APPENDIX A

NOT RECOMMENDED FOR PUBLICATION

No. 24-3268

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MARK ANTHONY HILL, Plaintiff-Appellant, v. JENNIFER PELL; SCOTT CRAWFORD; BRITTANY N. HAMM; RITA HAMM; ANITA HAMM; ERIC B. KOVACHS, Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

ORDER

Before: McKEAGUE, GRIFFIN, and NALBANDIAN, Circuit Judges.

Mark Anthony Hill, an Ohio prisoner proceeding pro se, appeals the district court's dismissal of his civil-conspiracy action. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). For the reasons that follow, we affirm.

Hill sued private citizens Jennifer Pell, Scott Crawford, Brittany N. Hamm, Rita Hamm, Anita L. Hamm, and Eric B. Kovachs based on events that took place on August 25, 2018, and led to his conviction for felonious assault. Hill alleged that, late that evening, Brittany, Hill's then-girlfriend, called Hill to ask him to pick her up at the home of her grandmother, Rita. While Brittany was waiting for Hill to arrive, Martie Jacobs sexually and physically assaulted her. When Hill arrived at the house, he found Brittany crying outside with a black eye. The pair entered the house to confront Jacobs, and a physical altercation between Hill and Jacobs ensued. Jacobs falsely told police that Hill hit him in the face with a sledgehammer. Two days later, the police filed a criminal complaint. Hill eventually proceeded to a jury trial and was convicted of felonious

assault. The trial court sentenced him to 12 years' imprisonment. According to Hill, Brittany was subpoenaed to testify in his defense, but she intentionally failed to appear.

Hill alleged that, after trial, when he was reviewing witness statements and trial transcripts, he learned that there was another eyewitness—defendant Jennifer Pell, who lived across the street from Rita. Hill averred that, after his trial, Brittany told him that Pell had witnessed the events that night. Brittany told Hill that Pell saw Jacobs demand oral sex from her in exchange for $20 and punch her when she refused. Brittany then went across the street to Pell's house and "sat crying" with her. Hill alleged that, when he arrived at Rita's house, Pell saw him exit his truck without a sledgehammer. But Pell never spoke with Hill's investigator. According to Hill, Pell and Crawford, her significant other, were good friends with Jacobs, and the three of them shared "their beliefs and dislikes of Black men based upon color."

Hill further alleged that, in January 2021, Brittany disclosed to him that she had been in a relationship with another man, Kovachs, since before the jury trial had commenced. In April 2021, Brittany told Hill that she wanted to record and post a video to social media "in order to publicly acknowledge that [Hill] is only in prison because he is a Black man and that it isn't right." But later that month, Brittany told Hill that Anita, her mother, had "told her that she would not allow Brittany to see her children again if she went public and told the truth about [Jacobs] lying on [Hill]." Then, in June 2021, Brittany told Hill that Kovachs had threatened to kick her out of his house if she continued to try to help Hill. In July 2021, Brittany told Hill that she would not be recording the video because "Anita, [Jacobs,] or [Kovachs] were threatening her children for wanting to finally do what is right by going public with the truth."

Citing 42 U.S.C. §§ 1985(2) and (3) and 1986, Hill asserted that Rita, Anita, Pell, and Crawford—who are white—conspired to obstruct justice with the intent to deprive him of his rights to equal protection, to a fair trial, and to obtain witnesses by "refusing to provide the exculpatory evidence and impeachment information exposing [Jacobs]'s false allegations[] because [Hill] is a Black man." He further asserted that Rita, Anita, Brittany, Pell, and Crawford conspired to deprive him of equal protection under the law by "purposely preventing or hindering

Franklin County, Ohio authorities from giving and/or securing [Hill]'s Fifth, Sixth[,] and Fourteenth Amendment[r]ights." Next, Hill claimed that Brittany, Rita, and Anita conspired to deprive him of his constitutional rights by "fraudulently concealing the existence of [Pell] as an eyewitness to the events on August 25, 2018." He further asserted that Pell and Crawford conspired to deprive him of his rights by "fraudulently concealing that [Pell] ha[d] eyewitness knowledge favorable to [Hill] . . . and by giving false and misleading statement(s) to investigator(s)." Finally, Hill asserted that, because of his race, Anita and Kovachs conspired to interfere with his Fifth, Sixth, and Fourteenth Amendment rights by using threats and intimidation to prevent Brittany from publicly exposing Pell as an eyewitness and Jacobs's false allegations and testimony.

Several defendants did not respond, but Pell and Anita moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6). A magistrate judge recommended that Hill's claims against all of the defendants be dismissed for failure to state a claim, *see* 28 U.S.C. § 1915(e)(2)(B)(ii), and that his motions for default judgment be denied as moot. The magistrate judge reasoned that Hill failed to state a conspiracy claim under §§ 1985 and 1986 against any defendant because he did not allege any facts to show that the defendants committed an overt act in furtherance of the alleged conspiracy or that there was a "single plan" or "conspiratorial objective" among the defendants to injure Hill. Over Hill's objections, the district court adopted the magistrate judge's report and recommendation and dismissed Hill's claims. The court agreed that Hill did not sufficiently allege the elements of a civil conspiracy and also found that his conspiracy claims failed because he did not adequately allege an underlying constitutional violation. The court explained that Hill failed to allege a Fifth or Fourteenth Amendment violation because there was no state action and failed to allege a Sixth Amendment violation because that amendment does not guarantee the actual attendance of witnesses.

On appeal, Hill argues that the district court erred by rejecting his claim under § 1985(2) for failure to allege state action and by limiting the Sixth Amendment guarantee to a fair trial to

compulsory process. He further argues that his complaint adequately alleged a "conspiratorial objective" to state a claim under § 1985(2).

We review de novo a district court's dismissal of a complaint for failure to state a claim under Rule 12(b)(6) and § 1915(e)(2)(B)(ii), using the standard set forth in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). *See Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010). To avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

The district court did not err in dismissing Hill's §§ 1985 and 1986 claims. To state a claim under § 1985(2), a plaintiff must allege that two or more persons conspired "to interfere with state judicial proceedings 'with intent to deny to any citizen the equal protection of the laws.'" *Alexander v. Rosen*, 804 F.3d 1203, 1207 (6th Cir. 2015) (quoting 42 U.S.C. § 1985(2)). To prevail under § 1985(3), a plaintiff must prove

> (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges or immunities of the laws; (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States.

Webb v. United States, 789 F.3d 647, 671-72 (6th Cir. 2015) (quoting *Vakilian v. Shaw*, 335 F.3d 509, 518 (6th Cir. 2003)). Under either provision, "a plaintiff must allege that there was 'some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action.'" *Fox v. Mich. State Police Dep't*, 173 F. App'x 372, 376 (6th Cir. 2006) (quoting *Kush v. Rutledge*, 460 U.S. 719, 726 (1983)); *see Alexander*, 804 F.3d at 1207. "Section 1986 provides a cause of action for additional damages against a party that fails to prevent a § 1985 violation," so when a plaintiff's § 1985 claim fails, so does his § 1986 claim. *Gerber v. Herskovitz*, 14 F.4th 500, 511 (6th Cir. 2021). "It is well-settled that conspiracy claims must be pled with some degree of specificity and that vague and conclusory allegations unsupported by material facts

will not be sufficient to state such a claim . . . ." *Spadafore v. Gardner*, 330 F.3d 849, 854 (6th Cir. 2003) (quoting *Gutierrez v. Lynch*, 826 F.2d 1534, 1538 (6th Cir. 1987)).

Even assuming that Hill's conspiracy claims could proceed against private actors without a showing of state action, he failed to state a claim because his allegations of a conspiracy and racial or class-based animus were wholly conclusory. Hill alleged no facts from which one could reasonably infer that the defendants withheld evidence or witnesses from investigators in accordance with a single plan to deprive him of his right to equal protection of the laws. Instead, Hill seemed to rely solely on the fact that the defendants knew each other or were related to each other. But this is insufficient to show that they acted or failed to act pursuant to a conspiratorial objective. Hill also asserted that the defendants were motivated by his race, but he failed to plead facts to support this conclusory allegation. Indeed, Hill's only allegations concerning racial animus were that Brittany, Anita, and Rita knew that Jacobs was racist and that Pell, Crawford, and Jacobs shared "their beliefs and dislikes of Black men based upon color." These allegations, even when considered along with the fact that Hill is black and the defendants are white, do not support an inference that "the defendants were motivated by 'invidious discrimination.'" *Alexander*, 804 F.3d at 1208 (quoting *Iqbal*, 556 U.S. at 680).

Finally, Hill asserts for the first time on appeal that, as a criminal defendant, he "has a protected liberty interest creating membership in a constitutionally protected class under § 1985(2) and (3)." But as explained above, Hill claimed that the defendants conspired to deprive him of equal protection under the law on account of his race, not because of his status as a criminal defendant. Because Hill did not raise this argument below, we need not consider it. *See McMillan v. LTV Steel, Inc.*, 555 F.3d 218, 228-29 (6th Cir. 2009).

For these reasons, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

MARK A. HILL,	:	
	:	
Plaintiff,	:	**Case No. 2:21-cv-4142**
	:	
v.	:	**Chief Judge Algenon L. Marbley**
	:	**Magistrate Judge Caroline H. Gentry**
JENNIFER PELL, *et al.*,	:	
	:	
Defendants.	:	

OPINION & ORDER

This matter is before this Court on Plaintiff Mark A. Hill's Objections (ECF No. 47) to the Magistrate Judge's Report and Recommendation (ECF No. 45); Defendant Anita Hamm's Motion to Dismiss (ECF No. 44); and Plaintiff's Motion for Leave to File an Amended and Supplemental Complaint ("Motion to Amend," ECF No. 50). In her Report and Recommendation ("R&R"), which was filed prior to the latter two Motions, the Magistrate Judge recommended that this Court:

- Deny Plaintiff's Motion for Sanctions (ECF No. 43);
- Grant Defendant Pell's Motion to Dismiss (ECF No. 33) and dismiss Plaintiff's claims against Defendant Pell without prejudice;
- Dismiss Plaintiff's claims against the remaining Defendants without prejudice; and
- Deny Plaintiff's remaining motions (ECF Nos. 26, 27, 41) as moot.

(ECF No. 45).

For the reasons explained below, the Court hereby **ADOPTS IN PART** the R&R (ECF No. 45); **OVERRULES** Petitioner's Objections (ECF No. 47); **DENIES** Plaintiff's Motion for Sanctions (ECF No. 43); **GRANTS** Defendant Pell's and Defendant Hamm's Motions to Dismiss (ECF Nos. 33, 44); **DENIES** Plaintiff's Motion to Amend (ECF No. 50); **DENIES AS MOOT** Plaintiff's remaining motions (ECF Nos. 26, 27, 41); and **DISMISSES** Plaintiff's claims against all Defendants.

I. BACKGROUND

A. Factual Background

While exactly what transpired is disputed by the parties, at the motion to dismiss stage, this Court is to construe the complaint in the light most favorable to the non-movant—here, Mr. Hill—and accept his well-pleaded factual allegations as true. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554-55 (2007). The facts summarized here reflect this standard.

On August 25, 2018, upon request from his then-girlfriend, Defendant Brittany Hamm, Mr. Hill went to pick her up at her grandmother's house, Defendant Rita Hamm. (Compl., ECF No. 1, at 3). Brittany[1] informed Mr. Hill that Martie Jacobs propositioned her sexually and then physically assaulted her.[2] (*Id.* at 3-4). After seeing Brittany's black eye, Mr. Hill entered Rita's house to confront Mr. Jacobs. (*Id.* at 4). Mr. Hill and Mr. Jacobs then indisputably got into a physical altercation. (*Id.*). In Mr. Hill's view, Mr. Jacobs struck him in the face, to which Mr. Hill "responded with four (4) quick punches to Mr. Jacobs' face in self-defense." (*Id.* at 5). But in Mr. Jacobs' view, as relayed to the Columbus Police, Mr. Hill "hit [Mr. Jacobs] twice in the face with a sledgehammer." (*Id.* at 4). Notably, Mr. Jacobs' view is reflected in the criminal complaint against Mr. Hill, (*id.*, Ex. A), and serves as the basis for Mr. Hill's indictment and charge of felonious assault. (*Id.* at 5-6).

Following the incident and leading up to Mr. Hill's jury trial, a variety of individuals provided their perspective on the events of August 25, 2018. Mr. Hill voluntarily provided his account to Detective Zimmer, which mirrors what was stated above. (*Id.* at 5). Rita provided that she saw Mr. Hill inside Mr. Jacobs' room for "a while," after which she saw Mr. Jacobs laying on

[1] Because Defendant Brittany Hamm and Defendant Rita Hamm share a last name, this Court refers to these individuals by their first names.

[2] Mr. Hill later learned that Mr. Jacobs physically assaulted Brittany a second time. (Compl., ECF No. 1, at 4).

the bathroom floor covered in blood, but that she did not see anything between those events. (*Id.*, Ex. C). She reiterated Brittany's account of Mr. Jacobs' sexual propositioning. (*Id.*). A neighbor, Defendant Scott Crawford, contradicted this account, stating that Mr. Jacobs would not have propositioned Brittany and that Brittany was lying. (*Id.*, Ex. D). Brittany herself also spoke with the investigation team, largely corroborating Mr. Hill's account, including that Mr. Hill struck Mr. Jacobs four times and that Mr. Hill did not have a weapon on him. (*Id.*, Ex. E). She also stated that Mr. Hill had previously punched her in the face. (*Id.*).

At trial, Mr. Jacobs maintained that he did not proposition Brittany and that Mr. Hill struck him in the face with a sledgehammer. (*Id.*, at 7). Rita testified that Mr. Jacobs had propositioned and assaulted Brittany, and this time stated that Mr. Hill did not have a sledgehammer the day of the incident. (*Id.* at 6). While Brittany was subpoenaed to testify on Mr. Hill's behalf, she failed to appear on time. (*Id.*). Mr. Hill asserts that Brittany's failure to appear was purposeful. (*Id.*, Ex. F).

Mr. Hill was found guilty of felonious assault against Mr. Jacobs and was sentenced to twelve (12) years in prison. (*Id.* at 7).

Following trial, Mr. Hill learned of a potential undisclosed eyewitness to the August 25 incident between Brittany and Mr. Jacobs: a neighbor, Defendant Jennifer Pell. (*Id.* at 7-8, 10-11; *id.*, Ex. I). But Ms. Pell informed investigators that she did not want to be involved in the case. (*Id.*, at 9). Also, Brittany told Mr. Hill that Mr. Jacobs "boasted" that he was believed because he is not Black and that she had been in a new relationship since before Mr. Hill's trial. (*Id.* at 11). Mr. Hill also learned that Brittany at one point intended to record a video explaining that Mr. Jacobs' "lies … are responsible for [Mr. Hill] being in prison," but that other Defendants' threats to her children kept her from doing so. (*Id.*).

B. Procedural Background

As a result of the above, Mr. Hill—an Ohio inmate proceeding *pro se*—brought suit against Defendants Jennifer Pell, Scott Crawford, Brittany Hamm, Rita Hamm, Anita Hamm, and Eric Kovachs. Mr. Hill, who is Black, alleges that Defendants, who are White, conspired to deprive him of his civil rights. Specifically, Mr. Hill takes issue with: (1) Mr. Jacobs' allegedly false testimony about the actions leading to Mr. Hill's arrest; (2) Brittany's failure to appear to testify in his defense on time; and (3) Defendant Pell and Crawford's eyewitness accounts of Mr. Jacobs' attack(s) on Brittany and lack of reporting of such. (*Id.*, at 12-14). In his eyes, had these individuals acted differently, he would not be in jail. (*Id.*, at 14). Therefore, he claims these individuals' conspiracies against him resulted in: (1) Fifth and Fourteenth Amendment violations because Defendants targeted him because he was Black (*id.*, at 10, 12-14; ECF No. 47, at 2, 13-14); and (2) Sixth Amendment violations resulting from Brittany's intentional failure to appear to testify in his defense and Defendant Pell not providing her allegedly eyewitness testimony (ECF No. 1, at 7, 11, 12-14; ECF No. 47, at 2, 10, 13-14, 19). He claims a slew of specific damages stemming from the alleged conspiracies. (ECF No. 1, at 14; ECF No. 47, at 14). He also points to a state law regarding failure to report a crime, presumably as a basis for at least some of the Defendants' liability. (ECF No. 1, at 10; ECF No. 47, at 9).

Upon review of Mr. Hill's complaint and Defendant Pell's motion to dismiss, the Magistrate Judge recommended that this Court grant Defendant Pell's Motion to Dismiss (ECF No. 33) and dismiss Plaintiff's claims against all Defendants without prejudice, and therefore recommended this Court deny Mr. Hill's other outstanding Motions (ECF Nos. 26, 27, and 41) as moot. (ECF No. 45). After the Magistrate Judge filed the R&R, Defendant Anita Hamm filed a Motion to Dismiss. (ECF No. 44). A few weeks later, Mr. Hill moved for leave to file, and subsequently filed, his Objections

to the R&R. (ECF Nos. 46, 47). Recently, Mr. Hill requested leave to file an amended and supplemental complaint. (ECF No. 50). This Court now reviews: (1) both of these new Motions (ECF Nos. 44, 50); (2) the motions covered in the R&R, as appropriate (ECF No. 45); and (3) Mr. Hill's objections (ECF No 47).

II. STANDARD OF REVIEW

When reviewing a party's objections to a Report and Recommendation, "[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed.R.Civ.P. 72(b)(3). In so doing, "[t]he district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instruction." *Id.*

III. LAW AND ANALYSIS

As this Court evaluates both the Magistrate Judge's recommendations as to various motions (ECF No. 45) and two since-filed motions (ECF Nos. 44, 50), and as Mr. Hill objected to some but not all of the Magistrate Judge's recommendations (ECF No. 47), this Court addresses the posture of and objections to each set of related motions or claims in turn.

A. Sanctions

The R&R recommends that Mr. Hill's Motion for Sanctions (ECF No. 43) be denied on multiple grounds, and Mr. Hill raises no objection to this recommendation. As this Court agrees with the recommendation, the Motion is **DENIED**. *See, e.g., Johnson v. Unknown Dellatifa*, 357 F.3d 539, 545 (6th Cir. 2004).

B. Conspiracy Claims

The Magistrate Judge recommends that Defendant Pell's Motion to Dismiss (ECF No. 33) be granted, and that Mr. Hill's claims against all Defendants be dismissed without prejudice. (ECF

No. 45, at 20-21). The Magistrate Judge concluded as much after finding that Mr. Hill's complaint fails to state a claim upon which a claim can be granted because he does not sufficiently allege any of the three key elements of a civil conspiracy under § 1985. (ECF No. 45, at 16). In considering this recommendation, this Court also considers Defendant Hamm's Motion to Dismiss (ECF No. 44).

In his objections, Mr. Hill contests the Magistrate Judge's recommendation that his claims against all the named defendants be dismissed for failure to state a claim because, in his view, "he has adequately alleged that Defendants engaged – either directly or indirectly – in an unlawful conspiracy to conceal, or withhold, evidence in a state criminal trial proceeding and thereby caus[ing] Plaintiff's constitutional injury." (ECF No. 47, at 14). In support of this, he argues that he: (1) sufficiently demonstrated the requisite "meeting of the minds"; (2) showed an overt act committed in furtherance of the conspiracy; and (3) can proceed on his § 1986 claim based on his adequate § 1985 allegations. (*Id.*, at 16-20).

If a plaintiff proceeding in forma pauperis "fails to state a claim upon which relief may be granted," "the court shall dismiss" their complaint or the inadequate portions of it. 28 U.S.C. § 1915(e)(2). While detailed factual allegations are not necessary at the pleading stage, mere "labels and conclusions" are insufficient to state a proper claim. *Twombly*, 550 U.S. at 545. Pro se complaints are to be construed liberally, but "basic pleading essentials" still are required. *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989). Thus, to survive, a complaint must contain sufficient facts which, if accepted as true as stated above, would plausibly state a claim upon which relief may be granted.

As a point of clarification, Mr. Hill is correct that the Sixth Circuit has held that the overt-act requirement can be satisfied by an omission. *See Webb v. United States*, 789 F.3d 647, 671 (6th

Cir. 2015); *Rieves v. Town of Smyrna, Tenn.*, 67 F.4th 856, 861 (6th Cir. 2023). But regardless, this omission, or concealment, must be *in furtherance of the conspiracy*. *Webb*, 789 F.3d at 671 (emphasis added). So, if the Court finds there is no single plan or conspiratorial objective—as the Magistrate Judge here did—there is no conspiracy to further through any alleged acts or omissions.

While this Court ultimately agrees with the Magistrate Judge's analysis and conclusion and Mr. Hill does not provide persuasive reasoning to the contrary in his objections, this Court finds that Mr. Hill's substantive § 1985 claims fail as a matter of law for a more fundamental reason: He "cannot succeed on [his] conspiracy claim because there was no underlying constitutional violation that injured [him]." *Wiley v. Oberlin Police Dep't*, 330 Fed. App'x 524, 530 (6th Cir. 2009). As to his Fourteenth Amendment claim, none of the Defendants is a state actor who can be held liable for constitutional violations, nor does Mr. Hill point to any state action by a private citizen. *See Simpson v. Ameji*, 57 Fed. Appx. 238, 239 (6th Cir. 2003) (citing *Henry v. Metropolitan Sewer Dist.*, 922 F.2d 332, 341 (6th Cir. 1990)); *see also Lansing v. City of Memphis*, 202 F.3d 821, 828 (6th Cir. 2000). The same is true for a Fifth Amendment violation, as none of the Defendants is a government actor. *See Mik v. Fed. Home Loan Mortg. Corp.*, 743 F.3d 149, 168 (6th Cir. 2014). And because the Sixth Amendment does not "guarantee[] the actual attendance of witnesses sought by the defense," this basis fares no better. *United States v. Barker*, 553 F.2d 1013, 1022 (6th Cir. 1977). As Mr. Hill therefore fails to articulate a valid Fifth, Sixth, or Fourteenth Amendment violation against Defendants, he cannot maintain a plausible conspiracy claim under § 1985. And as the Magistrate Judge explains, as goes a § 1985 claim, so goes a § 1986 claim. (R&R, ECF No. 45, at 20 (citing *Gerber v. Herskovitz*, 14 F.4th 500, 511 (6th Cir. 2021)). Accordingly, this Court **ADOPTS** the Magistrate Judge's conclusions on these claims, and Mr. Hill's claims against all Defendants are **DISMISSED**.

C. Motion to Amend

As Mr. Hill correctly notes, under Fed. R. Civ. P. 15(a)(2), he can amend his Complaint at this stage of the proceedings only with the consent of Defendants or leave of this Court. (ECF No. 50, at 1). Because Defendants have not consented to Mr. Hill's proposed amendments, the question is whether the Court should give leave.

While leave to amend should be "freely give[n] ... when justice so requires," Fed. R. Civ. P. 15(a)(2), this Court may deny such leave "if the amendment ... would be futile," *Otworth v. Dorwin*, No. 20-02153, 2021 WL 2104499, at *2 (6th Cir. May 11, 2021) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). "A proposed amendment is futile if the amendment could not withstand a Rule 12(b)(6) motion to dismiss." *Rose v. Hartford Underwriters Ins. Co.*, 203 F.3d 417, 420 (6th Cir. 2000).

Here, although the Amended and Supplemental Complaint contains additional details regarding the facts underlying Mr. Hill's state-court conviction, it is flawed in the same ways as his original Complaint: (1) it is bereft of the type of facts required to claim a constitutional violation, as is required to get over the 12(b)(6) hurdle for a civil conspiracy claim, *see Wiley*, 330 Fed. App'x at 530; and (2) it still fails to allege facts sufficient to demonstrate either that the Defendants shared a "single plan" or "conspiratorial objective," as the R&R detailed, (*see* ECF No. 45, at 18-19).

In the same manner as this Court explained above regarding this first reason, this Court is hard-pressed to see how Mr. Hill could allege the facts necessary to establish a constitutional violation given the circumstances presented across both Complaints. Mr. Hill makes no attempt to involve a state or government actor or point to any state action, and he adds no additional information regarding a potential Sixth Amendment violation, instead pointing again to compulsory process. (ECF No. 50-1, at 6). As such, granting leave to amend would be futile.

While this first reason is dispositive, this Court nonetheless provides more color as to the second problem with the proposed Amended and Supplemental Complaint. First, Mr. Hill again fails to provide any "specific[] ... material facts" to support his claims of a shared conspiratorial intent. *Gutierrez v. Lynch*, 826 F.2d 1534, 1538 (6th Cir. 1987). Instead, he states that Defendants Pell and Crawford "willfully, intentionally and maliciously conspired, planned, and agreed to conceal their eyewitness knowledge of the false denial(s) and accusation(s) from law enforcement officers," and that they "convinced and enlisted Defendants Rita Hamm and Anita Hamm to participate in their plan to protect their friend, Martie Jacobs." (ECF No. 50-1, at 17-18). But these allegations fail to rise above the level of "sheer speculation." *Warner v. Bevin*, No. 3:16-cv-422, 2017 WL 88991, at *7 (W.D. Ky. Jan. 9, 2017). As explained in the R&R, such a "web of inferences," (ECF No. 45, at 18), is insufficient to meet the "relatively strict" pleading standard for conspiracy claims, *Fieger v. Cox*, 524 F.3d 770, 776 (6th Cir. 2008).

Also insufficient are Mr. Hill's allegations that, "[h]ad Plaintiff not been a Black man, but instead a White man," Defendants would not have acted against him. (ECF. No. 50-1, at 21-22). These allegations are substantively identical to his original assertion that Defendants acted out of generalized racial bias. But, as the R&R previously explained (ECF No. 45, at 19), this kind of conclusory allegation of racial motivation will not support a civil conspiracy claim, *see Ahmed v. Ohio State Highway Patrol*, No. 1:17-cv-2555, 2019 WL 4419054, *12 (N.D. Ohio Aug. 28, 2019); *Patterson v. McCormick*, No. 2:13-cv-293, 2014 WL 2039966, *4 (E.D. Va. May 15, 2014).

In sum, Mr. Hill's proposed Amended and Supplemental Complaint fails to cure the deficiencies of his original Complaint. As the proposed Amended and Supplemental Complaint would still fail to withstand a motion to dismiss for failure to state a claim upon which relief can be

granted, Mr. Hill's proposed amendments would be futile, and so his Motion to Amend (ECF No. 50) is **DENIED**.

D. Other Motions

As to Mr. Hill's other Motions (to Substitute Party, ECF No. 26; for Default Judgment, ECF No. 27; and for Expedited Default Judgment, ECF No. 41), he states that the R&R's handlings of these motions should be "held in abeyance" so he can correct the deficiencies in an amended pleading. (ECF No. 47, at 20). But as noted above, Mr. Hill was unable to cure such deficiencies in his proposed Amended and Supplemental Complaint. This Court therefore **ADOPTS** the Magistrate Judge's recommendation as to these Motions, which are hereby **DENIED AS MOOT**.

IV. CONCLUSION

For the reasons explained above, the R&R (ECF No. 45) is **ADOPTED IN PART**; Petitioner's Objections (ECF No. 47) are **OVERRULED**; Plaintiff's Motion for Sanctions (ECF No. 43) is **DENIED**; Defendant Pell's and Defendant Hamm's Motions to Dismiss (ECF Nos. 33, 44) are **GRANTED**; Plaintiff's Motion to Amend (ECF No. 50) is **DENIED**; Plaintiff's remaining motions (ECF Nos. 26, 27, 41) are **DENIED AS MOOT**; and Plaintiff's claims against all Defendants are **DISMISSED**. Based on this Court's rulings, this case is hereby **DISMISSED**.

IT IS SO ORDERED.

ALGENON L. MARBLEY
CHIEF UNITED STATES DISTRICT JUDGE

DATED: March 11, 2024

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

MARK A. HILL,	:	
	:	
Plaintiff,	:	**Case No. 2:21-cv-4142**
	:	
	:	**Chief Judge Algenon L. Marbley**
v.	:	**Magistrate Judge Caroline H. Gentry**
	:	
JENNIFER PELL, *et al.*,	:	
	:	
Defendants.	:	

ORDER

This matter is before this Court on Defendant Anita Hamm's second motion to dismiss (ECF No. 53) and Petitioner Mark A. Hill's *pro se* motion for leave to appeal *in forma pauperis*. (ECF No. 55). This former motion was filed the same day this Court dismissed Plaintiff's claims against all Defendants, (*see* ECF No. 51), so this motion (ECF No. 53) is **DENIED AS MOOT**. But because Mr. Hill's appeal is taken in good faith, the latter motion (ECF No. 55) is **GRANTED**.

As a result of a domestic dispute at his then-girlfriend's grandmother's house, Mr. Hill was found guilty of felonious assault against a Hamm family friend, Martie Jacobs, and was sentenced to twelve (12) years in prison. (ECF No. 51 at 3). Following his conviction and the information that came to light during trial, Mr. Hill—an Ohio inmate proceeding *pro se*—brought suit against Defendants Jennifer Pell, Scott Crawford, Brittany Hamm, Rita Hamm, Anita Hamm, and Eric Kovachs. (ECF No. 1). Mr. Hill, who is Black, alleges that Defendants, who are White, conspired to deprive him of his civil rights vis-à-vis: (1) Mr. Jacobs' allegedly false testimony about the actions leading to Mr. Hill's arrest; (2) Brittany's failure to appear to testify in his defense on time; and (3) Defendant Pell and Crawford's eyewitness accounts of Mr. Jacobs' attack(s) on Brittany and lack of reporting of such. (*Id.* at 12–14). In his eyes, had these individuals acted differently,

not to testify on Mr. Hill's behalf at trial, this Court was attempting to construe the only aspect of Mr. Hill's complaint that it thought could possibly form the basis for a Sixth Amendment claim. (*See* ECF No. 51 at 7 (interpreting ECF No. 1 at 7)). But those allegations are still insufficient, since neither Brittany's abscondence from a subpoena nor the decision to not voluntarily testify rises to a constitutional violation in this context. As to Brittany, any compulsory process issue was militated by the issuance of a subpoena, as process was, indeed, issued. *See Thomas v. Knab*, No. 1:11-cv-333, 2012 WL 996972, at *2 (S.D. Ohio Mar. 22, 2012). And the Confrontation Clause was not implicated by either former defendant: Neither provided evidence at trial, so there was nothing to "confront," nor would either have been an adverse witness, considering Mr. Hill wanted them to testify on his behalf. *See United States v. Heck*, 499 F.2d 778, 789 n. 9 (9th Cir. 1974); *Veliev v. Warden, Chillicothe Corr. Inst.*, No. 2:12-cv-346, 2014 WL 3016165 (S.D. Ohio July 2, 2014), *report and recommendation adopted*, No. 2:12-cv-00346, 2014 WL 4805292 (S.D. Ohio Sept. 26, 2014). Accordingly, Mr. Hill failed to allege a meritorious Sixth Amendment claim.

Regardless, in sum, Mr. Hill's appeal is in good faith because the answer to the question of "whether, objectively speaking, there is *any* non-frivolous issue to be litigated on appeal" is yes. *Coppedge v. United States*, 369 U.S. 438, 445 (1962) (emphasis added). Mr. Hill's motion for leave to appeal *in forma pauperis* (ECF No. 55) is therefore **GRANTED**.

IT IS SO ORDERED.

ALGENON L. MARBLEY
CHIEF UNITED STATES DISTRICT JUDGE

DATED: April 17, 2024

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

MARK A. HILL, Plaintiff, vs. JENNIFER PELL, *et al.*, Defendants.	:	Case No. 2:21-cv-04142 Chief Judge Algenon L. Marbley Magistrate Judge Caroline H. Gentry

ORDER AND REPORT AND RECOMMENDATION

Plaintiff Mark Hill, an Ohio inmate who is proceeding without the assistance of counsel, filed this lawsuit against several individuals after a state-court jury convicted him on a charge of felonious assault. Plaintiff, who is Black, alleges that Defendants, who are White, conspired to deprive him of his civil rights by failing to assist him in his defense and to provide exculpatory videos after his trial. (Complaint, Doc. No. 1.)

This matter is before the undersigned Magistrate Judge upon the following motions: Plaintiff's Emergency Motion to Strike the Answer(s)/Letter(s) of Defendants Rita Hamm and Anita L Hamm ("First Motion to Strike," Doc. No. 25); Plaintiff's Emergency Rule 25(a)(1) Motion for Substitution of Defendant Rita Hamm with Executor of Estate Anita L. Hamm ("Motion to Substitute," Doc. No. 26); Plaintiff's Motion for Expedited Rule 55(b)(2) Default Judgment and Rule 54(c) Demand for Judgment Against Defendants Brittany N. Hamm and Eric B. Kovachs ("First Motion for

Default Judgment," Doc. No. 27); Defendant Pell's[1] Motion to Dismiss (Doc. No. 33); Plaintiff's Motion to Strike Defendant Anita L. Hamm's Undated Letter Filed in July 2023 ("Second Motion to Strike," Doc. No. 36); Plaintiff's Motion for Expedited Rule 55(b)(2) Default Judgment and Rule 54(c) Demand for Judgment Against Defendant Scott Crawford ("Second Motion for Default Judgment," Doc. No. 41); and Plaintiff's Fed. R. Civ. P. 11(c)(2) Motion for Sanctions Against Defendant Anita L. Hamm ("Motion for Sanctions," Doc. No. 43).

For the reasons set forth below, the undersigned denies Plaintiff's Motions to Strike and recommends that the District Judge: (1) deny Plaintiff's Motion for Sanctions, (2) grant Defendant Pell's Motion to Dismiss and dismiss Plaintiff's claims against Defendant Pell without prejudice, (3) dismiss Plaintiff's claims against the remaining Defendants without prejudice, and (4) deny Plaintiff's remaining motions as moot.

I. PLAINTIFF'S MOTIONS TO STRIKE (DOC. NOS. 25 & 36)

In his Motions to Strike, Plaintiff seeks Court orders that strike from the record the Answers filed by Defendant Rita Hamm (Doc. No. 13) and Defendant Anita Hamm (Doc. No. 14), as well as a subsequent brief filed by Defendant Anita Hamm (Doc. No. 32).

A. Background

After Defendant Rita Hamm was served with Plaintiff's Complaint, she submitted a handwritten letter to the Court in May 2022. (Doc. No. 13.) The letter described her version of the events underlying Plaintiff's conviction. (*Id.* at PageID 99-102.) In

[1] Plaintiff's Complaint names Jennifer Pell as a Defendant. (Doc. No. 1, PageID 2.) This Defendant has indicated that her name is Jennifer Schneid. (Doc. No. 28, PageID 199.) However, because the last name "Pell" has been used on the docket and in the case caption, the Court will continue to use it here for the sake of consistency.

addition, after stating that three of her great-grandchildren are biracial, Defendant Rita Hamm asserted: "I am not against black people." (*Id.* at PageID 99.)

In June 2022, Defendant Anita Hamm similarly submitted a handwritten letter to the Court after she was served with Plaintiff's Complaint. (Doc. No. 14.) She explained: "I am writing this letter to the court in the [sic] regards to the complaint filed against me by Mark A. Hill." (*Id.* at PageID 104.) Defendant Anita Hamm discussed the events underlying Plaintiff's conviction, denied the allegations in Plaintiff's Complaint, and stated: "I did not conspire with [any]one." (*Id.* at PageID 104-08.)

The Clerk docketed each of these letters as an Answer, which is a formal pleading that responds to a Complaint. *See* Fed. R. Civ. P. 7(a). It appears that Plaintiff did not receive a copy of either Answer at the time they were filed. Neither Answer contained a certificate of service as required by the Federal Rules of Civil Procedure and this Court's local rules. *See* Fed. R. Civ. P. 5(d)(1) & S.D. Ohio Civ. R. 5.2.

In his First Motion to Strike (Doc. No. 25), Plaintiff seeks to strike both Answers from the record. He states that he first learned about them in February 2023, during a telephone conversation with an employee from the Clerk of Court's office. (*Id.* at PageID 175.) Plaintiff argues that Defendants' "failure to serve their Answer[s]/Letter[s] upon [him] is either an intentional delay tactic utilized to thwart, or otherwise hinder, this judicial proceeding or a reckless disregard for the prejudicial effect of their conduct on this proceeding." (*Id.* at PageID 176.)

Defendant Anita Hamm responded to the First Motion to Strike with a letter that asked the Court to deny the Motion and also Plaintiff's "complaints of conspiracy."

(Response, Doc. No. 32, PageID 217.) Again, her letter did not include the required certificate of service. Defendant Rita Hamm did not file a response.

In his Second Motion to Strike (Doc. No. 36), Plaintiff seeks an order that strikes Defendant Anita Hamm's Response to the First Motion to Strike (Doc. No. 32) from the record. Although Plaintiff acknowledges that he received a copy of the Response in the mail, he argues that it should nevertheless be stricken from the record because it does not contain either a case caption or a certificate of service. (*Id.* at PageID 240.)

B. Law and Analysis

The Court must consider several legal principles when ruling on Plaintiffs' Motions to Strike.

The Answers that Plaintiff seeks to strike are formal pleadings. Fed. R. Civ. P. 7(a). The "action of striking a pleading should be sparingly used by the courts." *Brown & Williamson Tobacco Corp. v. U.S.*, 201 F.2d 819, 822 (6th Cir. 1953), *quoted in Anderson v. U.S.*, 39 F. App'x 132, 135 (6th Cir. 2002). The Sixth Circuit has cautioned that this "drastic remedy" is "to be resorted to only when required for the purposes of justice . . . [and] only when the pleading to be stricken has no possible relation to the controversy." *Id.* Here, the Answers are indisputably related to the controversy. This legal principle therefore weighs heavily against Plaintiff's First Motion to Strike.

With respect to both the Answers and the Response, the Court must also consider the right of public access to judicial records. The Sixth Circuit has repeatedly recognized that "[t]he public has a strong interest in obtaining the information contained in the court record." *Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir.

2016) (quoting *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1180 (6th Cir. 1983)). Because "[o]nly the most compelling reasons can justify non-disclosure of judicial records," *Shane Grp., Inc.*, 825 F.3d at 305, courts should rarely grant motions to strike documents that have been filed in a case. *E.g.*, *Lipman v. Budish*, 974 F.3d 726, 752-53 (6th Cir. 2020) (directing the district court to vacate its order striking certain filings from the record). This legal principle weighs heavily against Plaintiff's First and Second Motions to Strike.

Finally, the Sixth Circuit has held that "[t]he rights of *pro se* litigants require careful protection where highly technical requirements are involved, especially when enforcing those requirements might result in a loss of the opportunity to prosecute or defend a lawsuit on the merits." *Brown v. Matauszak*, 415 F. App'x 608, 616 (6th Cir. 2011). Therefore, this Court has the discretion to overlook technical violations. *E.g.*, *Ruhl v. Brown*, No. 2:13-CV-00716, 2015 WL 5117951, at *2-3 (S.D. Ohio Sept. 1, 2015) (Marbley, D.J.) (denying motion to strike pro se plaintiff's filing that exceeded page limit and noting that "the Court chooses to hold his briefing to a less stringent standard."). Here, striking these Defendants' Answers might "result in a loss of the opportunity to . . . defend a lawsuit on the merits." *Brown*, 415 F. App'x at 616. Therefore, this legal principle weighs heavily against Plaintiff's First Motion to Strike.

In light of all these considerations, the undersigned finds that orders striking the Answers and the Response are unwarranted and unsupported by the governing case law. Accordingly, the Court **DENIES** Plaintiff's First Motion to Strike (Doc. No. 25) and Second Motion to Strike (Doc. No. 36). In addition, in an abundance of caution, the Court

DIRECTS the Clerk of Court to mail copies of both Answers (Doc. Nos. 13 & 14) to Plaintiff at his address of record.

II. PLAINTIFF'S MOTION FOR SANCTIONS (DOC. NO. 43)

In his Motion for Sanctions (Doc. No. 43), Plaintiff argues that Defendant Anita Hamm's Response to the First Motion to Strike (Doc. No. 32) violates Rule 11 of the Federal Rules of Civil Procedure because it contains untrue factual representations, demands that the Court deny Plaintiff's Complaint, and threatens to hire counsel if the Court does not deny Plaintiff's Complaint. Finding that Plaintiff's Motion for Sanctions is not well-taken, the undersigned **RECOMMENDS** that it be **DENIED**.

Rule 11(b) imposes certain requirements upon any attorney or unrepresented party who submits a filing in federal court. Fed. R. Civ. P. 11(b). The core requirement of Rule 11 is an obligation to act reasonably. *Salkil v. Mount Sterling Twp. Police Dep't*, 458 F.3d 520, 528 (6th Cir. 2006). Thus, "the test for whether Rule 11 sanctions are warranted is whether the conduct for which sanctions are sought was 'reasonable under the circumstances.'" *Id.*

Defendant Anita Hamm's Response states:

> I am writing this court again regarding my answer to Mark A. Hill's civil complaints against me and also my mother, estate of Rita A. Hamm. I am asking the court to deny the motion to strike all previous letters from Anita L. Hamm and Rita A. Hamm and to once again deny his complaints of conspiracy with all defendants indicated in his complaints. I am denying any involvement with his case. I was not present, nor do I have any knowledge as to what happened. I believe that Mr. Hill made a bad choice and that is why he is where he is today. I absolutely do not feel comfortable in rendering an answer to him directly and do not want to have any further contact with Mark A. Hill (my daughter's ex-boyfriend) who is providing

him with my information. If this is not denied, I will be seeking legal counsel going forward.

(Doc. No. 32, PageID 217.)

The undersigned concludes that these statements are eminently reasonable under the circumstances. Defendant Anita Hamm is plainly entitled to deny Plaintiff's factual allegations, to ask the Court to dismiss his Complaint, and to hire legal counsel. None of these statements comes even remotely close to violating Rule 11. Moreover, the truth of a litigant's factual denials is not a proper subject for a Rule 11 motion. *See, e.g., Favor v. W.L. Fore Assocs., Inc.*, No. 2:13-CV-00655, 2014 WL 533804, at *6 (S.D. Ohio Feb. 11, 2014) (Frost, D.J.) (denying Rule 11 motion that "put[] the Court in the odd position of being required to make evidentiary determinations at the pleadings stage").

Accordingly, the undersigned Magistrate Judge **RECOMMENDS** that Plaintiff's Motion for Sanctions (Doc. No. 43) be **DENIED**.

III. DEFENDANT PELL'S MOTION TO DISMISS (DOC. NO. 33)

In her Motion to Dismiss (Doc. No. 33), Defendant Pell seeks an order dismissing Plaintiff's Complaint for failure to state a claim upon which relief can be granted under Rule 12(b)(6) and failure to join necessary parties under Rule 12(b)(7). Finding it to be dispositive, the undersigned addresses only the motion to dismiss under Rule 12(b)(6).

A. Statement of Facts

The following statement of facts is taken from the factual allegations set forth in Plaintiff's Complaint. For purposes of ruling on a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, the Court construes the

Complaint in Plaintiff's favor and accepts all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) The Court does not, however, consider any "legal conclusion couched as a factual allegation" to be true. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

Plaintiff's claims arise from his criminal case in state court, where he was tried and convicted on a charge of felonious assault in violation of Ohio Revised Code Section 2903.11. (Doc. No. 1, PageID 7 & 18.) Briefly, Plaintiff was convicted for hitting Martie Jacobs in the face with a sledgehammer on August 25, 2018. (*Id.* at PageID 7-8.)

1. Allegations against Defendant Brittany Hamm

Plaintiff claims that Defendant Brittany Hamm, who is White, violated his civil rights by failing to testify on his behalf and also failing to make an exculpatory video after the trial, despite her promise to do so. (Doc. No. 1, PageID 7 & 11.) He also claims that Defendant Brittany Hamm conspired with other Defendant to fraudulently conceal the existence of Defendant Pell as an eyewitness. (*Id.* at PageID 12-13.)

Plaintiff and Defendant Brittany Hamm were "in a mixed-race relationship" from Spring 2017 through at least August 2018. (Doc. No. 1, PageID 3.)

On August 25, 2018, Defendant Brittany Hamm was visiting the home of her grandmother, Defendant Rita Hamm, when she called Plaintiff and asked him to pick her up. (Doc. No. 1, PageID 3.) While she was waiting, Martie Jacobs approached Defendant Brittany Hamm and propositioned her sexually. She declined. Jacobs then punched Defendant Brittany Hamm in the eye. (*Id.*) Approximately fifteen minutes later, Jacobs

"physically assaulted [Defendant] Brittany [Hamm] again" in the presence of Defendant Brittany Hamm's young daughter and Defendant Rita Hamm. (*Id.* at PageID 4.)

After Jacobs punched her, Defendant Brittany Hamm "went across the street and sat crying with [Defendant Pell]." (Doc. No. 1, PageID 8.) When Plaintiff arrived to pick up Defendant Brittany Hamm, she was seated outside and was crying. (*Id.*)

Together, Plaintiff and Defendant Brittany Hamm confronted Jacobs about his assault. (Doc. No. 1, PageID 4.) Although Plaintiff denies the allegation, Jacobs told police that Plaintiff "had hit him twice in the face with a sledgehammer." (*Id.*) Plaintiff states that after Jacobs "threw a punch" at his face, Plaintiff "responded with four quick punches to [Jacobs'] face in self-defense." (*Id.* at PageID 4-5.)

Defendant Brittany Hamm provided a "detailed account of the events occurring on August 25, 2018" to Plaintiff's investigator. (Doc. No. 1, PageID 6.) She also attended a pretrial conference in Plaintiff's state-court criminal case. (*Id.*) However, despite having received a trial subpoena, she "intentionally failed to appear on time" to testify at trial in Plaintiff's defense. (*Id.* at PageID 7 (emphasis omitted).)

In April 2021, Defendant Brittany Hamm told Plaintiff that she wanted to "record a video, to be posted on several social media forums, in order to publicly acknowledge that Plaintiff is only in prison because he is a Black man and that it isn't right." (Doc. No. 1, PageID 8 (capitalization adjusted).) However, she later "expressed concerns to Plaintiff about doing the video," and ultimately did not make a video. (*Id.* at PageID 9 & 11.)

Plaintiff alleges that Defendant Brittany Hamm conspired with other Defendants to deprive him of his civil rights because he is a Black man. (Doc. No. 1, PageID 12-13.)

2. Allegations against Defendant Jennifer Pell

Plaintiff claims that Defendant Pell, who is White, violated his civil rights by "giving false and misleading statement(s) to investigator(s)" and by declining to testify on his behalf because he is a Black man. (Doc. No. 1, PageID 9-13.)

On the date of the assault, Defendant Pell allegedly "eyewitnessed [sic] Martie [Jacobs] demand oral sex for $20 from [Defendant] Brittany [Hamm] and then punch her when she told him 'no.'" (Doc. No. 1, PageID 8.) Defendant Pell also allegedly saw Plaintiff "exit [his] truck without a sledgehammer and walk up the brightly lit driveway to where [Defendant] Brittany [Hamm] was sitting and crying." (*Id.* at PageID 9.)

Defendant Pell refused to speak with Plaintiff's investigator or, years later, with Defendant Brittany Hamm about what she had witnessed. (Doc. No. 1, PageID 10-11.)

Plaintiff alleges that Defendant Pell was "good friends" with Jacobs and "they are like-minded in their beliefs [about] and dislikes of Black men based upon color." (Doc. No. 1, PageID 10.) He alleges that Defendant Pell conspired with other Defendants to deprive him of his civil rights because he is a Black man. (*Id.* at PageID 12.)

3. Allegations against Defendant Scott Crawford

Plaintiff claims that Defendant Crawford, who is married to Defendant Pell and is White, violated his civil rights by "fraudulently concealing that [Pell] has eyewitness knowledge favorable to Plaintiff regarding the events on August 25, 2018, and by giving false and misleading statement(s) to investigator(s)." (Doc. No. 1, PageID 13.)

Plaintiff alleges that Defendant Crawford was "good friends" with Jacobs and "they are like-minded in their beliefs [about] and dislikes of Black men based upon

color." (Doc. No. 1, PageID 10.) He alleges that Defendant Crawford conspired with other Defendants to deprive him of his civil rights because he is a Black man. (*Id.* at PageID 12.)

4. Allegations against Defendant Anita Hamm

Plaintiff claims that Defendant Anita Hamm, who is White and is Defendant Brittany Hamm's mother, violated his civil rights by discouraging Defendant Brittany Hamm from making the promised exculpatory video. (Doc. No. 1, PageID 4, 9 & 11.)

Defendant Anita Hamm has custody of Defendant Brittany Hamm's children. (Doc. No. 1, PageID 9.) Plaintiff alleges that Defendant Anita Hamm told Defendant Brittany Hamm "that she would not allow Brittany to see her children again if she went public and told the truth about [Jacob] lying on [sic] Plaintiff." (*Id.* (capitalization adjusted).) Defendant Brittany Hamm told Plaintiff that her mother's threats caused her to be concerned about making the exculpatory video. (*Id.*)

Defendant Anita Hamm and Jacobs have been friends since 1985. (Doc. No. 1, PageID 4 (capitalization adjusted).) Plaintiff alleges that Defendant Anita Hamm conspired with other Defendants to deprive him of his civil rights because he is a Black man. (*Id.* at PageID 12.)

5. Allegations against Defendant Rita Hamm

Plaintiff claims that Defendant Rita Hamm, who is White and is Defendant Brittany Hamm's grandmother, violated his civil rights by discouraging Defendant Brittany Hamm from obtaining exculpatory evidence after Plaintiff was convicted, and by

fraudulently concealing the existence of Defendant Pell as an eyewitness. (Doc. No. 1, PageID 6, 9 & 12.)

Plaintiff acknowledges that Defendant Rita Hamm cooperated with his interviewer and testified on his behalf at his state criminal trial. (Doc. No. 1, PageID 6.) However, he alleges that in May 2021, Defendant Rita Hamm told Defendant Brittany Hamm "not to bother" Defendant Pell regarding the events of August 2018, because Defendant Pell did not want to be involved. (*Id.* at PageID 9.) Also, on a separate occasion, Defendant Rita Hamm allegedly asked Defendant Brittany Hamm: "What does [Plaintiff] think he's doing?" (*Id.* at PageID 10.)

Defendant Rita Hamm and Jacobs have been friends since 1985, and he has lived with her since 2016. (Doc. No. 1, PageID 4.) Plaintiff alleges that Defendant Rita Hamm conspired with other Defendants to deprive him of his civil rights because he is a Black man. (*Id.* at PageID 12.)

6. Allegations against Defendant Eric Kovachs

Plaintiff claims that Defendant Kovachs, who is White, violated his civil rights by discouraging Defendant Brittany Hamm from making the promised exculpatory video. (Doc. No. 1, PageID 9 & 11.)

Defendant Kovachs was in a relationship with Defendant Brittany Hamm between August 2019 and January 2021. (Doc. No. 1, PageID 10.) Defendant Kovachs allegedly "gave [Defendant Brittany Hamm] an ultimatum to stop trying to help Plaintiff or she would have to find another place to live." (*Id.* (capitalization adjusted).) Plaintiff alleges that Defendant Kovachs also threatened Defendant Britanny Hamm's children "for

wanting to finally do what is right by going public with the truth." (*Id.*) Plaintiff alleges that Defendant Kovachs conspired with other Defendants to deprive him of his civil rights because he is a Black man. (*Id.* at PageID 12.)

7. Legal claims

Plaintiff asserts that Defendants unlawfully conspired to deprive him of his civil rights in violation of 42 U.S.C. §§ 1985 and 1986. (Doc. No. 1, PageID 12.) Section 1985 provides, in relevant part:

> [I]f two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws . . . . [and] if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1985(2) & (3).

Section 1986 provides, in relevant part:

> Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented . . . .

42 U.S.C. § 1986.

Plaintiff claims that the individual Defendants conspired to deprive him of civil rights guaranteed by Article IV, Section 2 of the United States Constitution and by the

Fifth, Sixth, Thirteenth, and Fourteenth Amendments to the United States Constitution. (Doc. No. 1 at PageID 12-14.) He demands declaratory relief and monetary damages. He also requests that the Court refer this matter to the U.S. Department of Justice for further proceedings. (Doc. No. 1, PageID 15-16).

B. Legal Standard

To state a claim upon which relief can be granted, a complaint must set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The Court must construe the complaint in plaintiff's favor, accept all well-pleaded factual allegations as true, and determine whether the complaint contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010) (holding that the "dismissal standard articulated in *Iqbal* and *Twombly* governs dismissals for failure to state a claim under §§ 1915A(b)(1) and 1915(e)(20(B)(ii)"). Thus, the complaint must include factual allegations that are ***well-pleaded*** and ***plausible***.

Factual allegations are well-pleaded if they are specific and support the plaintiff's claims. *Frazier v. Michigan*, 41 F. App'x 762, 764 (6th Cir. 2002) (courts need not accept "non-specific factual allegations and inferences"). "[A] legal conclusion couched as a factual allegation" is not well-pleaded and need not be accepted as true. *Twombly*, 550 U.S. at 555; *see 16630 Southfield Ltd. Partnership v. Flagstar Bank, F.S.B.*, 727 F.3d 502, 504 (6th Cir. 2013) ("[C]onclusory allegations ... that the defendant violated the

law" do not state a claim on which relief can be granted); *Frazier*, 41 F. App'x at 764 (6th Cir. 2002) (courts need not accept "unwarranted legal conclusions").

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also 16630 Southfield Ltd. Partnership v. Flagstar Bank, F.S.B.*, 727 F.3d 502, 504 (6th Cir. 2013) (internal quotations and citation omitted) ("[T]he sufficiency of a complaint turns on its factual content, requiring the plaintiff to plead enough factual matter to raise a plausible inference of wrongdoing."). Whether an inference is plausible "depends on a host of considerations, including common sense and the strength of competing explanations for the defendant's conduct." *Iqbal*, 556 U.S. at 678.

"In determining whether to grant a Rule 12(b)(6) motion, the court primarily considers the allegations in the complaint, although matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint, also may be taken into account." *Nieman v. NLO, Inc.*, 108 F.3d 1546, 1554 (6th Cir. 1997) (internal quotations and citation omitted). In addition, "documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to her claim." *Weiner v. Klais & Co.*, 108 F.3d 86, 89 (6th Cir. 1997) (internal quotations and citation omitted).

This Court liberally construes a *pro se* complaint and holds it "to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). This standard may require "active interpretation in some cases [in order] to

construe a *pro se* petition to encompass any allegation stating federal relief." *Franklin v. Rose*, 765 F.2d 82, 85 (6th Cir. 1985). Nevertheless, a *pro se* complaint must adhere to the "basic pleading essentials" and the Court should not have to guess at the nature of the claim asserted." *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989). Instead, the complaint must "give the defendant fair notice of what the ... claim is and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007).

C. Plaintiff's Complaint Against Defendant Pell Fails To State A Claim Upon Which Relief Can Be Granted.

Defendant Pell asserts that the Complaint "fails to meet these basic pleading requirements." (Doc. No. 33, PageID 223.) She argues that the Complaint "merely list[s] incidents . . . makes no allegation of conspiracy with regard to any of [her] conduct," and relies on an unsupported and conclusory assertion that Defendants conspired together to violate Plaintiff's civil rights. (*Id.* at PageID 224-25.) The Court agrees.

Plaintiff contends that because Defendant Pell was able to deny many of his allegations, his Complaint put her on notice of his claims and that is all that is required. (Doc. No. 37, PageID 258.) Plaintiff relies upon a line of Sixth Circuit cases that held that because "[d]ismissals of complaints under the civil rights statutes are scrutinized with special care . . . All a complaint need do [to survive a 12(b)(6) motion] is afford the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." (*Id.* at PageID 252.) *See, e.g., Westlake v. Lucas*, 537 F.2d 857, 858 (6th Cir. 1976). This line of cases, in turn, relied on *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), which held that "a complaint should not be dismissed for failure to state a claim unless it appears

beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *E.g., Westlake*, 537 F.2d at 858 (citing *Conley*).

As Defendant Pell points out, *Conley* is no longer good law. The Supreme Court abrogated *Conley* and instituted more demanding pleading standards in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Under *Twombly* and *Iqbal*, a complaint will only survive dismissal if it sets forth well-pleaded factual allegations that state a plausible claim for relief. This standard applies to unrepresented litigants, including Plaintiff. *See Clanton v. Sam's Club*, No. 21-2824, 2022 U.S. App. LEXIS 11108, *2 (6th Cir. April 22, 2022) (applying *Twombly* and *Iqbal* standards to pro se plaintiff's complaint); *Stewart v. Hartford Fin. Servs. Grp.*, No. 2:19-cv-304, 2020 WL 264416, at *4 (S.D. Ohio Jan. 17, 2020) (Morrison, D.J.) (same).

Accordingly, the Court must determine whether Plaintiff's Complaint contains sufficient well-pleaded facts to assert a plausible claim for relief against Defendant Pell.

1. Plaintiff's Section 1985 civil conspiracy claim

It is "well-settled that conspiracy claims must be pled with some degree of specificity and that vague and conclusory allegations unsupported by material facts will not be sufficient to state such a claim . . . ." *Gutierrez v. Lynch*, 826 F.2d 1534, 1538 (6th Cir. 1987). Therefore, "pleading requirements governing civil conspiracies are relatively strict." *Fieger v. Cox*, 524 F.3d 770, 776 (6th Cir. 2008).

A civil conspiracy claim under Section 1985 requires "an agreement between two or more persons to injure another by unlawful action." *Gerber v. Herskovitz*, 14 F.4th 500, 511 (6th Cir. 2021) (quoting *Hooks v. Hooks*, 771 F.2d 935, 943-44 (6th Cir. 1985)).

To prevail on a Section 1985 claim, the plaintiff must plead and prove that "(1) a single plan existed, (2) [the defendant] shared in the general conspiratorial objective to deprive [the plaintiff] of his constitutional (or federal statutory) rights, and (3) an overt act was committed in furtherance of the conspiracy that caused injury to [the plaintiff]." *Gerber*, 14 F.4th at 511 (quoting *Bazzi v. City of Dearborn*, 658 F.3d 598, 602 (6th Cir. 2011)).

Plaintiff may not rely upon a "web of inferences" or indulge in "sheer speculation" that "Defendants shared an unlawful objective." *Warner v. Bevin*, No. 3:16-cv-422, 2017 WL 88991, at *7 (W.D. Ky. Jan. 9, 2017). Nor may he rely on a "repeated recitation" that a conspiracy existed. *Id.* Instead, Plaintiff "must allege sufficient factual allegations to link . . . Defendants in the conspiracy and to establish the requisite 'meeting of the minds' essential to the existence of the conspiracy." *Thomas v. City of Circleville*, No. 2:23-cv-1474, 2023 WL 3742988, at *4 (S.D. Ohio May 31, 2023) (Preston Deavers, M.J.).

Plaintiff's allegations do not meet this standard. To the contrary, they fall far short of pleading the elements of a Section 1985 conspiracy claim.

As an initial matter, Plaintiff has not alleged facts that show that any Defendant committed an overt act in furtherance of the alleged conspiracy. The essence of Plaintiff's Complaint is that each Defendant failed to take actions that he believes would have been helpful to him, or discouraged others from taking such actions. But an overt ***act*** is an essential element of a Section 1985 claim. *Gerber*, 14 F.4th at 511. Absent an overt act, Plaintiff's Section 1985 claim fails. *See Giles v. University of Toledo*, 286 F. App'x 295, 306 (6th Cir. 2008) ("[B]ecause Giles failed to show that the University committed an unlawful action, he could not prove the elements of his civil-conspiracy claim.").

Plaintiff also has not alleged facts that demonstrate the existence of a "single plan" or "conspiratorial objective" between Defendants to injure Plaintiff by violating his civil rights. Plaintiff's allegations that Defendants knew each other, and were biased against him because he is a Black man, are insufficient to plausibly allege a single plan or conspiratorial objective. *See Ahmed v. Ohio State Highway Patrol*, No. 1:17-cv-2555, 2019 WL 4419054, *12 (N.D. Ohio Aug. 28, 2019) (mere "conclusory allegation of the existence of a racially motivated conspiracy" failed to state a civil conspiracy claim upon which relief can be granted); *Patterson v. McCormick*, No. 2:13-cv-293, 2014 WL 2039966, *4 (E.D. Va. May 15, 2014) (generalized allegations of racial bias failed to state a civil conspiracy claim upon which relief can be granted); *Medrano v. Acosta*, No. 2:18-cv-10108, 2021 WL 5249690, *6 (C.D. Cal. Sept. 27, 2021) (dismissing Section 1985 claim that "rest[ed] on [plaintiff's] conclusory interpretation that every party's individual actions demonstrate a collective conspiracy"). The fact that some Defendants were present during the physical confrontation between Plaintiff and Jacobs is also insufficient to establish the existence of a conspiracy. *Haile v. Vill. of Sag Harbor*, 639 F. Supp. 718, 721 (E.D.N.Y. 1986) ("The allegation that defendants were present at the scene of plaintiff's arrest, or even that they participated in that arrest, is simply not enough from which to infer that defendants had agreed to become part of a conspiracy").

Accordingly, the undersigned concludes that Plaintiff has failed to state a Section 1985 civil conspiracy claim against Defendant Pell upon which relief can be granted.

2. Plaintiff's Section 1986 civil conspiracy claim

"Section 1986 provides a cause of action for additional damages against a party that fails to prevent a Section 1985 violation." *Gerber v. Herskovitz*, 14 F.4th 500, 511 (6th Cir. 2021). If a plaintiff's claim under Section 1985 fails, then his claim under Section 1986 also fails. *Id.*

The undersigned has concluded that Plaintiff has failed to state a Section 1985 claim against Defendant Pell upon which relief can be granted. Therefore, the undersigned must reach the same conclusion regarding Plaintiff's Section 1986 claim.

For these reasons, the undersigned finds that Defendant Pell's Motion to Dismiss (Doc. No. 33) is well-taken and **RECOMMENDS** that it be **GRANTED**. To give Plaintiff the opportunity to rectify the deficiencies identified above in an amended pleading, the undersigned recommends that the dismissal be **WITHOUT PREJUDICE**.

IV. PLAINTIFF'S CLAIMS AGAINST THE REMAINING DEFENDANTS

This Court is required to dismiss a prisoner complaint that fails to state a claim upon which relief may be granted "at any time" that such a determination is made. *See* 28 U.S.C. § 1915(e)(2)(B)(ii) ("Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that the action . . . fails to state a claim on which relief may be granted.").

The deficiencies in Plaintiff's claims against Defendant Pell are equally present in Plaintiff's claims against the remaining Defendants. Therefore, for the same reasons set forth above, the undersigned concludes that Plaintiff's claims against Defendants Brittany Hamm, Anita Hamm, Rita Hamm, Crawford and Kovachs fail to state a claim upon

which relief can be granted, and **RECOMMENDS** that they be **DISMISSED.** To give Plaintiff the opportunity to rectify the deficiencies identified above in an amended pleading, the undersigned recommends that the dismissal be **WITHOUT PREJUDICE.**

V. PLAINTIFF'S OTHER MOTIONS (DOC. NOS. 26, 27 & 41) ARE MOOT

Also pending before the Court are Plaintiff's Motion to Substitute (Doc. No. 26), First Motion for Default Judgment (Doc. No. 27), and Second Motion for Default Judgment (Doc. No. 41). An order dismissing Plaintiff's Complaint will render these pending motions moot. Accordingly, if the District Judge adopts the above Recommendation and dismisses Plaintiff's Complaint with respect to all Defendants, the undersigned Magistrate Judge **RECOMMENDS** that Plaintiff's Motion to Substitute (Doc. No. 26) and Motions for Default Judgment (Doc. Nos. 27 & 41) be **DENIED AS MOOT**.

VI. CONCLUSION

In sum, for the reasons stated, the undersigned Magistrate Judge **ORDERS** as follows:

1. Plaintiff's First Motion to Strike (Doc. No. 25) is **DENIED**.
2. Plaintiff's Second Motion to Strike (Doc. No. 36) is **DENIED**.
3. The Clerk is **DIRECTED** to send copies of the Answers of Defendant Rita Hamm (Doc. No. 13) and Defendant Anita Hamm (Doc. No. 14) to Plaintiff at his address of record.

Furthermore, the undersigned Magistrate Judge **RECOMMENDS** as follows:

1. That Plaintiff's Motion for Sanctions (Doc. No. 43) be **DENIED**;

objections. If the Order and Report and Recommendation is based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within **FOURTEEN** days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).