintiff's Causes of Action" to his Opposition in which he purported to "enumerate[] each of the causes of action, with cross-references to some . . . of the supporting factual statements in the original and/or Amended Complaints." (See ECF No. 31-2). As the Court noted in the Dismissal Order, the Memorandum contained legal and factual assertions that were not made in the Amended Complaint. Thus, the Memorandum represented an impermissible attempt to supplement O'Reilly's claims through a responsive pleading. See Hurst v. District of Columbia, 681 F.App'x 186, 194 (4th Cir. 2017) (holding "a plaintiff may not amend her complaint via briefing"). Accordingly, the Court did not consider the Memorandum.

2019, Defendants filed an Opposition to the Motion to Convert and a Reply to the Motion to Dismiss. (ECF Nos. 40, 43). O'Reilly filed a Reply to the Motion to Convert on July 10, 2019. (ECF No. 48). On March 30, 2020, this Court granted the Motion to Dismiss. (ECF Nos. 73–74). In addition to granting Defendants' Motion to Dismiss, the Dismissal Order also disposed of several other outstanding motions: Defendants' Motion to Dismiss Plaintiff's Complaint (ECF No. 14); O'Reilly's Motion for Partial Summary Judgment for Defamation Per Se (ECF No. 30); O'Reilly's Motion for Judgment on the Pleadings (ECF No. 32); O'Reilly's Motions to Amend, Join, and for Orders to Show Cause and Relief (ECF No. 33); and Plaintiff's Motion for an Order to Show Cause for Contempt (ECF No. 57). On July 21, 2020, O'Reilly filed a Motion for Reconsideration. (ECF No. 75). On August 4, 2020, Defendants filed an Opposition to O'Reilly's Motion. (ECF No. 76). On August 17, 2020, O'Reilly filed a Reply in support of the Motion. (ECF No. 77).

II. DISCUSSION

A. Standard of Review

The Federal Rules of Civil Procedure include three Rules that permit a party to move for reconsideration. Rule 54(b) governs motions to reconsider interlocutory orders. See Fayetteville Invs. v. Com. Builders, Inc., 936 F.2d 1462, 1469–70 (4th Cir. 1991). Rules 59(e) and 60(b) govern motions to reconsider final judgments. Id. Rule 59(e) controls when a party files a motion to alter or amend within twenty-eight days of the final judgment. Bolden v. McCabe, Weisberg & Conway, LLC, No. DKC-13-1265, 2014 WL 994066, at *1 n.1 (D.Md. Mar. 13, 2014). If a party files the motion later, Rule 60(b) controls. Id. The Court granted Defendants' Motion to Dismiss on March 30, 2020, making O'Reilly's Motion for Reconsideration due April 27, 2020. As part of its response to the novel coronavirus, however, the Court issued certain standing orders extending all filing deadlines set to fall between March 16, 2020 and June 5, 2020 by eighty-four days. Standing Order 2020-07, In re Court Operations Under the Exigent Circumstances Created by COVID-19, slip op. at 2 (Apr. 10, 2020); see also Standing Order 2020-11, In re Court Operations Under the Exigent Circumstances Created by COVID-19, slip op. at 3 (May 22, 2020) (maintaining extended filing deadlines) (collectively, the "Standing Orders"). Thus, pursuant to the Standing Orders, the deadline for O'Reilly's Motion for Reconsideration was extended to July 20, 2020. Although the Court received O'Reilly's Motion on July 21, 2020, the Motion itself was dated July 20, 2020. (See Mot. Reconsideration at 2, ECF No. 75). Accordingly, the Court will treat O'Reilly's Motion as timely, and Rule 59(e) controls. Rule 59(e) authorizes a district court to alter or amend a prior final judgment. See Katyle v. Penn Nat'l Gaming, Inc., 637 F.3d 462, 470 n.4 (4th Cir.

O'Reilly encloses a similar document with his Motion to Reconsider. (See ECF No. 75-3). For the same reasons, the Court will not consider the Memorandum in deciding the Motion to Reconsider.

2011). A federal district judge's power to grant a Rule 59(e) motion is discretionary. Robison v. Wix Filtration Corp., LLC, 599 F.3d 403, 411 (4th Cir. 2010). In general, granting a motion for reconsideration "is an extraordinary remedy which should be used sparingly." Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998) (quoting Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2810.1, at 124 (2d ed. 1995)). Furthermore, "[a] motion for reconsideration is 'not the proper place to relitigate a case after the court has ruled against a party, as mere disagreement with a court's rulings will not support granting such a request.'" Lynn v. Monarch Recovery Mgmt., Inc., 953 F.Supp.2d 612, 620 (D.Md. 2013) (quoting Sanders v. Prince George's Pub. Sch. Sys., No. RWT-08-501, 2011 WL 4443441, at *1 (D.Md. Sept. 21, 2011)). "Rule 59(e) motions can be successful in only three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." U.S. ex rel. Carter v. Halliburton Co., 866 F.3d 199, 210–11 (4th Cir. 2017) (quoting Zinkand v. Brown, 478 F.3d 634, 637 (4th Cir. 2007)). With respect to the third factor, there must be more than simply a "mere disagreement" with a decision to support a Rule 59(e) motion. Hutchinson v. Staton, 994 F.2d 1076, 1082 (4th Cir. 1993). "A 'factually supported and legally justified' decision does not constitute clear error." Jarvis v. Berryhill, No. TMD-15-2226, 2017 WL 467736, at *1 (D.Md Feb. 3, 2017) (quoting Hutchinson, 994 F.2d at 1081–82). As to the "manifest injustice" standard, courts focus on whether there was fairness in the administrative process or a denial of due process. Id. (citing Kasey v. Sullivan, 3 F.3d 75, 79 (4th Cir. 1993)).

B. Analysis

1. O'Reilly's Previous Motions

While the body of the Court's Dismissal Order focused on the merits Defendants' Motion to Dismiss, the Order also summarily denied several of O'Reilly's other pending Motions. (Dismissal Order at 1–2 n.1). The Court will review O'Reilly's challenges to those decisions in turn.

i. Motion for Judgment on the Pleadings

The Court denied O'Reilly's Motion for Judgment on the Pleadings (ECF No. 32) because the Motion was filed before Defendants filed an Answer. See Fed.R.Civ.P. 12(c) (permitting the filing of such a motion "[a]fter the pleadings are closed . . ."). O'Reilly contends that the Court erred in finding that the pleadings were not closed, because "Defendants chose not to file an Answer, instead filing a motion for summary judgment...and forfeit[ing] their right to file a responsive pleading[.]" (Mem. Supp. Pl.'s Mot. Reconsider Pl.'s Mots. ["Mot. Reconsider Other Mots."] at 14, ECF No. 75-1). As this Court has explained, however:

"Pleadings are considered closed "upon the filing of a complaint and answer (absent a court-ordered reply), unless a counterclaim, crossclaim, or third-party claim is interposed, in which even the filing of an answer to a counterclaim, crossclaim answer, or third-party answer normally will mark the close of the proceedings." 5C Charles Alan Wright, et al., FED. PRAC. & PROC. § 1367 (4th ed. May 2019). "A Rule 12(c) motion for judgment on the pleadings is appropriate when all material allegations of fact are admitted in the pleadings and only questions of law remain." Wells Fargo Equip. Fin., Inc. v. State Farm Fire & Cas. Co., 805 F.Supp.2d 213, 216 (E.D. Va. 2011), aff'd, 494 F.App'x 394 (4th Cir. 2012) (internal quotation omitted)."

Puchmelter v. SKWeston & Co., LLC, No. ADC-20-309, 2020 WL 4903754, at *2 (D.Md. Aug. 20, 2020). There is no support for O'Reilly's contention that a Motion for Judgment on the Pleadings is appropriate where a defendant has moved to dismiss a claim rather than filing an Answer. Accordingly, the Court will not reconsider its decision to deny O'Reilly's Motion for Judgment on the Pleadings.

ii. Motions to Amend, Join, and for Orders to Show Cause and Relief

The Court denied O'Reilly's Motions to Amend, Join, and for Orders to Show Cause and Relief (ECF No. 33) because O'Reilly failed to properly support the requested relief. In the case of O'Reilly's request to amend, O'Reilly wrote simply that he "moves for leave of the Court to amend his complaint to address any deficiencies identified." (Mots. Amend, Join, & Orders to Show Cause & Relief ["Pl.'s Various Mots."] at 1, ECF No. 33). At the time of the Motion, O'Reilly had already amended his Complaint once. Under Rule 15(a)(2), "[t]he court should freely give leave [to amend a complaint] when justice so requires." Fed.R.Civ.P. 15(a)(2). However, leave to amend is properly denied when amendment would prejudice the opposing party, the moving party has exhibited bad faith, or amendment would be futile. Edell & Assocs., P.C. v. Law Offices of Peter G. Angelos, 264 F.3d 424, 446 (4th Cir. 2001) (citing Edwards v. City of Goldsboro, 178 F.3d 231, 242 (4th Cir. 1999)). Because O'Reilly provided no guidance to the Court regarding the substance of O'Reilly's prospective second amended complaint, the Court had no ability to evaluate the propriety of the proposed amendment under any of the three aforementioned factors. In the Fourth Circuit, the decision to grant a party leave to amend lies within the sound discretion of the district court. Medigen of Ky., Inc. v. Pub. Serv. Comm'n of W.Va., 985 F.2d 164, 167–68 (4th Cir. 1993) (citations omitted). In its discretion, the Court declined to grant O'Reilly leave to amend his Complaint a second time. It will not reconsider that decision now. O'Reilly's request to join was similarly unsupported. In his Motion, O'Reilly wrote, "If at any point in this action it is determined that Roy Palmer is an indispens[a]ble party for any cause of action, Plaintiff O'Reilly moves that the Court grant leave to join Roy Palmer as a named defendant under Rule 19." (Pl.'s Various Mots. at 1). In his Reply, however, O'Reilly averred that he "does not argue for Roy Palmer's inclusion as an

indispens[a]ble party because he does not believe him to be so[.]" (Reply Mem. Supp. Mots. Amend, Join, & Orders to Show Cause & Relief at 2, ECF No. 50). Confronted with these noncommittal arguments, the Court denied O'Reilly's request to join Palmer as a defendant. In his Motion to Reconsider, O'Reilly now argues that Palmer was rendered an indispensable party by the Court's Dismissal Order, in which it found that Tsottles was not a proper party to O'Reilly's battery claim. This sort of defensive pleading, however, is not countenanced by the Federal Rules. Essentially, O'Reilly seeks to revive his claim on the basis that he, as "the master of the complaint," Caterpillar Inc. v. Williams, 482 U.S. 386, 398–99, (1987), declined to include as a defendant a party he now asserts was indispensable. The Court is not persuaded by this argument and will not reconsider its decision to deny O'Reilly's request to join Palmer as a party. O'Reilly's Motion also sought orders to show cause and other relief relating to Defendants' alleged failure to waive service. The precise substance of O'Reilly's arguments and alleged injury caused by Defendants' actions are not clear from O'Reilly's briefing; what is clear, however, is that Defendants entered their appearance and actively defended against the Complaint. Moreover, the Court ultimately denied Tsottles' argument that O'Reilly had failed to properly serve him. (Dismissal Order at 16–17). To the extent Defendants engaged in an inappropriate failure to waive service, the effect of such a failure in this pro se proceeding was minimal. The Court thus declines to reconsider its decision to deny O'Reilly's requests for an order to show cause and other relief.

iii. Motion to Show Cause for Contempt

The Court also denied O'Reilly's Motion for an Order to Show Cause for Contempt (ECF No. 57). In the Motion, O'Reilly sought an order requiring Defendants to show cause why they should not be held in contempt on the basis that Tsottles had perjured himself through an affidavit he submitted in support of Defendants' Motion to Dismiss. The Court denied the Motion upon finding that it failed to plead any of the elements for civil contempt. See Ashcraft v. Conoco, Inc., 218 F.3d 288, 301 (4th Cir. 2000) (identifying the four elements of civil contempt, which must be proved by clear and convincing evidence: existence of a valid decree that the nonmovant had actual or constructive knowledge of; the decree benefited the movant; the nonmovant violated that decree with, at least, constructive knowledge of the violation; and harm to the movant). In his Motion to Reconsider, O'Reilly argues that the Court erred in evaluating his Motion under the standards for civil contempt, as he sought an order requiring Defendants to show cause why the Court should not hold them in criminal contempt. (Mot. Reconsider Other Mots. at 23–24). Setting aside the propriety of a civil litigant seeking to hold an opposing party in criminal contempt, the Court will briefly review the applicable standards. A United States court may impose criminal contempt under the following circumstances: "(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice; (2) Misbehavior of any of its officers in their official transactions;

[or] (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command." 18 U.S.C. § 401. In his Reply in support of his Motion for an Order to Show Cause for Contempt, O'Reilly appears to argue that criminal contempt is appropriate under 18 U.S.C. § 401(1). To secure a conviction under § 401(1), "the Government must establish beyond a reasonable doubt: '(1) misbehavior of a person, (2) which is in or near to the presence of the Court, (3) which obstructs the administration of justice, and (4) which is committed with the required degree of criminal intent.'" United States v. Peoples, 698 F.3d 185, 189 (4th Cir. 2012) (quoting United States v. Warlick, 742 F.2d 113, 115 (4th Cir. 1984)). O'Reilly has cited no authority for the proposition that submission of an allegedly fraudulent affidavit—particularly one on which the Court did not rely in its analysis—may constitute grounds for a Court to impose criminal contempt on a party in a civil lawsuit, nor is the Court aware of any such authority. At a minimum, given the inconsequential nature of the affidavit in question, it had no impact on the administration of justice, nor did it occur in or near to the presence of the Court. Accordingly, the Court will not reconsider its decision to deny O'Reilly's Motion for an Order to Show Cause for Contempt (ECF No. 57).

2. Conversion

O'Reilly argues that the Court erred in denying his Motion to Treat Defendants' Amended Motion to Dismiss as a Motion for Summary Judgment ("Motion to Convert") (ECF No. 27). Specifically, O'Reilly identifies three categories of evidence the Court considered that ought to have required conversion of Defendants' Motion into a Motion for Summary Judgment: (1) court records relating to O'Reilly's criminal trial; (2) two affidavits attached to Defendants' filings; and (3) a cell phone video attached to Defendants' Reply in support of their Motion to Dismiss. The general rule is that a court may not consider extrinsic evidence when resolving a Rule 12(b)(6) motion without converting it to a motion for summary judgment. Fed.R.Civ.P. 12(d); see also Chesapeake Bay Found., Inc. v. Severstal Sparrows Point, LLC, 794 F.Supp.2d 602, 611 (D.Md. 2011). But this general rule is subject to several exceptions. One such exception allows the Court to consider matters of public record, including state court records. Philips v. Pitt Cty. Mem. Hosp., 572 F.3d 176, 180 (4th Cir. 2009); see also Wittholn v. Fed. Ins. Co., 164 F.App'x 395, 396–97 (4th Cir. 2006) (per curiam) (concluding that state court records are public records of which a federal district court may take judicial notice). Moreover, the Court "may consider documents . . . attached to the motion to dismiss, if they are integral to the complaint and their authenticity is not disputed." Sposato v. First Mariner Bank, No. CCB-12-1569, 2013 WL 1308582, at *2 (D.Md. Mar. 28, 2013); see CACI Int'l, Inc. v. St. Paul Fire & Marine Ins. Co., 566 F.3d 150, 154 (4th Cir. 2009). Records from the state court proceedings that were the genesis of this lawsuit may properly be deemed integral documents, and O'Reilly has not raised credible doubts about the authenticity of those documents. Accordingly, the Court was permitted to consider records from O'Reilly's state court proceedings without

converting Defendants' Motion to a motion for summary judgment. With respect to the cell phone video and Tsottles' accompanying affidavit, the Court did not consider this evidence in reaching its decision on Defendants' Motion to Dismiss. The Court "has 'complete discretion to determine whether or not to accept the submission of any material beyond the pleadings that is offered in conjunction with a Rule 12(b)(6) motion and rely on it, thereby converting the motion, or to reject it or simply not consider it.'" Wells-Bey v. Kopp, No. ELH-12-2319, 2013 WL 1700927, at *5 (D.Md. Apr. 16, 2013) (quoting 5C Wright & Miller, Federal Practice & Procedure § 1366, at 159 (3d ed. 2004, 2012 Supp.)). Because the Court declined to consider the video and affidavit, it was not required to convert Defendants' Motion to a motion for summary judgment. Finally, the Affidavit of Courtney Tippy ("Tippy Affidavit") was attached to Defendants' Motion to support Defendants' argument that the Court lacks personal jurisdiction over WMI. (See Mot. Dismiss at 19–20 & Ex. 3). Under the Federal Rules, the introduction of materials outside the pleadings requires conversion only to the extent those materials are presented to support a motion under Rule 12(b)(6) or 12(c). Fed.R.Civ.P. 12(d). Defendants moved to dismiss O'Reilly's claims against WMI for lack of personal jurisdiction under Rule 12(b)(2). Moreover, all references to the Tippy Affidavit in the Dismissal Order are found in the portion of the Order addressing the Court's jurisdiction. (See Dismissal Order at 9, 12, 13). Accordingly, the Court was permitted to consider the Tippy Affidavit without converting the Motion to Dismiss to a motion for summary judgment. In sum, the Court did not err in declining to convert Defendants' Motion.

3. Personal Jurisdiction

In the Dismissal Order, the Court concluded that O'Reilly had "failed to carry his burden of establishing that WMI has purposefully availed itself of the privilege of conducting activities in the state." (Dismissal Order at 14). In his Motion to Reconsider, however, O'Reilly introduces additional evidence, apparently discovered after the Court's decision to dismiss the Complaint, indicating that WMI did purposefully avail itself of the privilege of conducting activities in Maryland. (Mem. Supp. Pl.'s Mot. Reconsider Defs.' Mot. Dismiss Pl.'s Am. Compl. ["Mot. Reconsider"] at 9, ECF No. 75-2). The Court will assume, without concluding, that O'Reilly has unearthed and introduced sufficient evidence to warrant reversing the Court's determination that it lacked jurisdiction over WMI. Regardless, for the reasons set forth below, the Court will decline to reconsider its dismissal of WMI, as the same deficiencies in his allegations and arguments regarding his claims against Tsottles are fatal as to his claims against WMI.

4. Undisputed Claims

The Court dismissed several of O'Reilly's claims on the basis that he failed to defend the claims in his Opposition to Defendants' Motion to Dismiss. See Muhammad v. Maryland, No. ELH-11-3761, 2012 WL 987309, at *1 n.3 (D.Md. Mar. 20, 2012) ("[B]y failing to

respond to an argument made in a motion to dismiss, a plaintiff abandons his or her claim."). In his Motion for Reconsideration, O'Reilly argues the Court erred in relying on cases regarding abandonment of claims that arose in the context of motions for summary judgment, rather than motions to dismiss. However, it is customary practice in this Court to deem claims abandoned to the extent a plaintiff fails to respond to a motion to dismiss those claims. See, e.g., Grice v. Colvin, 97 F.Supp.3d 684, 707 (D.Md. 2015); Grinage v. Mylan Pharm., Inc., 840 F.Supp.2d 862, 867 n.2 (D.Md. 2011); Ferdinand-Davenport v. Children's Guild, 742 F.Supp.2d 772, 783 (D.Md. 2010); Cox v. U.S. Postal Serv. Fed. Credit Union, No. GJH-14-3702, 2015 WL 3795926, at *6 (D.Md. June 17, 2015); Wingler v. Fid. Invs., No. WDQ-12-3439, 2013 WL 6326585, at *3 (D.Md. Dec. 2, 2013); Muhammad, 2012 WL 987309, at *1 n.3; Stewart Title Guar. Co. v. Sanford Title Servs., LLC, No. ELH-11-620, 2011 WL 5547997, at *3 (D.Md. Nov. 10, 2011); see also United Supreme Council, 33 Degree of the Ancient & Accepted Scottish Rite of Freemasonry, Prince Hall Affiliation, S. Jurisdiction of the U.S. of Am., a Tenn. Non-Profit Corp. v. United Supreme Council of the Ancient Accepted Scottish Rite for the 33 Degree of Freemasonry, Prince Hall Affiliated, a D.C. Non-Profit Corp., 792 F.App'x 249, 259 (4th Cir. 2019) ("[W]e affirm the district court's . . . [holding] that [plaintiff] conceded its claims . . . by failing to respond to [defendant's] summary judgment motion on those points."). The Court's dismissal of these abandoned claims was proper. Accordingly, the Court will not reconsider its decision to dismiss Counts 4–7,[18] 13–16, 22–24, and 28–30.

5. Partially Disputed Claims

The Court dismissed another group of O'Reilly's claims based on similar reasoning. These "Partially Disputed Claims" included intentional infliction of emotional distress ("IIED"), civil conspiracy, and aiding and abetting IIED; malicious prosecution, civil conspiracy, and aiding and abetting the same; abuse of process, civil conspiracy, and aiding and abetting the same; and promissory estoppel. Rather than substantively responding to Defendants' motion to dismiss these claims, O'Reilly conclusorily asserted that Defendants' motion was incorrect and that he had adequately pleaded the elements of each cause of action. The Court found that O'Reilly's response warranted dismissal of those claims because it was "entirely conclusory, and contain[s] no specific arguments addressing the defendant['s] points." Bankcroft Com., Inc. v. Goroff, No. CCB-14-2796, 2014 WL 7409489, at *7 (D.Md. Dec. 31, 2014); see also Hardaway v. Equity Residential Mgmt., LLC, 2016 WL 3957648,

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[18] While O'Reilly does not mention this in his Motion for Reconsideration, the Court's Dismissal Order mistakenly omits Count 6 from the counts dismissed on this basis. (See Dismissal Order at 21). However, the Court clearly referenced Count 6, which alleged a violation of Health Code of Baltimore City § 9-206, in this section. (See Dismissal Order at 20 ("[P]rior to filing a private lawsuit for violation of Baltimore City Health Code § 9- 206, O'Reilly was required to notify the Commissioner, as required by § 9-214, but he failed to do so[.]")). The Court's reasoning in this section of the Dismissal Order thus applied equally to Count 6.

at *6 (D.Md. July 22, 2016) (reiterating that the court may treat a defendant's arguments as uncontested and dismiss the complaint when the plaintiff simply "repeat[s] many of the same conclusory allegations in their opposition brief that appeared in the . . . amended complaint"). In his Motion for Reconsideration, O'Reilly does not challenge the Court's conclusion that he failed to substantively address Defendants' arguments in his Opposition to their Motion to Dismiss. Instead, he references, without explanation, the portions of his Amended Complaint that purportedly establish the elements of the dismissed claims. O'Reilly thus fails to identify or establish a clear error of law or manifest injustice, as is required for the Court to reconsider its dismissal of these claims. Accordingly, the Court will not reconsider its decision to dismiss Counts 8–9, 11–12, 17–21,[19] and 25–27.

6. Defamation

The Court dismissed O'Reilly's defamation claim and his two related claims on the basis of timeliness. "Maryland imposes a one-year statute of limitations on claims for defamation." Long v. Welch & Rushe, Inc., 28 F.Supp.3d 446, 456 (D.Md. 2014) (citing Md. Code Ann., Cts. & Jud. Proc. ["CJP"] § 5-105). The statute of limitations for defamation begins to run the day the statements are improperly communicated. Id. However, Maryland recognizes and applies the discovery rule to defamation claims. Ayres v. Ocwen Loan Servicing, LLC, 129 F.Supp.3d 249, 272 (D.Md. 2015). O'Reilly filed his original Complaint on November 27, 2018. (ECF No. 1). On October 17, 2017, more than one year and one month beforehand, Tsottles reported the incident to police, who issued a summons to O'Reilly that same day. The summons plainly states that it was accompanied by a charging document, in accordance with Maryland Rules. (See Defs.' Reply Mem. Law Supp. Mot. Dismiss Am. Compl. ["Defs.' Reply Supp. Mot. Dismiss"] Ex. D ["Summons"] at 2, ECF No. 43-4); see also Md. Rule 4-212(b) ("[A] summons shall advise the defendant to appear in person at the time and place specified or, in the circuit court . . . . A copy of the charging document shall be attached to the summons."). The charging document, in turn, stated in general terms the allegations against O'Reilly. (See Defs.' Reply Supp. Mot. Dismiss Ex. E ["Summons"] at 2, ECF No. 43-5). The Court found that receipt of the summons and the accompanying charging document caused O'Reilly to possess "facts sufficient to cause a reasonable person to investigate further." Pennwalt Corp. v. Nasios, 550 A.2d 1155, 1163–64 (Md. 1988). O'Reilly argues that the Court erred by assuming that the charging

[19] While O'Reilly does not mention this in his Motion for Reconsideration, the Court's Dismissal Order mistakenly omits Count 18 from the Counts dismissed pursuant to the Court's analysis in this section of the Dismissal Order. (See Dismissal Order at 22). Once again, however, the Court clearly referenced Count 18, which alleged a civil conspiracy to prosecute maliciously, in this section. (See Dismissal Order at 21–22 ("Tsottles argues that O'Reilly has failed to state a claim for . . . malicious prosecution [and] civil conspiracy . . . . While O'Reilly intends to defend these claims, his response is wholly inadequate[.]")). The Court's reasoning in this section of the Dismissal Order thus applied equally to Count 18.

document was attached to the summons. According to O'Reilly, the summons was not accompanied by the charging document; thus, he was "first informed of the charges against him" when he appeared in court in response to the summons on November 28, 2017. (Am. Compl. ¶ 57; see also O'Reilly Aff. ¶ 4, ECF No. 75-5 ("The only information I received prior to the first Baltimore City District Court hearing on 28 November, 2017, was a small slip of carbon paper summoning me to the hearing, which contained no information about the charges being brought against me.")). Therefore, O'Reilly argues, his defamation claim was timely filed within one year of the date on which he became aware of the allegedly defamatory statements. The Court is unpersuaded by O'Reilly's argument for two reasons. First, to survive a motion to dismiss, O'Reilly is obligated 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)). Two assertions supporting O'Reilly's argument are implausible: (a) that the summons was served on him without a charging document, an event that would constitute a virtually unheard-of exception to the Maryland Rules; and (b) that O'Reilly, whose zealous advocacy for himself in this case has more than demonstrated his tenacity when it comes to legal action, received a summons lacking any detail regarding its origin and, rather than investigate, simply waited for over a month and appeared in court, knowing nothing of the charges against him. Second, for that very reason, O'Reilly was on inquiry notice from the time he received the summons even if it is true that a charging document was not attached. A plaintiff is on inquiry notice when the plaintiff "possesses 'facts sufficient to cause a reasonable person to investigate further, and . . . a diligent investigation would have revealed that the plaintiffs were victims of . . . the alleged tort.'" Dual Inc. v. Lockheed Martin Corp., 857 A.2d 1095, 1104 (Md. 2004) (quoting Pennwalt, 550 A.2d at 1164). When O'Reilly received a summons directing him to appear in court because he was being charged with a crime—and the summons referenced a purportedly missing "charging document attached hereto"—O'Reilly possessed facts sufficient to cause a reasonable person to investigate further. Had he done so, he would have learned of the substance of Defendants' allegations against him, which would have placed him on notice of the alleged defamatory statements. His failure to investigate does not excuse his untimely claim. Accordingly, the Court will not reconsider its decision to dismiss Counts 1–3 as time-barred.

7. Negligent Infliction of Emotional Distress and Spoliation

The Court dismissed Count 10, negligent infliction of emotional distress, and Counts 31–33, spoliation of evidence and related conspiracy and aiding and abetting claims, on the basis that they asserted claims that are not recognized in Maryland. See Bagwell v. Peninsula Reg'l Med. Ctr., 665 A.2d 297, 320 (Md.Ct.App. 1995) ("Maryland does not recognize the tort of 'negligent infliction of emotional distress' as an independent cause of action.") (citing Abrams v. City of Rockville, 596 A.2d 116, 118 (Md.Ct.App. 1991)); Goin v.

Shoppers Food Warehouse Corp., 890 A.2d 894, 898–99 (Md.Ct.App. 2006) (declining to recognize spoliation as independent tort). In his Motion to Reconsider, O'Reilly appears to question why this Court will not contravene Maryland law. It once again declines to do so. Accordingly, the Court will not reconsider its decision to dismiss Counts 10 and 31–33.

8. Motion for Leave to Amend

Finally, O'Reilly includes with his Motion to Reconsider a proposed Second Amended Complaint. (ECF Nos. 75-6, 75-7). Among other things, the proposed Second Amended Complaint, filed nearly two years after O'Reilly first filed this lawsuit, includes a host of new defendants; additional background information regarding the development of the hostility between O'Reilly and Defendants; additional details regarding the alleged assault; new assertions regarding deficiencies in the summons he received; and other edits and restatements throughout the document. The Court will deny O'Reilly's Motion for Leave to Amend. As set forth above, leave to amend is properly denied when amendment would prejudice the opposing party, the moving party has exhibited bad faith, or amendment would be futile. Edell & Assocs., 264 F.3d at 446. A post-judgment motion for leave to amend "is evaluated under the same legal standard as a similar motion filed before judgment was entered—for prejudice, bad faith, or futility." Hecht v. Hargan, No. GJH-17-3786, 2020 WL 134534, at *2 (D.Md. Jan. 13, 2020) (quoting Laber v. Harvey, 438 F.3d 404, 426 (4th Cir. 2006)). Here, the Court finds that amendment would be futile because the additional allegations do not address the reasons for the Court's prior dismissal of O'Reilly's lawsuit. Indeed, O'Reilly's previous Amended Complaint was already quite substantial, spanning twenty-nine pages in total and including thirty-three separate counts. Despite that, it failed to state a claim for which relief may be granted. O'Reilly's additional factual allegations do nothing to address the grounds for the Court's dismissal of his Complaint. Moreover, even assuming arguendo that the Second Amended Complaint articulates an otherwise viable claim against the proposed additional defendants, many of those claims would now be outside the applicable statutes of limitations. See Wonasue v. Univ. of Md. Alumni Ass'n, 295 F.R.D. 104, 110 (D.Md. 2013) (finding that for an amended complaint to "relate back" to the date of the original filing, the added party must have within the appropriate time period "received such notice of the action that it will not be prejudiced in defending on the merits; and . . . knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity") (quoting Fed.R.Civ.P. 15(c)). Accordingly, the Court finds that the proposed amendment is futile and will deny O'Reilly's request for leave to amend.

III. CONCLUSION

For the reasons stated above, the Court will deny O'Reilly's Motion for Reconsideration (ECF No. 75). A separate Order follows. Entered this 8th day of February, 2021.

/s/
George L. Russell, III
United States District Judge

Appendix P4 - Dismissal Order of the United States District Court for the District of Maryland (30 March, 2020)

Case 1:18-cv-03622-GLR Document 73 Filed 03/30/20

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. GLR-18-3622

MATTHEW O'REILLY,
Plaintiff,

v.

ADAM TSOTTLES, et al.,
Defendants.

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MEMORANDUM OPINION

THIS MATTER is before the Court on Defendants Waste Management, Inc. ("WMI") and Adam Tsottles' Motion to Dismiss Plaintiff's Amended Complaint (ECF No. 17) and Plaintiff Matthew O'Reilly's Motion to Treat Defendants' Amended Motion to Dismiss as a Motion for Summary Judgment (ECF No. 27). The Motions are ripe for disposition, and no hearing is necessary. See Local Rule 105.6 (D.Md. 2018). For the reasons outlined below, the Court will grant the Motion to Dismiss the Amended Complaint and deny the Motion to Treat the Motion to Dismiss as a Motion for Summary Judgment[20].

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[20] Also pending before the Court is Defendants' Motion to Dismiss Plaintiff's Complaint (ECF No. 14); O'Reilly's Motion for Partial Summary Judgment for Defamation Per Se (ECF No. 30); O'Reilly's Motion for Judgment on the Pleadings (ECF No. 32); O'Reilly's Motions to Amend, Join, and For Orders to Show Cause and Relief (ECF No. 33); and Plaintiff's Motion for an Order to Show Cause for Contempt (ECF No. 57).

The Motion to Dismiss (ECF No. 14) is denied as moot, because O'Reilly filed an Amended Complaint on April 26, 2019. An amended complaint generally moots a pending motion to dismiss the original complaint because the original complaint is superseded. Due Forni LLC v. Euro Rest. Solutions, Inc., No. PWG-13-3861, 2014 WL 5797785, at *2 (D.Md. Nov. 6, 2014).

O'Reilly's Motion for Partial Summary Judgment for Defamation Per Se (ECF No. 30) is denied as moot, because the Court has determined that the claim is barred by Maryland's statute of limitations as explained herein.

The Motion for Judgment on the Pleadings (ECF No. 32) is denied, because the Motion was filed before Defendants filed an Answer. See Fed.R.Civ.P. 12(c) (permitting the filing of such a motion "[a]fter the pleadings are closed . . .").

O'Reilly's Motions to Amend, Join, and For Orders to Show Cause and Relief (ECF No. 33) is denied. Moreover, the request for leave to amend was prematurely filed and O'Reilly failed to specifically identify a basis for requesting leave to amend.

O'Reilly's Motion for an Order to Show Cause for Contempt (ECF No. 57) is denied because it wholly fails to plead any of the elements for civil contempt. See Ashcraft v. Conoco, Inc., 218 F.3d 288, 301 (4th Cir.

I. BACKGROUND[21]

Roy Palmer and Henry Prioleau are employed by Waste Management of Maryland, Inc. ("Maryland Waste") (Mot. Dismiss Pl.'s Am. Compl. ["Mot. Dismiss"] at 1, ECF No. 17-1). On October 16, 2017, O'Reilly was at an apartment in the 3200 block of North St. Paul Street in Baltimore, Maryland when Palmer and Prioleau arrived at or before 7:00 a.m. to collect residents' waste. (Am. Compl. ¶¶ 19, 32, 34, ECF No. 12; see also Mot. Dismiss at 1). Palmer was operating the trash truck. (Am. Compl. ¶ 32). O'Reilly approached Palmer, saying, "I thought we agreed that you weren't going to come before ten o'clock any longer?" (Id.). Palmer told O'Reilly, "That's not how this works," and O'Reilly walked away. (Id.).

As he was walking away, O'Reilly allegedly heard the driver's side door on the trash truck open and then saw Palmer get inside. (Id. ¶ 35). Concerned that he may be run over, O'Reilly "reached up with his left hand and rapped his ring twice on the driver's side windscreen" to get Palmer's attention. (Id.). O'Reilly alleges that the trash truck "lurched forward" knocking him to the ground. (Id. ¶ 36). Again, concerned that he may be run over, O'Reilly ran toward the trash truck and "grasped the wipers for dear life." (Id. ¶ 37). The windshield wipers broke off in O'Reilly's hand and he dropped them to the ground. (Id.). At some point during the incident, O'Reilly allegedly assaulted Prioleau. (Mot. Dismiss at 1). Baltimore City Police responded to the scene and interviewed O'Reilly, Palmer, and Prioleau but left without making any arrests. (Am. Compl. ¶ 44).

The following day, on October 17, 2017, Adam Tsottles, a Senior Route Manager for Maryland Waste, went to the Baltimore City Police Department and filed charges against O'Reilly. (Mot. Dismiss at 1–2). Tsottles alleged that O'Reilly "attempted to steal the vehicle" and that "[a]ll of this was caught on video." (Am. Compl. ¶ 49). O'Reilly was subsequently charged with second-degree assault, malicious destruction of property, and attempted theft.[22] (Mot. Dismiss at 2). O'Reilly later entered an Alford plea[23] to the

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2000) (identifying the four elements of civil contempt, which must be proved by clear and convincing evidence: existence of a valid decree that the nonmovant had actual or constructive knowledge of; the decree benefited the movant; the nonmovant violated that decree with, at least, constructive knowledge of the violation; and harm to the movant).

[21] Unless otherwise noted, the Court takes the following facts from O'Reilly's Amended Complaint and accepts them as true. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citations omitted).

[22] Neither party provides a factual account regarding the alleged theft of the trash truck; however, O'Reilly dedicates several paragraphs in his Amended Complaint to refuting such allegations. (See Am. Compl. ¶¶ 39–43).

[23] An Alford plea "lies somewhere between a plea of guilty and a plea of nolo contendere" because it contains a "protestation of innocence." Bishop v. State, 7 A.3d 1074, 1085 (Md. 2010) (internal quotations and citations omitted). Individuals who enter into this plea may be "unwilling or unable" to admit their participation in the acts constituting the crime. Id. (quoting North Carolina v. Alford, 400 U.S. 25, 36 (1970)).

second-degree assault charge. (Id.; see also Maryland v. O'Reilly, No. 6B02363577 (Dist.Ct.Balt.City filed Oct. 17, 2017).

On November 27, 2018, O'Reilly, proceeding pro se, sued WMI and Tsottles. (ECF No. 1). O'Reilly alleged that Tsottles knowingly made false and defamatory statements, causing him to be criminally charged with attempted theft of the trash truck. (Compl. at 4). On April 26, 2019, O'Reilly filed an Amended Complaint, supplementing his factual allegations and causes of action. (ECF No. 12). The thirty-three count Amended Complaint alleges: common law defamation per se (Count 1); civil conspiracy to defame (Count 2); aiding and abetting defamation (Count 3); violation of Maryland Transportation Code §§ 22-602 (Count 4); violation of Code of Maryland Regulation 11.14.07 (Count 5); violation of Health Code of Baltimore City § 9-206 (Count 6); violation of Health Code of Baltimore City § 7-221 (Count 7); promissory estoppel (Count 8); intentional infliction of emotion distress ("IIED") (Count 9); negligent infliction of emotional distress (Count 10); civil conspiracy to inflict emotional distress (Count 11); aiding and abetting the infliction of emotional distress (Count 12); assault (Count 13); negligent assault (Count 14); battery (Count 15); negligent battery (Count 16); malicious prosecution (Count 17); civil conspiracy to prosecute maliciously (Count 18); aiding and abetting malicious prosecution (Count 19); abuse of process (Count 20); civil conspiracy to abuse process (Count 21); obstruction of justice (Count 22); civil conspiracy to obstruct justice (Count 23); aiding and abetting the obstruction of justice (Count 24); fraud (Count 25); civil conspiracy to defraud (Count 26); aiding and abetting fraud (Count 27); deprivation of due process (Count 28); civil conspiracy for deprivation of due process (Count 29); aiding and abetting the deprivation of due process (Count 30); spoliation of evidence (Count 31); civil conspiracy to despoil evidence (Count 32); and aiding and abetting the spoliation of evidence (Count 33). (Am. Compl. ¶¶ 73–116). O'Reilly seeks $25 million in damages. (Id. ¶ 124).

On May 13, 2019, Defendants filed a Motion to Dismiss the Amended Complaint. (ECF No. 17). On June 5, 2019, O'Reilly filed a Motion to Treat Defendants' Amended Motion to Dismiss as a Motion for Summary Judgment ("Motion to Convert") (ECF No. 27). O'Reilly filed an Opposition to the Motion to Dismiss on June 7, 2019.[24] (ECF No. 31). On June 24, 2019, Defendants filed an Opposition to the Motion to Convert and a Reply to the

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[24] O'Reilly attached a "Memorandum of Restatement of the Elements of Plaintiff's Causes of Action" to his Opposition in which he purports to "enumerate[] each of the causes of action, with cross-references to some...of the supporting factual statements in the original and/or Amended Complaints." (See ECF No. 31-2). The Memorandum contains legal and factual assertions that were not made in the Amended Complaint. Thus, as Defendants correctly note, the Memorandum represents an impermissible attempt to supplement O'Reilly's claims through a responsive pleading. Hurst v. District of Columbia, 681 F.App'x 186, 194 (4th Cir. 2017) (holding "a plaintiff may not amend her complaint via briefing"). The Court will not consider the Memorandum.

Motion to Dismiss. (ECF Nos. 40, 43). O'Reilly filed a Reply to the Motion to Convert on July 10, 2019. (ECF No. 48).

II. DISCUSSION

A. Personal Jurisdiction under Rule 12(b)(2)

WMI argues that the Court does not have either specific or general jurisdiction over it because WMI is a Delaware corporation that is not registered to conduct business in Maryland. WMI also asserts that Tsottles is employed by a separate entity—Maryland Waste—as are the employees who were present during the October 16, 2017 incident. WMI argues that it has no connection to this case, warranting its dismissal. Conversely, O'Reilly contends that jurisdiction is conferred under Maryland's long arm statute, and that WMI regularly and purposefully avails itself of the benefits of conducting business in Maryland by virtue of its website, and because it advertises and solicits business in the State. The Court will first assess whether it may exercise specific jurisdiction over WMI; if it cannot, the Court will determine if WMI is subject to general jurisdiction.

1. Standard of Review

When a court's power to exercise personal jurisdiction over a nonresident defendant is challenged by a motion under Fed.R.Civ.P. 12(b)(2), "the jurisdictional question is to be resolved by the judge, with the burden on the plaintiff ultimately to prove grounds for jurisdiction by a preponderance of the evidence." Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc., 334 F.3d 390, 396 (4th Cir. 2003) (citing Mylan Labs., Inc. v. Akzo, N.V., 2 F.3d 56, 59–60 (4th Cir. 1993)). If the existence of jurisdiction turns on disputed facts, the court may resolve the challenge after a separate evidentiary hearing, or may defer ruling pending receipt at trial of evidence relevant to the jurisdictional question. Combs v. Bakker, 886 F.2d 673, 676 (4th Cir. 1989). If the court chooses to rule without conducting an evidentiary hearing, relying solely on the basis of the complaint, affidavits, and discovery materials, "the plaintiff need only make a prima facie showing of personal jurisdiction." Carefirst, 334 F.3d at 396; see also Mylan, 2 F.3d at 60; Combs, 886 F.2d at 676. In determining whether the plaintiff has proven a prima facie case of personal jurisdiction, the court "must draw all reasonable inferences arising from the proof, and resolve all factual disputes, in the plaintiff's favor." Mylan, 2 F.3d at 60; Carefirst, 334 F.3d at 396. Absent a federal statute specifying different grounds for personal jurisdiction, federal courts may exercise jurisdiction in the manner provided by state law. Fed.R.Civ.P. 4(k)(1)(A). "[F]or a district court to assert personal jurisdiction over a nonresident defendant, two conditions must be satisfied: (1) the exercise of jurisdiction must be authorized under the state's long-arm statute; and (2) the exercise of jurisdiction must comport with the due process requirements of the Fourteenth Amendment." Carefirst, 334 F.3d at 396. Maryland's long-arm statute authorizes the exercise of personal jurisdiction

to the limits permitted by the Due Process Clause of the Fourteenth Amendment.[25] See ALS Scan, Inc. v. Digital Serv. Consultants, Inc., 293 F.3d 707, 710 (4th Cir. 2002); Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory", 283 F.3d 208, 212–13 (4th Cir. 2002). That broad reach does not suggest that analysis under the long arm statute is irrelevant. Rather, it merely reflects that, "to the extent that a defendant's activities are covered by the statutory language, the reach of the statute extends to the outermost boundaries of the due process clause." Dring v. Sullivan, 423 F.Supp.2d 540, 545 (D.Md. 2006) (quoting Joseph M. Coleman & Assocs., Ltd. v. Colonial Metals, 887 F.Supp. 116, 118–19 n.2 (D.Md. 1995)). A court's exercise of jurisdiction over a nonresident defendant comports with due process if the defendant has "minimum contacts" with the forum, such that requiring the defendant to defend its interests in that state "does not offend traditional notions of fair play and substantial justice." Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (internal quotation marks omitted). Personal jurisdiction may be specific or general. Under Armour, Inc. v. Battle Fashions, Inc., 294 F. Supp. 3d 428, 433 (D.Md. 2018), as discussed below.

2. Analysis

a. Specific Jurisdiction

If the defendant's contacts with the forum state form the basis for the suit, they may establish "specific jurisdiction." In determining whether specific jurisdiction exists, a court must consider (1) the extent to which the defendant has purposefully availed itself of the privilege of conducting activities in the state; (2) whether the plaintiff's claims arise out of those activities directed at the state; and (3) whether the exercise of personal jurisdiction would be constitutionally "reasonable." Carefirst, 334 F.3d at 396; see also ALS Scan, 293 F.3d at 711–12; Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 n.8 (1984). If, and only if, the plaintiff has satisfied the first prong, will the Court consider the

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[25] The Maryland long-arm statute, Md. Code Ann. Cts. & Jud. Proc. § 6–103(b), authorizes a court to exercise personal jurisdiction over a person, who directly or through an agent:

(1) Transacts any business or performs any character of work or service in the State;
(2) Contracts to supply goods, food, services, or manufactured products in the State;
(3) Causes tortious injury in the State by an act or omission in the State;
(4) Causes tortious injury in the State or outside of the State by an act or omission outside the State if he regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from goods, food, services, or manufactured products used or consumed in the State;
(5) Has an interest in, uses, or possesses real property in the State; or
(6) Contracts to insure or act as surety for, or on, any person, property, risk, contract, obligation, or agreement located, executed, or to be performed within the State at the time the contract is made, unless the parties otherwise provide in writing.

second and third prongs. Consulting Eng'rs Corp. v. Geometric Ltd., 561 F.3d 273, 278 (4th Cir. 2009).

In assessing the extent to which a corporation purposefully availed itself of the benefits of conducting business in a forum, the Court considers the following nonexhaustive list of actors: first, whether the defendant maintains offices or a registered agent in the forum state; second, whether the defendant owns any property in the forum; third, the extent to which the defendant solicits or initiates business in the state; fourth, whether the defendant "deliberately engaged in significant or long-term business activities" in the state; and fifth, whether the defendant made in-person contact with residents regarding a business relationship.[26] Id. The Court analyzes each factor in turn.

All but the third factor decisively weigh in WMI's favor. The first factor— appointment of a registered agent and maintaining local office buildings—supports WMI's position. WMI affirmatively denies being registered to conduct business in the State, and O'Reilly does not allege any facts suggesting otherwise. WMI also denies maintaining "an office, mailing address, or bank account" in Maryland. (See Tippy Aff. ¶ 8, ECF No. 17-4). Again, O'Reilly does not argue, or provide evidence, to the contrary. As to the second factor, O'Reilly does not allege that WMI owns any property in this forum, whereas WMI asserts that it "does not have a direct interest in any real or personal property located in Maryland" other than "as the ultimate shareholder." (Id. ¶ 10). The fourth factor — significance and longevity of deliberate business dealings—also weighs in WMI's favor, as O'Reilly has failed to allege any facts that would lead this Court to conclude that WMI has deliberately conducted significant or long-term business in this jurisdiction. To the contrary, WMI argues that Maryland Waste is the entity that "is engaged in providing waste collection, transfer and disposal services, and recycling and resource recovery in the State of Maryland." (Id. ¶ 16). As to the fifth factor, O'Reilly has not alleged any facts tending to show that WMI solicited Maryland residents in person.

The only factor that could conceivably sway in O'Reilly's favor is the third , which relates to WMI's web accessibility and activity. To that point, O'Reilly alleges that WMI operates a website, "where Maryland entities are able, and encouraged, to search for service availability, choose options, and engage Waste Management, Inc., for periodic and/or temporary waste removal services in Maryland, among other offerings." (Pl.'s Am. Mot. Oppose Defs.' Am. Mot. Dismiss ["Pl.'s Opp'n"] ¶ 25, ECF No. 31-1).WMI neither admits

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[26] Additional factors include "the nature, quality, and extent of the parties' communication about the business being transacted," whether the parties contractually agreed that any disputes would be governed by the law of the forum state, and "whether the performance of contractual duties was to occur within the forum." Consulting Engineers Corp., 561 F.3d at 278. Because the parties to this litigation do not have a business relationship governed by a contract, these factors are irrelevant to the Court's analysis and will not be considered.

nor denies ownership of that domain. Even if this Court assumes O'Reilly's assertion is true, as the Court is obligated to do at this stage, WMI's internet presence and activity are not dispositive in this analysis. This Court has held that "the mere act of placing information on the Internet is not sufficient by itself to subject that person to personal jurisdiction in each state in which the information is accessed." Mike's Train House, Inc. v. Metro. Transp. Auth., No. 16-CV 02031-JFM, 2016 WL 6652712, at *9 (D.Md. Nov. 9, 2016) (emphasis added) (internal quotations and citations omitted). The ultimate question is whether a defendant "acted with the manifest intent of targeting Marylanders." Id. (citing Carefirst, 334 F.3d at 339). To that end, "[t]he Fourth Circuit has adopted a 'sliding scale' model for website-based specific jurisdiction." Id. On one end of the spectrum lies defendants who "clearly do[] business over the Internet," such as contractually engaging residents of the forum state through "repeated transmission of computer files." Id. (quoting ALS Scan, 293 F.3d at 714). On the opposite end are defendants who operate "passive" websites that simply make information available to users in foreign jurisdictions. Id. Bridging the gap are defendants who operate "interactive" websites, where users can "exchange information with the host computer." Id. Here, O'Reilly characterized WMI's website as "interactive" and asserts that users can search for services and "engage [WMI] for periodic and/or temporary waste removal services in Maryland." (Pl.'s Opp'n ¶ 25). However, this allegation, standing alone, is insufficient to bring WMI within this Court's jurisdictional reach, as there is no evidence that WMI targeted Maryland residents at all and certainly no more than nonresidents. See Mike's Train House, 2016 WL 6652712, at *10 (declining to exercise personal jurisdiction where the plaintiff "has done nothing to target the residents of Maryland more than the residents of any other state" through its website). Lastly, the Court considers a factor that was neither identified in Consulting Engineers Corp. nor argued by O'Reilly as a potential basis for specific jurisdiction: WMI's relationship to Maryland Waste.[27] WMI asserts that Waste Management of Maryland is its "indirect, wholly owned subsidiary" and the "wholly owned subsidiary of Waste Management Holdings, Inc." (Tippy Aff. ¶¶ 13–14).However, even this relationship appears insufficient to bring WMI within the jurisdictional grasp of this Court. In Mylan, the Fourth Circuit specifically considered whether "a federal district court may assert personal jurisdiction over a foreign parent corporation solely because the parent's third-

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[27] Although O'Reilly argues that WMI "is ultimately liable for the actions of its owned and controlled subsidiaries, including Waste Management of Maryland, Inc." (Pl.'s Opp'n ¶ 59), he appears to be making an argument for respondeat superior —not a jurisdictional argument. In any event, the Court rejects O'Reilly's attempt to hold WMI liable under that theory, as the Amended Complaint is completely silent as to any fact that, even if true, would establish that WMI is somehow liable for Maryland Waste's conduct. See, e.g., Ademiluyi v. PennyMac Mortg. Inv. Tr. Holdings I, LLC, 929 F.Supp.2d 502, 517 (D.Md. 2013)(rejecting plaintiff's claim that a parent company was liable for the conduct of its subsidiary under respondeat superior where plaintiff made "only conclusory assertions as to control" by the parent company). Here, O'Reilly makes n o assertions regarding the extent to which, if at all, WMI exerts control over Maryland Waste.

tier subsidiary corporation, over which the parent exerts no control, conducts business in the forum." 2 F.3d at 58. The Fourth Circuit concluded that it could "attribute the actions of a subsidiary corporation to the foreign parent corporation only if the parent exerts considerable control over the activities of the subsidiary." In determining whether the parent company exerted "considerable control" over the subsidiary, the Court considered (1) whether the subsidiary could make "significant decisions" without the parent company's approval; (2) whether the parent and subsidiary maintained "separate books and records;" (3) whether the entities employed separate accounting procedures; (4) if each entity held separate directors' meetings; (5) whether the subsidiary has "some independent reason for its existence, other than being under the . . . control of another legal entity;" and (6) whether the parent "knew or should have known, that its conduct would have some impact in Maryland." 2 F.3d at 61. In Mylan, the Court concluded that these factors did not support personal jurisdiction. This Court reaches that same conclusion. Considering the above factors, O'Reilly fails to allege facts establishing that this Court has specific jurisdiction over WMI as the parent company of Maryland Waste. To be clear, O'Reilly does not offer any facts or exhibits tending to show that WMI exerts considerable control over Maryland Waste. WMI acknowledges that it is the parent company of Waste Management Holdings, Inc. ("WMH") and that WMH has subsidiaries, including Maryland Waste, that provide waste disposal and recycling services in Maryland. Thus, Maryland Waste has a legitimate business purpose and "independent reason for . . . existence." Mylan, 2 F.3d at 61. Moreover, because Maryland Waste is the entity that services Maryland residents, this Court would be hard-pressed to identify instances in which WMI knew or should have known that its conduct would have some impact in Maryland. WMI also asserts that subsidiaries owned by WMH are "separate and distinct corporate entities, each of which has its own officers and directors." (Tippy Aff. ¶ 4). According to WMI, "the operating companies [WMI and WMH] also maintain separate books and records" and "the corporate minutes and records of [WMI] and [WMH] are not intermingled with the corporate minutes or records of any of their subsidiaries." (Id.). WMI further asserts that transactions between it and its subsidiaries "are done at arm's length with full regard for maintaining the formalities of such transaction," (id.¶ 5), and that none of its subsidiaries are authorized to accept service of process on WMI's behalf, (id. ¶ 9). Although WMI's affidavit in support of dismissal does not specifically address whether WMI must approve significant decisions made by Maryland Waste or whether their directors have separate meetings, the Court is persuaded that, based upon the averments that were made, WMI does not exercise considerable control over Maryland Waste, thereby justifying the imposition of personal jurisdiction. In sum, O'Reilly has failed to carry his burden of establishing that WMI has purposefully availed itself of the privilege of conducting activities in the state, as required under the first prong in Carefirst, and based upon the factors articulated in Consulting Engineers Corp. and Mylan. Having concluded that O'Reilly failed to satisfy the first Carefirst prong, the Court need not

continue its analysis under the second and third prongs. See Consulting Engineers Corp., 561 F.3d at 278. Next, the Court considers whether WMI falls within the Court's general jurisdiction. b. General Jurisdiction If a defendant's contacts with the state are not also the basis for the suit, then jurisdiction over the defendant must arise from the defendant's general, more persistent, but unrelated contacts with the state. It is well-established that "a corporation's 'place of incorporation and principal place of business are paradig[m] . . . bases for general jurisdiction.'" Cricket Grp., Ltd. v. Highmark, Inc., 198 F.Supp.3d 540, 546 (D.Md. 2016) (quoting Daimler AG v. Bauman, 571 U.S. 117, 137 (2014)). Nonetheless, courts may exercise general jurisdiction over nonresident defendant corporations when "their affiliations with the State are so continuous and systematic as to render them essentially at home in the forum State." BNSF Ry. Co. v. Tyrrell, 137 S.Ct. 1549, 1558 (2017) (quoting Daimler, 571 U.S. 117 at 127 (internal quotation marks omitted)). Whether the defendant corporation is "essentially at home" does not "focus solely on the magnitude of the defendant's in-state contacts." Id.at 1559 (internal quotation marks omitted). Instead, courts must examine the defendant corporation's "activities in their entirety, nationwide and worldwide." Daimler, 571 U.S. at 139 n.20. When activities in a particular forum are "so substantial and of such a nature as to render the corporation at home in that State" in light of all of the corporation's activities, a court may exercise general jurisdiction. BNSF Ry., 137 S.Ct. at 1558 (quoting Daimler, 571 U.S. at 139 n.19) (internal quotation marks omitted)). Here, WMI is not incorporated in Maryland, and WMI does not maintain its principal place of business in this State. Although O'Reilly alleges that WMI owns and operates a website that is accessible to Maryland residents, O'Reilly has failed to allege "a connection between the cause of action in this case and a specific transaction with a Maryland resident" such that his conclusion that the website is "interactive" is of "limited significance. Robbins v. Yutopian Enter. Inc., 202 F.Supp.2d 426, 430 (D.Md. 2002). Moreover, this Court has specifically rejected the argument O'Reilly now advances. Id. This Court has previously held that "the fact that a website is available for access by residents of the forum state, and contains advertising for the defendant's goods or services [is] [in]sufficient to subject the operator to the general jurisdiction of the forum's courts." Id. Thus, O'Reilly's factual allegations fail to establish that WMI is subject to general jurisdiction. At bottom, O'Reilly has failed to establish that this Court may exercise personal jurisdiction over WMI.[28] Accordingly, the Court must grant Defendants' Motion to Dismiss, as to WMI, for lack of personal jurisdiction.

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[28] O'Reilly requests an opportunity to conduct jurisdictional discovery. "[T]he decision whether or not to permit jurisdictional discovery is a matter committed to the sound discretion of the district court." Base Metal Trading Ltd., 283 F.3d at 216 n.3. "When a plaintiff offers only speculation or conclusory assertions about contacts with a forum state, a court is within its discretion in denying jurisdictional discovery." Carefirst, 334 F.3d at 402. Here, O'Reilly makes only conclusory assertions regarding WMI's contact with

B. Sufficiency of Service of Process under Rule 12(b)(5)

Tsottles argues that O'Reilly failed to properly serve him in a manner prescribed by Rule 4(c) because O'Reilly mailed copies of the Complaint, Amended Complaint, and Summons to Tsottles' place of employment. The Court concludes that Tsottles has been properly served. Under Fed.R.Civ.P. 12(b)(5), a defendant may move to dismiss for insufficient service of process. If service is contested, the "plaintiff bears the burden of establishing the validity . . . pursuant to Rule 4." O'Meara v. Waters, 464 F.Supp.2d 474, 476 (D.Md. 2006). "Generally, when service of process gives the defendant actual notice of the pending action, the courts may construe Rule 4 liberally to effectuate service and uphold the jurisdiction of the court." Clark v. AT & T Corp., No. CIV.A. DKC 13-2278, 2014 WL 1493350, at *2 (D.Md. Apr. 15, 2014). The "plain requirements for the means of effecting service of process," however, "may not be ignored." Id.

Rule 4(e) governs service of process and provides that a plaintiff may serve a defendant in any manner permitted by the laws of the state in which the court is located. Fed.R.Civ.P. 4(e). Under Maryland law, an individual may be personally served by mailing a copy of the summons, complaint, and all other papers filed with it b y certified mail requesting: "Restricted Delivery—show to whom, date, address of delivery." Md. Rule 2- 121(a)(3); see also Little v. Estes, No. CIV. WDQ-13-1514, 2013 WL 5945675, at *2 (D.Md. Nov. 5, 2013), report and recommendation adopted sub nom. Little v. E. Dist. Police Station, No. CIV. WDQ-13-1514, 2014 WL 271628 (D.Md. Jan. 22, 2014). Service by certified mail under Rule 2-121 is complete upon delivery. Id. Furthermore, Rule 2- 121(a)(3) neither identifies nor limits the locations where that certified mailing can be sent. O'Reilly sent the original Complaint and the Amended Complaint via certified mail with restricted delivery to Tsottles at his place of employment on April 2, 2019 and April 26, 2019, respectively. Accordingly, service upon Tsottles was complete when O'Reilly sent Tsottles the Summons, Complaint, Amended Complaint, and related papers via certified mail with restricted delivery to his place of employment. Thus, the Court will deny Tsottles' motion to dismiss for failure to properly serve.[29] The Court will now consider the sufficiency of the Amended Complaint as against Tsottles, who is the only remaining Defendant.

C. Conversion of Motion to Dismiss under Rule 12(d)

O'Reilly filed a Motion to Treat Defendants' Amended Motion to Dismiss as a Motion for Summary Judgment (ECF No. 27) because Tsottles' Motion included records from O'Reilly's court proceedings in the District Court of Maryland for Baltimore City . (See,

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the State of Maryland and cites caselaw clearly undermining his jurisdictional claims. Accordingly, the Court will deny O'Reilly's request to conduct discovery.

[29] Because the Court concludes that service of process comports with Rule 2-121, the Court will not consider O'Reilly's arguments.

e.g., Mot. Dismiss Ex. 2 ["State Court Docket"], ECF No. 17-3). The general rule is that a court may not consider extrinsic evidence when resolving a Rule 12(b)(6) motion without converting it to a motion for summary judgment. Fed.R.Civ.P. 12(d); see also Chesapeake Bay Found., Inc. v. Severstal Sparrows Point, LLC, 794 F.Supp.2d 602, 611 (D.Md. 2011). But this general rule is subject to several exceptions. Of relevance here is the exception allowing the Court to consider matters of public record, including state court records. Philips v. Pitt Cty. Mem. Hosp., 572 F.3d 176, 180 (4th Cir. 2009); see also Wittholn v. Fed. Ins. Co., 164 F.App'x 395, 397 (4th Cir. 2006) (per curiam) (concluding that state court records are public records of which a federal district court may take judicial notice). Here, Tsottles attached to his Motion to Dismiss publicly available court records. Accordingly, thc Court may consider them without converting Tsottles' Motion to one for summary judgement. O'Reilly's Motion to convert is denied. D. Sufficiency of Allegations under Rule 12(b)(6) 1. Standard of Review The purpose of a Rule 12(b)(6) motion is to "test[ ] the sufficiency of a complaint," not to "resolve contests surrounding the facts, the merits of a claim, or the applica bility of defenses." King v. Rubenstein, 825 F.3d 206, 214 (4th Cir. 2016) (quoting Edwards v. City of Goldsboro, 178 F.3d 231, 243 (4th Cir. 1999)). A complaint fails to state a claim if it does not contain "a short and plain statement of the claim showin g that the pleader is entitled to relief," Fed.R.Civ.P. 8(a)(2), or does not "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 facially 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). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. (citing Twombly, 550 U.S. at 555). Though the plaintiff is not required to forecast evidence to prove the elements of the claim, the complaint must allege sufficient facts to establish each element. Goss v. Bank of Am., N.A., 917 F.Supp.2d 445, 449 (D.Md. 2013) (quoting Walters v. McMahen, 684 F.3d 435, 439 (4th Cir. 2012)), aff'd sub nom., Goss v. Bank of Am., NA, 546 F.App'x 165 (4th Cir. 2013). In considering a Rule 12(b)(6) motion, a court must examine the complaint as a whole, consider the factual allegations in the complaint as true, and construe the factual allegations in the light most favorable to the plaintiff. Albright v. Oliver, 510 U.S. 266, 268 (1994); Lambeth v. Bd. of Comm'rs of Davidson Cty., 407 F.3d 266, 268 (4th Cir. 2005) (citing Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)). But, the court need not accept unsupported or conclusory factual allegations devoid of any reference to actual events, United Black Firefighters v. Hirst, 604 F.2d 844, 847 (4th Cir. 1979), or legal conclusions couched as factual allegations, Iqbal, 556 U.S. at 678. When, as here, the plaintiff is proceeding pro se, the Court will liberally construe the pleadings, which are held to a less stringent standard than pleadings drafted by lawyers. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)); accord Brown v. N.C. Dep't of Corr., 612 F.3d 720, 722 (4th Cir. 2010). Pro se complaints are entitled to special care to

determine whether any possible set of facts would entitle the plaintiff to relief. Hughes v. Rowe, 449 U.S. 5, 9–10 (1980). But even a pro se complaint must be dismissed if it does not allege "a plausible claim for relief." Forquer v. Schlee, No. RDB-12-969, 2012 WL 6087491, at *3 (D.Md. Dec. 4, 2012) (citation and internal quotation marks omitted).

2. Analysis

a. Undisputed Claims

The Motion to Dismiss challenges each and every one of O'Reilly's thirty-three claims. Specifically, Tsottles argues: the battery claim must be dismissed because he is not the proper party to that claim; that negligent battery is not a cognizable offense; that the assault claim is barred by Maryland's one-year statute of limitations; that there is no cause of action for obstruction of justice; there is no due process cause of action against private actors; prior to filing a private lawsuit for violation of Baltimore City Health Code § 9 -206, O'Reilly was required to notify the Commissioner, as required by § 9-214, but he failed to do so; and that there is no private right to action to enforce § 22-602 of the Maryland Transportation Article,Code of Maryland Regulation 11.14.07, or § 7-221 of the Baltimore City Health Code. O'Reilly did not respond to any of these arguments in his Opposition. This Court has recognized that "by failing to respond to an argument made in a motion to dismiss, a plaintiff abandons his or her claim." Muhammad v. Maryland, No. ELH-11-3761, 2012 WL 987309, at *1 n.3 (D.Md. Mar. 20, 2012); see also See FerdinandDavenport v. Children's Guild, 742 F.Supp.2d 772, 783 (D.Md. 2010) (a plaintiff's failure to address arguments in a defendant's motion to dismiss a particular claim constitutes an abandonment of the claim). Because O'Reilly wholly failed to defend the above-referenced claims, while refuting Tsottles' arguments as to other claims, the Court concludes that O'Reilly has abandoned those claims and will dismiss counts 4, 5, 7, 13–16, 22–24, and 28–30.

b. Partially Disputed Claims

Tsottles argues that O'Reilly has failed to state a claim for IIED, civil conspiracy, and aiding and abetting IIED; malicious prosecution, civil conspiracy, and aiding and abetting the same; abuse of process, civil conspiracy, and aiding and abetting the same; and promissory estoppel. Tsottles also asserts that O'Reilly's fraud claim is not supported by the requisite level of specificity. In defending the sufficiency of his claims, O'Reilly generally asserts that Defendants are "plainly incorrect" because he "has clearly and substantially pleaded the essential elements of each and every cause of action in his complaint." (Pl.'s Opp'n ¶ 43). Similarly, and presumably in response to Tsottles' argument that his fraud claim lacks the required specificity, O'Reilly asserts "[t]he specificity of the causes of action and factual statements in [his] Amended Complaint is more than ample for Defendants to know what constitutes the allegations against them,

and reasonably and properly prepare any available defenses thereof." (Id. ¶ 45). While O'Reilly intends to defend these claims, his response is wholly inadequate, as it is "entirely conclusory, and contain[s] no specific arguments addressing the defendant['s] points," warranting dismissal of those claims. Bankcroft Commercial, Inc. v. Goroff, No. CCB-14-2796, 2014 WL 7409489, at *7 (D.Md. Dec. 31, 2014); see also Hardaway v. Equity Residential Mgmt., LLC, 2016 WL 3957648, at *6 (D.Md. July 22, 2016) (reiterating that the court may treat a defendant's arguments as uncontested and dismiss the complaint when the plaintiff simply "repeat[s] many of the same conclusory allegations in their opposition brief that appeared in the . . . amended complaint"). Because Tsottles' arguments appear meritorious, and O'Reilly has offered no more than conclusory assertions, the Court concludes that O'Reilly has, in essence, abandoned these claims. Accordingly, the Court dismisses counts 8, 9, 11, 12, 17 19–21, and 25–27.

The Court now considers the claims O'Reilly defended in opposition to the Motion to Dismiss.

c. Disputed Claims

i. Defamation

In Maryland, claims for libel and slander must be filed within one year from the date they accrue. Md. Code Ann., Cts. & Jud. Proc. ["CJP"] § 5-105. Similarly, "Maryland imposes a one-year statute of limitations on claims for defamation." Long v. Welch & Rushe, Inc., 28 F.Supp. 3d 446, 456 (D.Md. 2014) (citing CJP § 5-105). The statute of limitations begins to run the day the statements are improperly communicated. Id. However, Maryland recognizes and applies the discovery rule to defamation claims. Ayres v. Ocwen Loan Servicing, LLC, 129 F.Supp.3d 249, 272 (D.Md. 2015).

Under the discovery rule, "a plaintiff's cause of action accrues when the plaintiff knows or reasonably should have known of the wrong." Brown v. Neuberger, Quinn, Gielen, Rubin & Gibber, P.A., 731 F.Supp.2d 443, 449 (D.Md. 2010) (citing Lumsden v. Design Tech Builders, Inc., 749 A.2d 796, 801 (2000)), aff'd, 495 F.App'x 350 (4th Cir. 2012). However, "[t]his standard . . . does not require actual knowledge on the part of the plaintiff, but may be satisfied if the plaintiff is on 'inquiry notice.'" Dual Inc. v. Lockheed Martin Corp., 857 A.2d 1095, 1104 (2004). A plaintiff is on inquiry notice when the plaintiff "possesses 'facts sufficient to cause a reasonable person to investigate further, and...a diligent investigation would have revealed that the plaintiffs were victims of . . . the alleged tort.'" Id. (quoting Pennwalt Corp. v. Nasios, 550 A.2d 1155, 1159 (1988)) (alterations in original).

Tsottles contends that O'Reilly's defamation per se and civil conspiracy to defame claims are barred by Maryland's one-year statute of limitation. O'Reilly argues that his original Complaint, filed on November 27, 2018 is timely, because his claims were tolled until he

learned of "the substance and detail" of "Tsottles' words" on November 28, 2017.[30] (Am. Compl. at 12). The Court agrees with Tsottles.

First, O'Reilly's confrontation with Palmer and Prioleau and the alleged attempted theft occurred on October 16, 2017. The next day, on October 17, 2017, Tsottles reported the incident to police. According to the docket in O'Reilly's underlying criminal case, the

summons was issued that same day on October 17, 2017.[31] (See State Court Docket). The summons, accompanied by a copy of the charging document, instructed O'Reilly to appear in court. See Md. Rule 4-212(b) ("A summons . . . shall advise the defendant to appear in person at the time and place specified or, in the circuit court . . . A copy of the charging document shall be attached to the summons."). Upon receipt of the summons, O'Reilly possessed "facts sufficient to cause a reasonable person to investigate further." Pennwalt Corp., 550 A.2d at 1159. The discovery rule does not require, as O'Reilly seems to suggest, that he be aware of the "the substance and detail" of the allegedly defamatory statement. Accordingly, the Court dismisses counts 1–3 as time barred.

ii. Negligent Infliction of Emotional Distress

Tsottles argues that Maryland does not recognize a cause of action for negligent infliction of emotional distress. O'Reilly acknowledges the well-settled case law regarding negligent infliction of emotional distress but contends that Rule 11(b)(2)[32] allows him to advocate for a modification or extension of established law. O'Reilly then argues that failing to recognize negligent infliction of emotional distress as a claim "would violate Maryland's precept of 'a remedy for every wrong,'" and that the Court should allow the claim to proceed because he would otherwise be without relief. (Pl.'s Opp'n ¶¶ 78–79). The Court agrees with Tsottles. Maryland simply does not recognize negligent infliction of emotional distress as an independent cause of action. Bagwell v. Peninsula Reg'l Med. Ctr., 665 A.2d 297, 320 (1995); see also Abrams v. City of Rockville, 596 A.2d 116, 118 (1991) (affirming the lower court's dismissal of negligent infliction of emotional distress because it was not "a cognizable claim under Maryland law"). O'Reilly has not offered a compelling argument

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[30] The docket indicates that the case was filed on November 29, 2017. (See State Court Docket).

[31] Service of a summons is made either "by mail or by personal service by a sheriff or other peace officer." Md. Rule 4-212(c).

[32] Fed. R. Civ. P. 11 provides:
By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
...
(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law...

justifying the reversal or modification of this rule. Accordingly, the Court will dismiss O'Reilly's claim for negligent infliction of emotional distress (count 10).

iii. Spoliation of Evidence

In his Amended Complaint, O'Reilly alleges that the trash truck was equipped with a "DriveCam . . . which record[s] video of the interior cabin and exterior of the equipment." (Am. Compl. ¶ 23). He further alleges that he never attempted to reach into or enter the trash truck during the October 16, 2017 incident, and that the "DriveCam" video would have shown that, but Tsottles failed to preserve and disclose the video. (Id. ¶¶ 41, 53–54). Tsottles argues there is no independent cause of action for spoliation in Maryland and cites Goin v. Shoppers Food Warehouse Corp., 890 A.2d 894, 898 (2006), in support. O'Reilly again relies upon Rule 11(b)(2) and argues that the holding in Goin and related cases should not apply to this case, because those cases concerned "spoliation committed by a party within that specific action," whereas this case involves spoliation by a "third-party." (Pl.'s Opp'n ¶¶ 82, 84(a)–(g)). Again, O'Reilly has not offered a compelling argument justifying the reversal or modification of this rule. The Court will dismiss O'Reilly's claims for spoliation of evidence (count 31); civil conspiracy to despoil evidence (count 32); and aiding and abetting the spoliation of evidence (count 33).

III. CONCLUSION

For the foregoing reasons, the Court will grant Defendants' Motion to Dismiss Plaintiff's Amended Complaint (ECF No. 53). The Court will deny O'Reilly's Motion to Treat the Motion to Dismiss as a Motion for Summary Judgment (ECF No. 27).

A separate order follows.

Entered this 30th day of March, 2020.

_____/s/_____

George L. Russell, III,
United States District Judge

Maryland Code, Courts and Judicial Proceedings § 5-204

A foreign corporation or foreign limited partnership required by law to qualify or register to do business in the State or a person claiming under the foreign corporation or foreign limited partnership, may not benefit from any statute of limitations in an action at law or suit in equity:

(1) Arising out of a contract made or liability incurred by the foreign corporation or foreign limited partnership while doing business without having qualified or registered; or

(2) Instituted while the foreign corporation or foreign limited partnership is doing intrastate or interstate or foreign business in the State without having qualified or registered.