

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

THOMAS J. BURNS,
Plaintiff

v.

**LAVENDER HILL HERB
FARM, INC., ET AL,**
Defendants

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**CIVIL ACTION
NO. 01-CV-7019**

MEMORANDUM

CYNTHIA M. RUFÉ, J.

October 30, 2002

This case involves numerous federal and state causes of action asserted by *pro se* Plaintiff Thomas J. Burns (“Burns”), a Delaware resident and former employee of Defendant Lavender Hill Herb Farm, Inc. This Court has federal question jurisdiction in this case under 28 U.S.C. § 1331. There are nine Defendants to this action:

- Lavender Hill Herb Farm, Inc. (“Lavender”), a Delaware corporation engaged in the sale of organic produce, with its principal place of business in Pennsylvania;
- Pennsylvania Certified Organic (“PCO”), a Pennsylvania corporation engaged in the business of inspecting and certifying organic farms and produce, with its principal place of business in Pennsylvania;
- Demsey & Seubert, P.A. (“D&S”), a now-defunct Delaware law firm;
- Marjorie S. Lamb (Marjorie Lamb), a Pennsylvania resident, sole shareholder of Lavender, and Plaintiff Burns’ ex-wife;
- Kathryn Elizabeth Lamb (Kathryn Lamb), a Delaware resident, employee

of Lavender, and sister to Marjorie Lamb;

- Helen Calder Lamb (Helen Lamb), a Delaware resident, owner of real property leased to Lavender, and mother of Marjorie Lamb;
- Leslie Zuck (Zuck), a Pennsylvania resident and executive director of PCO;
- Suzanne L. Seubert (“Seubert”), a Delaware resident and attorney formerly affiliated with D&S. Seubert represented Marjorie Lamb in her divorce from Plaintiff Burns and related proceedings; and
- Christine K. Demsey (Demsey), a Delaware resident and attorney formerly affiliated with D&S.

Burns alleges the following: Defendants Marjorie Lamb, Kathryn Lamb, and Helen Lamb (collectively, the “Lambs”) sold organic produce through Lavender. Burns contends that the Lambs conspired with Zuck, PCO, and Seubert to misbrand and sell produce as “organic,” when in fact it was nonorganic (*i.e.*, “conventional”) produce. According to Burns, the Lambs would fill customer orders by purchasing conventional herbs and flowers from Pennsylvania vendors, repackaging the items, and labeling them “certified organic.” In addition, the Lambs offered to provide customers with a certificate from Zuck and PCO stating that the produce came from a farm that utilizes organic farming methods. Burns claims that all defendants (except Demsey) had actual and constructive knowledge of this scheme, and that Zuck and PCO made false statements to the Pennsylvania Department of Agriculture and other federal and state agencies about their knowledge and/or involvement in this misbranding scheme.

In addition, Burns makes numerous other allegations in his Complaint, including contentions that some of the flowers sold by the Lambs were neither edible nor organic, and thus posed a health risk to consumers; that Marjorie and Helen Lamb filed false tax returns to conceal

the alleged misbranding scheme; that Marjorie Lamb attempted to conceal the fraud, and illegally seized Lavender from Burns; that the Lambs retained the D&S law firm to conceal and continue the fraud; that D&S conspired with Marjorie Lamb to obstruct justice in civil and criminal investigations by lying to and providing false documents to investigators; and that Burns' efforts to halt the unlawful activity caused the Lambs to terminate Burns' employment with Lavender.

The Defendants categorically deny Burns' allegations. According to the Defendants, Lamb met Burns after she started Lavender as a sole proprietorship in 1989. She married Burns in 1993, and employed him as a part-time delivery person. Lamb incorporated Lavender in 1997. It is a small business employing "a handful of individuals." Its net profits ranged from \$11,268 in 1999 to \$376 in 2000.

Burns and Lamb were divorced in July 2000. Seubert represented Lamb in that divorce. Under the divorce agreement, Lamb retained full ownership and control over Lavender. After the separation, Burns began making allegations similar to those in his Complaint to various authorities. The authorities, including the Delaware Department of Justice, rejected these allegations. Defendants characterize Plaintiff as an individual who has a history of using legal processes to harass and annoy.

Burns brings claims based on the False Claims Act ("FCA"), 31 U.S.C. §§ 3729-33 (Counts 1-2); the Sherman Antitrust Act, 15 U.S.C. §§ 1-2 (Count III); the Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. §§ 1961-68 (Counts 4-6); Trade Libel (Count 7); Interference with Commercial Relations (Count 8); Abuse of Process (Count 9); Civil Conspiracy (Count 10); Fraudulent Concealment (Counts 11-12); and Assault and Battery (Count 13). It should be noted that Burns *pro se* Complaint is inartfully drafted. He clearly asserts

thirteen different causes of action, but it is not always clear which parties he charges in each count. Such ambiguity is inconsequential in light of the reasons for dismissing his claims, set out below.

MOTIONS TO DISMISS

Each defendant has filed a motion to dismiss. Part I below addresses Defendants Demsey, Seubert, and D&S's motion to dismiss for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2). Part II addresses the remaining defendants' motions to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Plaintiff Burns filed a response to the 12(b)(2) jurisdictional motion, but failed to file any response to the 12(b)(6) motions alleging failure to state a claim. Under Local Rule 7.1(c), failure to respond to a properly filed motion within the time frame set forth in the rule permits the court to treat the motion as uncontested, and to dismiss the claim on that basis. See Smith v. Resorts USA, Inc., No. 99-CV-2685, 1999 U.S. Dist. LEXIS 17614, at *9-10 (E.D. Pa. Nov. 10, 1999). The Court learned at oral argument that Plaintiff Burns served his opposition to the 12(b)(6) motions on opposing counsel, but apparently failed to properly file it with the Clerk. The Court has reviewed a courtesy copy of Burns' opposition, and considered his arguments presented at oral argument. Accordingly, it will not grant the motion as unopposed.

I. DEFENDANTS DEMSEY, SEUBERT, AND D&S's MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND LACK OF VENUE.

Defendants Demsey, Seubert, and D&S move to dismiss the claims against them for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2) and, in the alternative, for improper venue under Fed. R. Civ. P. 12(b)(3). For the reasons set out below, the Court will dismiss Plaintiff's

Complaint against these three defendants for lack of personal jurisdiction.

This Court may only exercise personal jurisdiction over Defendants in this case if Burns' cause of action arises out of Defendants' Pennsylvania-related activities such that the Defendants should "reasonably anticipate being haled into court" in Pennsylvania. Gen. Elec. Co. v. Deutz AG, 270 F.3d 144, 150 (3d Cir. 2001). Burns' evidentiary burden is critical to the outcome of this motion, thus some discussion on this issue is appropriate.

When a defendant challenges a district court's authority to exercise personal jurisdiction over them, plaintiff bears the burden of coming forward with facts, by affidavit or otherwise, establishing "with reasonable particularity" constitutionally sufficient "minimum contacts" between the defendant and the forum state to support jurisdiction. Imo Indus., Inc. v. Kiekert AG, 155 F.3d 254, 259 (3d Cir. 1998); Carteret Sav. Bank, F.A. v. Shushan, 954 F.2d 141, 146 (3d Cir. 1992); Mellon Bank (East) PSFS v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992). Third Circuit precedent is clear that Plaintiff Burns may not meet his burden by relying only on general averments in the bare pleadings. See id.; Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 66 n.9 (3d Cir. 1984). If plaintiff meets this burden, the burden shifts to the defendant to show that the exercise of jurisdiction is unreasonable such that it does not comport with notions of fair play and substantial justice. Farino, 960 F.2d at 1226.

In deciding a motion to dismiss for lack of personal jurisdiction, the Court enjoys "considerable procedural leeway":

"[i]t may determine the motion on the basis of affidavits alone; or it may permit discovery in aid of the motion; or it may conduct an evidentiary hearing on the merits of the motion." If the court decides *not* to conduct an evidentiary hearing, the plaintiff "need make only a *prima facie* showing of jurisdiction through its affidavits and supporting materials." Plaintiff must eventually establish

jurisdiction by a preponderance of the evidence, “either at a pretrial evidentiary hearing or at trial. But, until such a hearing is held, a *prima facie* showing suffices, notwithstanding any controverting presentation by the moving party, to defeat the motion.”

Kishi Int’l, Inc. v. Allstates Textile Mach., Inc., No. 96-CV-6110, 1997 WL 186324, at *2 (E.D. Pa. Apr. 11, 1997) (quoting Marine Midland Bank, N.A. v. Miller, 664 F.2d 899, 904 (2d Cir. 1981)). This Court has not held an evidentiary hearing on the jurisdictional issue, so Burns must only meet the lesser *prima facie* burden to establish jurisdiction. As explained below, Plaintiff has failed to meet this minimal burden.

Defendants argue that they lack sufficient contacts with Pennsylvania to justify personal jurisdiction over them in this case. They allege the following facts, and provide detailed affidavits in support thereof: Seubert, Demsey, and D&S are all Delaware residents. Defendant Seubert represented Marjorie Lamb in proceedings related to her divorce from Burns. Seubert’s law partner, Demsey, never personally represented Marjorie Lamb. The legal representation took place entirely in Delaware and before Delaware Family Court, and never involved any of Lamb’s business affairs or tax matters. Seubert called and sent faxes to Marjorie Lamb in Pennsylvania in connection with the representation, but such representation was limited to Lamb’s divorce and domestic relations issues. Seubert and Demsey are licensed to practice law in Pennsylvania, but have never actually practiced in Pennsylvania, have never had a Pennsylvania office, have never advertised in Pennsylvania, and have never been members of a bar association in Pennsylvania.

Burns offers a single affidavit¹ in an effort to establish facts sufficient to justify personal

¹ Although a verified complaint may be treated as an affidavit, Burns’ Complaint is not verified because it lacks the necessary sworn testament. See Colon v. Coughlin, 58 F.3d 865, 872 (2d Cir. 1995).

jurisdiction. It provides:

Thomas Burns after being duly sworn according to law, deposes and says the following facts are true and correct to the best of my knowledge, information and belief.

1. Defendant Seuber [sic] has had over 100 contacts including telephone calls, faxes, and mailings into the district.
2. These above state [sic] activities [sic] included preparing and transporting false affidavits [sic] and other documents.
3. This activity was directed at an illegal activity located in this District.

Burns Aff., dated Mar. 18, 2002 (attached to docket no. 25). Statements in an affidavit only have value when they are based on the affiant's personal knowledge or are admissible for some other reason. Green Keepers, Inc. v. Softspikes, Inc., No. 98-CV-2255, 1998 WL 717355, at *3 (E.D. Pa. Sept. 23, 1998) (citing Davis v. Portline Transportes Maritimo Internacional, 16 F.3d 532, 537 n.6 (3d Cir. 1994)). The court in Green Keepers held that personal jurisdiction could not rest on a single affidavit containing inadmissible statements that were not based on the affiant's personal knowledge. See id.; see also LDM Sys. v. Russo, No. 97-CV-3111, 1997 WL 431005, at *1 (E.D. Pa. July 15, 1997) (disregarding "a substantial portion of the largely conclusory and speculative Sollinger Affidavit").

Burns' proffered affidavit is insufficient to establish that this Court may properly exercise personal jurisdiction over these three defendants. First, Burns' affidavit fails to allege any jurisdictional facts linking Demsey and D&S with Pennsylvania. Accordingly, Burns has failed to meet his burden with respect to these two defendants, and the motion should be granted as to Demsey and D&S.

Second, the Burns affidavit is insufficient to establish jurisdiction over Seubert. Like the situation in Green Keepers, Burns' affidavit fails to demonstrate that he has personal knowledge

of the facts alleged therein. In Green Keepers, the plaintiff sought to establish personal jurisdiction over defendants through the use of a single affidavit. See 1998 WL 717355, at *3. The court held that the affidavit was insufficient because it failed to include any “specific reference” to “critical ‘facts’ [that] are within Carroll’s personal knowledge, as opposed to simply being ‘information’ in his possession.” Id. Similarly, Burns’ affidavit fails to demonstrate that he has personal knowledge of Seubert’s alleged “100 contacts” with Pennsylvania, or how these contacts relate to the illegal activity alleged in the Complaint.

Burns attempts to meet his burden with mere allegations, instead of the requisite actual proofs. His allegations are limited to general averments in his Complaint, and the even more general statements in his affidavit. Without establishing “with reasonable particularity” that the Defendants had sufficient contacts with the Pennsylvania, the exercise of jurisdiction is not proper. Farino, 960 F.2d at 1223; Harris v. Transunion LLC, 197 F. Supp. 2d 200, 203 (E.D. Pa. 2002) (“General averments in an unverified complaint or response without the support of ‘sworn affidavits or other competent evidence’ are insufficient to establish jurisdictional facts.”) (quoting Time Share, 735 F.2d at 66 n.9).² Accordingly, Seubert, Demsey, and D&S’s motion

² Defendants filed a reply brief answering Burns’ response, and Burns subsequently filed a sur-reply. Burns attached to his sur-reply a letter from Seubert to Burns’ Delaware divorce attorney. The letter is copied to Lamb, presumably at her Pennsylvania residence. In the letter, Seubert implores Burns’ attorney to tell Burns to stop making false allegations that Lamb is misbranding Lavender produce. Burns argues that this letter is evidence of Seubert’s assistance in helping to continue the alleged fraudulent misbranding scheme in Pennsylvania. Burns argues that this letter, coupled with his affidavit, satisfies the requirement that he provide the Court with supporting evidence demonstrating that personal jurisdiction is appropriate. Most recently, Burns filed an additional affidavit on October 17, 2002 (docket no. 34) detailing additional contacts with Pennsylvania made by Seubert, all of which appear to relate to the divorce proceedings.

Because neither Defendants nor Burns sought leave of this Court to file a reply or a sur-reply, or to provide additional evidence in support, this Court may disregard these filings. See

for lack of personal jurisdiction is granted, and these defendants are dismissed from the case.

II. MOTIONS TO DISMISS FOR FAILURE TO STATE A CLAIM

The remaining defendants (Lavender, PCO, Zuck, Marjorie Lamb, Helen Lamb, and Kathryn Lamb) each filed a motion to dismiss the claims against them for failure to state a claim under which relief may be granted. See Fed. R. Civ. P. 12(b)(6). Burns did not file any response to these motions, but opposed them at oral argument.

When considering a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6), this Court must accept as true the facts alleged in the Complaint and all reasonable inferences that can be drawn from them. Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990). The Court should dismiss the Complaint only if “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989). The Court will consider Burns’ Complaint under a more liberal standard than one drafted by an attorney. See Panayotides v. Rabenold, 35 F. Supp. 2d 411, 419 (E.D. Pa. 1999). Nevertheless, this leniency does not excuse a *pro se* plaintiff from conforming to the rules of civil procedure or from pleading the essential elements of his claim. See Floyd v. Brown & Williamson Tobacco Corp., 159 F. Supp. 2d 823, 832 (E.D. Pa. 2001); Smith v. SSA, 54 F. Supp. 2d 451, 454 (E.D. Pa. 1999).

Local Rule 7.1(c) (“The Court may require or permit further briefs if appropriate.”); Assn. of Minority Contractors v. Halliday Properties, No. 97-CV-274, 1997 U.S. Dist. LEXIS 16311, at *4 n.3 (E.D. Pa. Oct. 21, 1997) (“The court notes Defendants have filed a reply memorandum and AMCAS has filed a sur-reply memorandum. The Local Rules do not authorize such filings. The parties must seek leave of court for any reply and sur-reply briefs they wish to file with the court.”). Therefore, the Court will not consider these late filings.

A. False Claims Act - Counts 1-2

In Count 1, Burns alleges that the Defendants violated the False Claims Act (FCA) by delivering “mis-labeled herbs and other produce” to the U.S. Government, and requesting payment for organic produce when it actually delivered conventional produce. See Complaint ¶¶ 50-59. In Count 2, he alleges that Defendants filed false tax returns with the U.S. Government.³ See Complaint ¶¶ 60-65.

Burns failed to follow the requisite statutory procedures for advancing FCA claims. As a private person, Burns may bring a *qui tam* action for a violation of the FCA. See 31 U.S.C. § 3730(b). However, the statute imposes important procedural requirements on the relator (as *qui tam* plaintiffs are known). First, the relator must serve the Government with a copy of the complaint and “all material evidence and information the person possesses.” Id. at § 3730(b)(2). Second, the relator must file the complaint *in camera*. Id. The complaint must remain under seal for at least sixty (60) days, and may not be served on the defendants until a court so orders. Id.

A relator’s failure to comply with the FCA service and filing requirements may justify dismissal of the claim. See Erickson ex rel United States v. Am. Instit. of Biological Sciences, 716 F. Supp. 908 (E.D. Va 1989). In Erickson, the relator failed to comply with the *in camera* filing procedures, and the court held that such failure warranted dismissal of the action. See id. at 910. The court based its ruling both on the text of the statute, and on policy grounds.

The text of the statute provides that the complaint “*shall* be filed in camera, *shall* remain under seal for at least 60 days, and *shall* not be served on the defendant until the court so orders.” 31 U.S.C. § 3730(b)(2) (emphasis added). In support of its conclusion to dismiss the FCA claim,

³ Burns abandoned Count 2 at oral argument.

the Erickson court looked to this mandatory language, and cited opinions by the Supreme Court and other courts finding that a procedural defect was fatal to a plaintiff's claim. See, e.g., United States ex rel Texas Portland Cement Co. v. McCord, 233 U.S. 157, 162 (1913) (holding failure to comply with procedural requirement is fatal to Heard Act claim); Reich v. Dow Badische Co., 575 F.2d 363 (2d Cir. 1978) (holding failure to comply with statutory notice and filing requirements terminated a right to bring suit under ADEA).

The Erickson court also noted that the relator's procedural defects "frustrate[] the congressional goals underlying those provisions." 716 F. Supp. at 912. It noted that Congress adopted the procedures to allow the Government first to ascertain in private whether it was already investigating the claims stated in the suit, and then to consider whether it wished to intervene. See id. In addition, the provisions were designed to prevent alleged wrongdoers from being tipped off that they were under investigation. See id. Not only were these goals frustrated by the Erickson's failure to serve the Government and file the complaint under seal, but the consequences were irreparable. See id. ("And, significantly, this result cannot be cured or remedied."). More recently, the Second Circuit reached a similar conclusion. See United States ex rel Pilon v. Martin Marietta Corp., 60 F.3d 995, 998-99 (2d Cir. 1995) (holding relator's failure to serve the Government and comply with filing requirements frustrated congressional goals and warranted dismissal of FCA claim).

In the instant case, Burns failed to comply with the FCA service and filing requirements. The docket reveals that Burns did not file his Complaint *in camera*, instead serving it immediately upon all defendants and the Government. While there is ample case law supporting dismissal of the claims on this basis, see cases cited supra, dismissal is not *required* under the

FCA. See United States ex rel Kusner v. Osteopathic Med. Ctr. of Phila., No. 88-CV-9753, 1996 WL 287259, at *5 (E.D. Pa. May 30, 1996) (holding procedural defects do not mandate dismissal because purposes of FCA not frustrated where Government had already chosen not to intervene before procedural violations occurred).

Nonetheless, the Court will dismiss Burns' FCA claims for failure to comply with the service and filing requirements. Like the plaintiff in Erickson (and unlike the plaintiff in Kusner), Burns' failure to file his Complaint under seal frustrates the policy underlying the FCA. Furthermore, dismissal is particularly appropriate in this case because Burns' allegations appear to have little or no merit, and may have unduly blemished defendants' reputations. As the Second Circuit noted, the filing requirements protect the defendants' reputations against meritless claims "because the public will know that the government had an opportunity to review the claims but elected not to pursue them." Pilon, 60 F.3d at 999 (noting that, conversely, filing of a meritorious claim under seal enables a willing defendant to reach "a speedy and valuable settlement with the government in order to avoid the unsealing"). Where, as here, the Complaint sits on a public docket for months before the Government notifies the public that it will not intervene,⁴ the relator deprives the defendants of the protections afforded by the filing requirements. As the Erickson court made clear, the harm arising from a failure to follow the FCA procedures cannot be cured. See 716 F. Supp. at 912. In light of these considerations, the Court will dismiss with prejudice Burns' FCA claims against all defendants.⁵

⁴ Burns filed his Complaint on December 21, 2001, but the Government did not decline to intervene until July 25, 2002 [docket no. 30].

⁵ Before dismissing any claims premised on the FCA, this Court must receive the written consent of the Attorney General of the United States. 31 U.S.C. § 3720(b)(1). The

B. Sherman Act - Count 3

In Count 3, Burns alleges that the Defendants “engaged in an unlawful combination and conspiracy unreasonably to restrain and to monopolize interstate commerce in certified organic food standards, production, and sales” in violation of the Sherman Act, 15 U.S.C. §§ 1- 2. See Complaint ¶ 71. He also alleges that Defendants’ “misbranding and consumer fraud scheme is a per se violation of the Sherman Act.” See id. at ¶ 76.

Defendants challenge Burns’ standing to bring this antitrust claim. The first step in determining whether a plaintiff has antitrust standing is to analyze “whether the plaintiff suffered an antitrust injury.” City of Pittsburgh v. West Penn Power Co., 147 F.3d 256, 265 (3d Cir. 1998). If there is no antitrust injury, that is the end of the inquiry, and the claim should be dismissed. See id.

An antitrust injury is an “injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants’ acts unlawful. The injury should reflect the anticompetitive effect either of the violation or of anticompetitive acts made possible by the violation.” Brunswick Corp. v. Pueblo Bowl-O-Mat, 429 U.S. 477, 489 (1977); Eichorn v. AT&T Corp., 248 F.3d 131, 140 (3d Cir. 2001). In addition, such injury must be causally related to the defendants’ allegedly anticompetitive activity. Eichorn, 248 F.3d at 140 (holding plaintiff employees had antitrust standing when employers’ anticompetitive no-hire agreement interfered with employees’ ability to sell their labor in the market). The Third Circuit has “consistently held an individual plaintiff personally aggrieved by an alleged anticompetitive agreement has not

Government’s consent to dismissal is reflected in the attached letter from Assistant United States Attorney Barbara Rowland, to the Honorable Cynthia M. Rufe, dated October 29, 2002.

suffered an antitrust injury unless the activity has a wider impact on the competitive market.” Id.

Burns has failed to allege any injury “of the type the antitrust laws were intended to prevent.” Brunswick, 429 U.S. at 489. In fact, Burns fails to allege any injury *to himself* that flows from the Defendants’ allegedly anticompetitive practices. Rather, his Complaint is limited to unspecified allegations of injury to the price and supply of organic foods. See Complaint ¶ 72. Even if the Court were to consider Burns’ discharge from employment as an injury somehow flowing from the allegedly anticompetitive behavior, such injury is insufficient to establish antitrust standing. See Hughes v. Halbach & Braun Indus., Ltd., 10 F. Supp. 2d 491, 496 (W.D. Pa. 1998) (“[i]n fashioning the antitrust laws, Congress was concerned with competition, not employee coercion or discharge”) (quoting In re Industrial Gas Antitrust Litig., 681 F.2d 514, 519 (7th Cir. 1982)). Because Burns has failed to allege an “antitrust injury,” he lacks antitrust standing. Accordingly, Count 3 of the Complaint is dismissed.

C. RICO - Counts 4-6

In Counts 4 and 5, Burns alleges that the Defendants participated in a “scheme to misbrand and mislabel produce,” and “to obstruct justice to conceal and continue the operation of the fraudulent mislabeling scheme” in violation of RICO. See Complaint ¶¶ 84, 87. In Count 6, Burns alleges that the Defendants seized control of Lavender from him through unlawful means. See Complaint ¶¶ 92-94.

In brief, RICO makes it unlawful to acquire or maintain control of an enterprise through a pattern of criminal activity, or to use such an enterprise to engage in a pattern of criminal activity, or to conspire to perform these acts. 18 U.S.C. § 1962(b)-(d); Seville Indus. Mach. Corp. v. Southmost Mach. Corp., 742 F.2d 786, 789 (3d Cir. 1984). Although RICO is primarily a

criminal statute, it provides a civil remedy for any person “injured in his business or property by reason of” a RICO violation. 18 U.S.C. § 1964(c).

To have standing to bring a claim under RICO,⁶ a plaintiff must allege injury to “business or property.” 18 U.S.C. § 1964(c); see also Sedima, S.P.R.I. v. Imrex Co., 473 U.S. 479, 496 (1985) (“plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation”). This injury must be specific or quantifiable. See Maio v. Aetna, Inc., 221 F.3d 472, 495 (3d Cir. 2000) (compiling cases where RICO claims were denied for insufficiently alleging injury). Claims for personal loss are not covered by RICO. Zimmerman v. HBO Affiliate Group, 834 F.2d 1163, 1169 (3d Cir. 1987).

In his Complaint, Burns avers only that he was “directly and distinctly injured by the defendants in his business and property in as yet undetermined amount by reason of a violation of 18 U.S.C. § 1962(c) and (d) committed [sic] by defendants.” Complaint ¶ 89. Paragraph 85 of the Complaint contains a nearly identical allegation. These imprecise, nebulous allegations are plainly insufficient to establish standing. See Wolk v. United States, No. 00-CV-6394, 2001 WL 1735258, at *5 (E.D. Pa. Oct. 25, 2001), aff’d, 2002 WL 1815901 (3d Cir. Aug. 8, 2002) (where plaintiff contended only that he lost “large sums of income,” such claims of injury were “vague and highly speculative,” warranting dismissal). Because Burns has failed to allege adequate injury in his Complaint, and thereby failed to state a claim under RICO for which relief can be

⁶ Ordinarily, “standing” is an Article III jurisdictional question addressed in a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1). However, the Third Circuit has noted that it is a common, acceptable practice to evaluate RICO standing on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). See Maio v. Aetna, Inc., 221 F.3d 472, 481-82 n.7 (3d Cir. 2000).

granted, Burns' RICO claims are dismissed. See, e.g., Browne v. Abdelhak, No. 98-CV-6688, 2000 WL 1201889, at *4 (E.D. Pa. Aug. 23, 2000) (dismissing RICO claims for lack of standing where plaintiffs failed to allege any injury to business or property interest).

D. State Law Claims - Counts 7-13

Counts 7 through 13 are state law claims that, in the absence of a federal question in the case, may be dismissed for lack of jurisdiction. These counts include Trade Libel (Count 7); Interference with Commercial Relations (Count 8); Abuse of Process (Count 9); Civil Conspiracy (Count 10); Fraudulent Concealment (Counts 11-12); and Assault and Battery (Count 13).

Federal courts may exercise supplemental jurisdiction over pendent state law claims if they possess original jurisdiction over federal claims brought under a common nucleus of operative facts. See United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966). A district court has discretion to exercise supplemental jurisdiction following the dismissal of all federal claims. 28 U.S.C. § 1367(c)(3). The Third Circuit has refined this discretion, stating that “under Gibbs jurisprudence, where the claim over which the district court has original jurisdiction is dismissed before trial, the district court *must decline* to decide the pendent state law claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so.” Borough of W. Mifflin v. Lancaster, 45 F.3d 780, 788 (3d Cir. 1995) (emphasis added); see also Hedges v. Musco, 204 F.3d 109, 123 (3d Cir. 2000) (same). Burns has not presented any evidence showing that judicial economy, convenience, or fairness would suffer if this Court were to dismiss his pendent state law claims, nor does there appear to be any. Accordingly, Counts 7-13 are dismissed without prejudice.