IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DIANA MEY, on behalf of herself
and a class of others similarly situated,

Plaintiff,

v. **Civil Action No. 5:24-cv-55**

WILLIAM PINTAS, P&M LAW FIRM, LLC, P&M LAW FIRM (PR), LLC, RELIANCE LITIGATION, LLC, and JAMES RYDER INTERACTIVE, LLC,

Defendants.

WILLIAM PINTAS, P&M LAW FIRM (PR), LLC, AND P&M LAW FIRM, LLC'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

In March 2024, Diana Mey filed a five-count complaint against (1) attorney and Puerto Rican resident, William Pintas; (2) a Puerto Rican Law Firm; and (3) a Chicago Law Firm (collectively, the "P&M Defendants"). As explained in the P&M Defendants' Motion to Dismiss—and for the reasons discussed more fully in this Memorandum of Law in Support—Mey's instant lawsuit must be dismissed with prejudice, as far as she does not state a plausible claim for relief.

I. INTRODUCTION

Mey filed this action nearly a year after one of the defendants—P&M Law Firm (PR), LLC (the "Puerto Rico Law Firm")—sued her for common state law fraud claim and declaratory judgment in the Puerto Rican Court of First Instance (Tribunal de Primera Instancia). *See P&M Law Firm (PR), LLC v. Diana Mey*, Case No. SJ2023CV02997 (the "Puerto Rico Lawsuit"). She has been defending the Puerto Rico Lawsuit after foregoing removal to the United States District Court for the District of Puerto Rico. Mey filed this Action *not* to vindicate rights as she so implies, but singularly to enjoin the Puerto Rican court from hearing and deciding the fraud claims in the Puerto Rico Lawsuit. Mey's claims and request for injunctive relief fail for several reasons.

First, Mey's demand that this Court enjoin the Puerto Rico Lawsuit and divest the Puerto Rican court of jurisdiction runs afoul of the Anti-Injunction Act, *see* 28 U.S.C. § 2283 (the "AIA"). To be sure, Mey could have removed the Puerto Rico Lawsuit to the federal district court in Puerto Rico, which has jurisdiction over this matter and where two of the defendants here (William Pintas and the Puerto Rico Firm) reside, but she elected not to. Now she must live with the consequences of her strategic decision. The AIA does not authorize one federal district court to enjoin a pending state action in these circumstances.

Second, the allegations and claims filed in this Court tellingly parallel the earlier-filed Puerto Rico Lawsuit, and the claims in each respective action present exceptional circumstances that justify this Court's abstention under *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 802, 96 S. Ct. 1236, 1239, 47 L. Ed. 2d 483 (1976).

Third, Mey's Complaint does not state a plausible claim under Federal Civil Procedure Rule 12(b). More specifically, Mey's Complaint is lacking for (1) standing and subject matter jurisdiction, (2) personal jurisdiction, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, and (6) failure to state a plausible claim for relief.

II. BACKGROUND

Chock-full of invective language, Mey adorns her Complaint filed on March 19, 2024, with claims of intentional infliction of emotional distress, fraudulent process, and abuse of legal process grounded in the Puerto Rico Lawsuit. In her Complaint, Mey promotes herself as a "consumer advocate." She, however, is in fact a professional plaintiff who, since the 1990s, has filed dozens of state and federal court lawsuits and class actions under the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA"), and other related statutes.[1] Embolden by her belief that the outcome

[1] A simple Westlaw search uncovered the following 55 cases involving Mey in the respective jurisdictions: N.D. West Virginia – 39 lawsuits; S.D. West Virginia- 1 lawsuit; E.D.

in her favor in the Northern District of West Virginia is *fait accompli*, Mey admittedly uses deception, false identities, and pre-litigation threats and lawsuits in this Court—and many other courts—to make TCPA demands and settlements. *See* Mey Complaint, ECF No. 1, *e.g.*, ¶¶ 21-45 (referred to herein as the "Mey Complaint").[2]

Mey's Complaint—in each of her five separate claims—makes startling admissions of her own deceptive and fraudulent conduct, which is the very subject of the Puerto Rico Lawsuit. For example, Mey admits that in February 2023, she answered telephone calls and filled out forms using pseudonyms, such as "Rhonda Nicholson," when completing online forms, such as TCPA consent forms. *See generally* Mey Complaint ¶¶ 21-45.

Mey does not deny that she filled out forms online using her "fake identity" and used her "imposter persona" Rhonda to give the Puerto Rico Law Firm *consent* to call the imposter and to prepare a retainer agreement for "Rhonda Nicholson," the fictional character central to this litigation drama. *See* Mey Complaint ECF No. 1, ¶24. Mey alleges that in late February 2023, she answered telephone calls and answered questions using her fake persona, Rhonda Nicholson. Mey also admits she consented to in-bound calls where "Rhonda" then allegedly protested the same calls she invited, claiming that "Rhonda" registered her telephone number on the National "Do Not Call" Registry. *See Id.*

On March 15, 2023—this time as Diana Mey and *not* as "Rhonda Nicholson"—Mey admits that she emailed William Pintas ("Pintas") and visited the defendant Chicago Law Firm's world wide web domain. In her communications, Mey detailed what she described as "*her* claims under federal and West Virginia telemarketing laws and offered a settlement." *See* Mey Complaint ¶¶ 46

Michigan – 1 lawsuit; M.D. Florida – 3 lawsuits; S.D.N.Y – 1 lawsuit; 4th Circuit – 9 appeals; and 6th Circuit – 1 appeal.

[2] Reference to supporting material will be by reference to the Court's ECF No.

& 55 (emphasis supplied). At the same time, Mey admitted using the "Rhonda" pseudonym. Using a fake name and address undercuts any notion the P&M Defendants "willfully or knowingly violated" the TCPA and underlines the vindictive and bad faith motive driving Mey's lawsuit.

For example, thirty minutes before emailing Pintas and others at the two Law Firms, Mey sent an e-mail to the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois ("ARDC"). Mey, as herself and not "Rhonda," lodged a "formal bar complaint against the law firm of Pintas & Mullins . . . for violations of Rule 7.3 involving solicitation of prospective clients," that is the same telephone calls about which she complains. On March 17, 2023, ARDC informed Pintas that ARDC would *not* start a Bar inquiry.

On April 4, 2023, the Puerto Rico Law Firm filed the Puerto Rico Lawsuit, alleging and cataloguing Mey's fraud and deceptive acts.[3] The Puerto Rico Law Firm also arranged for service with Legal Process Service & Investigations, LLC 8724 SW 72nd St., Miami, Florida 33173 (LPSI), for personal service on Mey in her hometown of Wheeling, West Virginia. *See* Baralt Declaration at ¶¶ 6 and Tab C, attached to Motion to Dismiss as **Exhibit 1**. LPSI attempted to serve Mey on April 6, 2023, twice on April 7, once on April 8, and twice on April 10, at Diana Mey's

[3] This Court may take judicial notice of the filings in the Puerto Rico proceedings. *Philips v. Pitt Cnty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009); *Witthohn v. Fed. Ins. Co.*, 164 F. App'x 395, 396 (4th Cir. 2006); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir.1989) (explaining that "[t]he most frequent use of judicial notice of ascertainable facts is in noticing the content of court records" (internal quotation marks omitted)). Moreover, considering this fact does not covert this motion into one for summary judgment, especially where – like here – there is a challenge to subject matter jurisdiction. *See Heard v. W. Virginia United Health Sys., Inc.*, 2023 WL 11113847, at *2 (N.D. W. Va. Nov. 15, 2023) (in a jurisdictional challenge, the Court "may consider evidence by affidavit, deposition, or live testimony without converting the proceeding to one for summary judgment."). *See Heard v. W. Virginia United Health Sys., Inc.*, 2023 WL 11113847, at *2 (N.D. W. Va. Nov. 15, 2023); *see also Woods v. City of Greensboro*, 855 F.3d 639, 642 (4th Cir. 2017) (citing *Philips v. Pitt Cnty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009)) (recognizing that, in ruling on a Rule 12(b)(6) motion, courts "consider as true all well-pleaded allegations in the complaint, matters of public record, and documents attached to the motion to dismiss that are integral to the complaint and of unquestioned authenticity").

home address, 114 Applewood Drive, Wheeling, WV 26003. Mey successfully avoided service of process, as reflected in the Verified Return of Non-Service notarized by Debbie L. Hall, Gold, Khourey & Turak Law, 510 Tomlinson Avenue, in Moundsville, WV 26041. *Id.* at Tab C. Eventually, the Puerto Rico Law Firm effected service under Puerto Rico court rules.[4]

The Puerto Rico Lawsuit alleges that Mey committed common-law fraud against the Puerto Rico Law Firm. For example, in the FIRST CAUSE OF ACTION, the Puerto Rico Law Firm alleges that Mey made several material and false oral and written representation, solely to induce telephone calls to her. *See* Baralt Declaration at Tab C; *see also* Puerto Rico Lawsuit Complaint at ¶¶ 41-46.[5] The remaining claims "SECOND" through "FIFTH CAUSES OF ACTION" ask for declaratory relief on TCPA issues "consent," "solicitation," "residential subscriber," and "identification requirements," respectively.

In July 2023, Mey filed a motion to dismiss the Puerto Rico Lawsuit. Before the Court had a chance to hear the motion, however, Mey withdrew her motion. Then, on April 9, 2024, the Judge in the Puerto Rico Lawsuit entered the comprehensive Scheduling Order. *See* Baralt Declaration at ¶¶ 11; Puerto Rico Lawsuit at ¶¶ 40-45. Around that same time, in a rush to undo her consent to the ongoing proceedings in Puerto Rico, Mey filed her Complaint in this Court, seeking extraordinary relief under the AIA to enjoin the Puerto Rican Court's consideration of the Puerto Rico Law Firm's lawsuit in its entirety. After providing notice to just one of the P&M Defendants (that is, the Chicago Law Firm), this Court conducted a hearing on Tuesday, April 30, 2024, on

---

[4] Although a default judgment was initially entered in the Puerto Rico Lawsuit, Mey successfully had the default lifted. Furthermore, to the extent that Mey claims of any perceived deficiencies with service of process related to the Puerto Rico Lawsuit, those concerns are abated by the fact that Mey was able to lift the default judgment rendered by the Puerto Rico court.

[5] Mey made these fraudulent statements so she could point to telephone calls to "Rhonda Nicholson" as the basis for a lawsuit she filed on March 19, 2024, in this Court, albeit filed as Plaintiff Diana Mey (not Plaintiff "Rhonda Nicholson").

Mey's petition for a temporary restraining order (TRO). By its TRO Ruling issued on May 1, 2024, this Court enjoined the P&M Defendants from "proceeding in any way with the lawsuit in the Commonwealth of Puerto Rico Court of First Instance until a hearing on the Preliminary Injunction is heard on Monday[,] May 13, 2024, at 10:00 a.m." *See* ECF No. 22, at 9.[6]

III. LEGAL STANDARD – MOTION TO DISMISS

A federal court will dismiss a complaint if it does not allege "enough facts to state a claim to relief that is plausible on its face." *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In *Twombly*, the Supreme Court, noted that "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do . . . ." 550 U.S. at 555, 570 (dismissal appropriate where the plaintiffs did not "nudge[ ] their claims across the line from conceivable to plausible."). Likewise, a court is "not bound to accept as true a legal conclusion couched as a factual allegation." *See Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 2944, 92 L. Ed. 2d 209 (1986).

IV. THE SEPARATE BASES TO DISMISS THIS ACTION

Mey drafted her Complaint as if it were a rebuttal memorandum or an outline of a counterclaim or her affirmative defenses to the Puerto Rico Lawsuit. The Complaint is full of conclusions and editorialized commentary about the Spanish language, the Puerto Rico Lawsuit, the Puerto Rican Judge, and the Puerto Rico Rules of Civil Procedure. What's more, the Complaint is full of condemning and personal attacks on the P&M Defendants. Consequently, Mey's claims rest heavily on legal conclusions masquerading as facts, Mey offers *no* plausible facts to support the claims against the P&M Defendants.

---

[6] Subsequently, the Court granted the P&M Defendants' request for limited emergency relief from the TRO Ruling, permitting and allowing the P&M Defendants to file "non-substantive motions in the Commonwealth of Puerto Rico Court of First Instance to obtain hearings records and transcripts" in preparation for the Preliminary Injunction Hearing. *See* ECF No. 28, at 2.

A. <u>The Anti–Injunction Act, 28 U.S.C. § 2283, precludes this Court from enjoining the Puerto Rico Lawsuit</u>.

First and foremost, Mey cannot use the in "aid of jurisdiction" exception to 28 U.S.C. § 2283 based on pure speculation that there is the *prospect* that the concurrent state proceeding—the Puerto Rico Lawsuit—*might* result in a judgment inconsistent with a decision in this Court. In each of the five Counts in the Complaint and the single prayer for relief, Mey seeks an injunction to stay the Puerto Rico Action. *See, e.g.,* Mey Complaint ECF No. # 1, at ¶¶ 105-110; *see also* Complaint, at ¶ G. Even before effecting service and before any response from any defendant, Mey filed a motion for a temporary restraining order and preliminary injunction in this Court, based on the Anti-Injunction Act ("AIA"), 28 U.S.C. § 2283, and other sundry grounds. More specifically, Mey seeks a stay of the Puerto Rico Lawsuit, which the Puerto Rico Law Firm brought against her in Puerto Rico. *See* Mey Memo in Support of Injunction ECF No. 8, at p. 10. Not limited to just the plaintiff in that action (*i.e.*, the Puerto Rico Firm), Mey "moves this Court for a temporary restraining order enjoining Defendants William Pintas, P&M Law Firm, LLC, and P&M Law Firm (PR), LLC from further prosecuting claims against Mey in the Puerto Rican territorial court." *See* Mey Injunction Motion ECF No. 7, p. 14.[7] Nothing that is happening—or going to happen—in the

---

[7] Mey *emailed* a Motion for Temporary Restraining Order and Preliminary Injunction and supporting memorandum at 4:12 PM on Friday, April 26, 2024, to attorney Carlos Baralt, the lawyer in Puerto Rico who represents the Puerto Rico Law Firm. *See* ECF No. 9. The Court entered an Order setting a hearing on the temporary restraining order Motion Tuesday, April 30, 2024 at 10:30 am. *See* ECF No. 10. The Court also ordered Mey to effect "actual service" on each defendant—and to file returns showing actual service—by 12:00 PM on Monday, April 30, 2024. Mey did not do so for Pintas or the Puerto Rico Law Firm, and service on the Chicago law firm is, at best, questionable. The Supreme Court has explained that Rule 65 "implies a hearing in which the defendant is given a fair opportunity to oppose the application and to prepare for such opposition." *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 433, n.7, (1974). Lawyers for the defendants appeared at the hearing, where the Court entered the TRO based solely on Mey's papers and her self-serving declaration. Suffice it to say, one business day notice of Mey's application for a temporary restraining order,

Puerto Rico Lawsuit affects *this* Court's jurisdiction, nor are there any exigent circumstances calling for a preliminary injunction.

Consider that Mey waited nearly eleven months *after* the Puerto Rico Law Firm sued her before filing suit in this Court. During that eleven months, Mey litigated a Motion to Dismiss (which the parties agreed to withdraw), and the Judge entered a comprehensive Scheduling Order. *See generally* Baralt Declaration. Mey is now unhappy about her litigation missteps in the Puerto Rico Lawsuit. Neither injunctive relief nor the AIA provides Mey an avenue to forum shop in such a fashion. Mey could have, a year ago, removed the Puerto Rico Lawsuit to the United States District Court for the District of Puerto Rico. She also could have filed a counterclaim on the very issues she tries to litigate here but she did not. She also could have after removal moved to transfer venue to another district court, but she opted for a different strategy. Now she must live with the consequences of her inactions.

The AIA absolutely prohibits the federal injunction that Mey seeks restraining prosecution of the lawsuit in state court *unless* authorized by one of the three narrow statutory exceptions specifically defined in the Anti-Injunction Act. *See Mitchum v. Foster,* 407 U.S. 225, 228-29 (1972). Put most simply, the AIA bans any "stay" of the Puerto Rico Lawsuit because none of its narrow exceptions apply, as discussed in further detail below.

The starting point of any legal analysis of Mey's request for an injunction to stay the Puerto Rico Action is 28 U.S.C. § 2283, which imposes an absolute ban on federal courts issuing injunctions against state court proceedings unless one of three narrow exceptions apply. *See Atl. Coast Line R. Co. v. Bhd. of Locomotive Engineers*, 398 U.S. 281, 286 (1970). Section 2283 states:

---

one day notice on these facts is insufficient time to prepare for and oppose Mey's motion and is *de facto* and *de jure* "no notice."

"A court of the United States may not grant an injunction to stay proceedings in a state court except [1] as expressly authorized by Act of Congress, or [2] where necessary in aid of its jurisdiction, or [3] to protect or effectuate its judgments." *See* 28 U.S.C. § 2283. In these circumstances, Mey seeks to enjoin the Puerto Rican Action by invoking *only* the second exception.

To invoke that exception, a requested injunction must not only be *related* to the federal court's jurisdiction, but it also must be "necessary in aid of *its* jurisdiction." *See Atlantic Coast Line R. Co. v. Bd. of Locomotive Engineers*, 398 U.S. 281, 295 (1970) (emphasis added). In cases decided under this exception, courts have interpreted the language narrowly.[8] In no event, however, may a litigant use the in "aid of jurisdiction" exception because of the *prospect* that a concurrent state proceeding *might* result in a judgment inconsistent with a federal court's decision. *Id.* at 295-96. The AIA *only* allows federal injunctive relief to stay a state court proceeding where necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case. *See e.g., State Farm Mut. Auto. Ins. Co. v. Parisien*, 352 F. Supp. 3d 215, 225 (E.D.N.Y. 2018).

In this situation, Mey's Complaint is devoid of *any* plausible facts supporting a conclusion that the Puerto Rico Lawsuit "seriously impairs" this Court's flexibility to decide the case now pending before it. To the extent Mey casts aspersions on the proceedings in Spanish or the rules of procedure in the Puerto Rican courts and complains about the orders entered by the Judge, she must take the matter up with that Judge in the Commonwealth of Puerto Rico. Contrary to any misperception or belief that there is an inherent bias in Puerto Rican legal proceedings against

---

[8] The second exception in the AIA has the same language as the All-Writs Act, as far as it allows a federal court to issue an injunction "where necessary in aid of its jurisdiction." A threat to the court's jurisdiction, however, occurs only in limited circumstances, such as where a state proceeding threatens to dispose of property that forms the basis for federal *in rem* jurisdiction. *See, e.g.*, *Signal Properties, Inc. v. Farha*, 482 F.2d 1136, 1140 (5th Cir. 1973).

English speakers, *e.g.,* because the business of the Court of First Instance business is conducted primarily in Spanish, the Puerto Rican Court of First Instance, in cases involving both English and Spanish speakers, has several processes in place to ensure effective communication and fair proceedings for those who do not speak or understand Spanish. *See* Baralt Declaration at ¶¶ 6.

Furthermore, the second exception under 28 U.S.C. § 2283 does *not* authorize one federal district court to enjoin a pending state action in aid of the jurisdiction of another federal district court (i.e., the District of Puerto Rico). *See Alton Box Bd. Co. v. Esprit de Corp.*, 682 F.2d 1267, 1272 (9th Cir. 1982). In the Puerto Rico Lawsuit, Mey—for nearly a year—has been aggressively [1] litigating the motion to dismiss she prepared and filed; [2] fighting over court ordered discovery that she wants to avoid; and [3] battling the Puerto Rico Judge's scheduling order, which sets a timeline for progressing the case and maximizing judicial economy. *See generally* Baralt Declaration. The injunction Mey looks for from this Court is simply not "in aid of [this Court's] jurisdiction" because the Puerto Rico Judge has matters well in hand; rather, Mey wants the injunction to aid Mey's effort to forum shop under the guise of the AIA. That will not do.

For one thing, the existence of a parallel action in state court is *insufficient* to invoke the in-aid-of-jurisdiction exception under the AIA to allow federal injunctive relief to stay the state court proceedings. *State Farm Mut. Auto. Ins. Co. v. Parisien*, 352 F. Supp. 3d 215, 225 (E.D.N.Y. 2018). This is true even where the state court proceeding threatens to prevent the federal court from reaching the same issue through res judicata or collateral estoppel. *Id.* And importantly, any doubts as to the propriety of a federal injunction against state court proceedings are resolved in favor of *allowing* the state courts to go ahead in an orderly fashion to finally decide the controversy. *See Atlantic Coast Line*, 398 U.S. at 297. On this point, the law is well settled: federal district courts have no power to sit in direct review of state court decisions. *Id.* at 296; *accord Duby v.*

Moran, 901 F. Supp. 215, 216 (S.D. W. Va. 1995) (recognizing that "lower federal courts possess no power whatever to sit in direct review of state court decisions."). A federal district court cannot issue an injunction under § 2283 to stay another proceeding, be it another federal district court or the court of another sovereign. *Richmond v. Wampanoag Tribal Ct. Cases*, 431 F. Supp. 2d 1159, 1181 (D. Utah 2006). To do so would impermissibly enlarge the second §2283 exception "by loose statutory construction." *See Atlantic Coast Line R. Co.* 398 U.S. at 287.

For another thing, a federal court does not have inherent power to *ignore* the limitations of 28 U.S.C. § 2283 or to otherwise enjoin state court proceedings merely because those proceedings interfere with a protected federal right or invade an area preempted by federal law, even when the interference is unmistakably clear. *See Atlantic Coast Line R. Co.*, 398 U.S. at 294–95. The three explicit § 2283 exceptions are exclusive and narrowly construed. Courts are not allowed to create new ones. *See Vendo Co. v. Lektro-Vend Corp*., 433 U.S. 623, 630 (1977) (plurality); *see also Atlantic Coast Line R. Co.*, 398 U.S. at 287. The existence of parallel action in state court is insufficient to invoke the in-aid-of-jurisdiction exception under the AIA to allow federal injunctive relief to stay the state court proceeding, even where the state court proceeding threatens to prevent the federal court from reaching the same issue because of claim or issue preclusion.

B. *Colorado River* Abstention

Moving on, allegations and claims filed in this Court tellingly parallel the earlier-filed Puerto Rico Lawsuit, and the claims in each respective action present exceptional circumstances that justify this Court's abstention under the *Colorado River* doctrine. That is so because this action [1] parallels the earlier-filed Puerto Rico Lawsuit and [2] presents exceptional circumstances that justify a refusal by this Court to hear the case.

It is well-established that federal and state courts have concurrent jurisdiction over private suits arising under the Telephone Consumer Protection Act ("TCPA"). *See, e.g.*, *Mims v. Arrow*

Fin. Servs., LLC, 565 U.S. 368 (2012). A pending state court action, such as the Puerto Rico Lawsuit, does not bar a party (such as Mey) from bringing a parallel federal court action. For the same reason, a federal court may abstain from hearing parallel federal-state cases under the reasoning of *Colorado River. See* 424 U.S. at 802. *Colorado River* abstention is proper, for example, [1] where parallel federal and state court actions exist and [2] where "exceptional circumstances" justify the federal court's abstention—that is, its refusal to hear the case. *Colo. River*, 424 U.S. at 818-19; *see also Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.,* 460 U.S. 1, 19(1983). The *Colorado River* abstention doctrine is applicable in this instance.

[1] *There is a parallel action.*

To be parallel, the actions must typically involve the same parties, facts, and issues. *See, e.g.*, *Air Evac EMS, Inc. v. Tex., Dep't of Ins*., 851 F.3d 507, 520 (5th Cir. 2017). Actions, however, do not have to be identical, to be parallel. *See, e.g., Ambrosia Coal & Const. Co. v. Pages Morales*, 368 F. 3d 1320, 1329-30, n.21 (11th Cir. 2004) (collecting cases). Furthermore, added factors, which apply here, come into consideration and militate in favor of abstention, including:

- The state court has already made multiple substantive rulings and the federal district court has not. *See Saucier v. Aviva Life & Annuity Co.*, 701 F.3d 458, 464 (5th Cir. 2012).

- The state action has made significant progress with the litigation, such as pretrial and trial matters, and the federal district court has not. *See, e.g.*, *Ferolito v. Menashi*, 918 F. Supp. 2d 136, 140 (E.D.N.Y 2013).

- The parallel litigation presents a substantial risk, as in this case, of forum shopping. *See Jolly v. Intuit Inc.*, 485 F. Supp. 3d 1191, 1205 (N.D. Cal. 2020).

- The parallel state-court action would dispose of the federal-court claims. *See Window World Int'l, LLC v. O'Toole*, 21 F. 4th 1029, 1033-34 (8th Cir. 2022); *see also Clark v. Lacy*, 376 F.3d 682, 686-87 (7th Cir. 2004) (adding defendants or repackaging claims under different causes of action does not destroy the parallel "nature" of the actions).

- The parallel actions involve some of the same parties and issues and seek the same relief. *See U.S. Bank Nat'l Ass'n v. E. Fordham DE LLC*, 804 Fed. Appx. 106, 107 (2d Cir. 2020).

[2] *There are exceptional circumstances calling for abstention.*

A federal court may also abstain under *Colorado River* where there are "exceptional circumstances" justifying abstention. *See Moses H. Cone*, 460 U.S. at 15-16; *Colo. River*, 424 U.S. at 817-819. Relevant circumstances in favor of abstention, which apply here, include:

- The risk of piecemeal litigation (*e.g.,* the possibility of multiple courts adjudicating the same case or issue) weighs in favor of *Colorado River* abstention. *See Colo. River*, 424 U.S. at 819-20; *Moses H. Cone*, 460 U.S. at 16. Primary concerns include the duplication of judicial resources—such as Mey herself proposes—and the risk of inconsistent judgments.

- The order in which the actions were filed and the progression of the respective actions, *e.g.,* here the state court made multiple substantive rulings and the federal district court has not. *See Saucier*, 701 F.3d at 463; *see also DePuy Synthes Sales, Inc. v. Ortho LA, Inc.*, 953 F.3d 469, 477 (7th Cir. 2020). As discussed above, the Puerto Rico Lawsuit has been pending for well over a year. Mey has heavily litigated a motion to dismiss and fought feverishly against any discovery, despite the court's substantive scheduling orders and efforts to avoid duplication of effort and to maximize judicial economy.

- Whether the state procedures adequately protect the plaintiff's federal rights. There is no basis to reject or condemn the Puerto Rican judicial system merely because it is conducted in Spanish. The Puerto Rican Court of First Instance employs several strategies to ensure effective communication and fair proceedings. *See* Baralt Declaration at ¶¶ 7.

"The principal purpose of a stay under *Colorado River* is judicial economy. . . ." *See Schneider Nat'l Carriers, Inc. v. Carr*, 903 F.2d 1154, 1157 (7th Cir. 1990). There is "no reason for identical suits to be proceeding in different courts." *See U.S.O. Corp. v. Mizuho Holding Co.*, 547 F.3d 749, 750 (7th Cir. 2008). Judicial economy strongly favors abstention. *See Driftless Area Land Conservancy v. Valcq*, 16 F.4th 508, 528 (7th Cir. 2021); *see also DePuy Synthes*, 953 F.3d at 479.

State courts will adequately protect the parties' interests when a federal statute grants concurrent jurisdiction to federal and state courts. *See, e.g.*, *DePuy Synthes*, 953 F.3d at 478. So, too, here.

C. Mey does not have Article III standing, nor is there subject matter jurisdiction, in this case, such that her claims should be dismissed.

Next, Mey lacks standing to bring these claims. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (as revised May 24, 2016) (recognizing that Article III standing consists of three elements: that plaintiff (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision). Mey claims that various people violated the TCPA by calling and texting *her* multiple times on February 8, 2023, and then again on multiple occasions through the end of February. *See* Mey Complaint at ¶¶ 21, 24-25. Transcripts she produced in discovery in the Puerto Rico Litigation, however, do not support her allegation (in ¶ 30) that she gave the "express instruction to Smith not to text her." *See* Baralt Declaration at ¶ 9 and Tab B (documents Mey produced).

Because the very power to hear the case is at issue, the Court is free to weigh the record and papers attached to the Baralt Declaration to decide whether Mey can manufacture and assert jurisdiction over the federal TCPA claim here. *See Heard v. W. Virginia United Health Sys., Inc.*, 2023 WL 11113847, at *2 (N.D. W. Va. Nov. 15, 2023) (explaining that, in considering a jurisdictional challenge, the Court "may consider evidence by affidavit, deposition, or live testimony without converting the proceeding to one for summary judgment"). No presumptive truthfulness attaches to Mey's allegations, and the existence of disputed material facts will not prevent this Court from evaluating the merits of Mey's bare jurisdictional allegation. *Id.* The best she can allege to support a TCPA violation is that her telephone number is on the "Do Not Call" Registry. Nowhere in the transcripts she produced, including those for February 8, 2024, does she tell the caller not to call her again. *See* Baralt Declaration at Tab B. Couple that fact with Mey's

use of a fake identity to speak to the callers and to complete online forms, *see* Mey Complaint ¶34, Mey does not show how she "personally suffered some actual or threatened injury" where she initiated and invited the calls, texts, and email. Mey lacks Article III standing to bring these claims.

To establish an injury in fact, Mey had to show, but did not show, that she suffered "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical. *Spokeo*, 578 U.S. at 339. Mey's use of a pseudonym to invite at least 19 separate communications she alleges are TCPA violations, but then concedes she invited, shows her alleged injury did not affect her "in a personal and individual way," was not "particularized" and did not actually exist and so was not "concrete." *Spokeo*, 578 U.S. at 339; (standing requires that plaintiff "personally has suffered some actual or threatened injury")(internal citation and quotations omitted). Not one of these contacts—as the transcripts reveal, contacts which she invited—can be fairly traceable to Pintas, the Puerto Rico Law Firm, or the Chicago Law Firm. Likewise, even Mey's false persona never said, "don't call, text, or email me." Mey did not and cannot allege facts showing each of the three elements of Article III standing, that the *Spokeo* Court explained are necessary to bring claims in federal court in the first place.

Finally, the burden of proving subject matter jurisdiction on a Rule 12(b)(1) motion to dismiss is on the party asserting federal jurisdiction. *Huskey v. Lovett*, 2024 WL 629982, at *2 (N.D. W. Va. Jan. 10, 2024), *report and recommendation adopted,* 2024 WL 627267 (N.D. W. Va. Feb. 14, 2024). Here, the absence of standing means there is no case or controversy, which means there is no federal question and no subject matter jurisdiction. *Id.* Whenever it appears by suggestion of a party or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. *See* Fed. R. Civ. P. 12(h)(3).

D. <u>This Court does not have personal jurisdiction over the P&M Defendants.</u>

As the party inviting the Court's exercise of personal jurisdiction, Mey bears the burden of showing that it is statutorily authorized and constitutionally permissible. *See Box Alarm Leather, LLC v. Manuel*, 2023 WL 7391867, at *1 (N.D. W. Va. Sept. 14, 2023). West Virginia's long-arm statute provides jurisdiction to the full extent allowable under the United States Constitution. *Id.* For this Court to assert jurisdiction over non-resident defendant William Pintas, the Puerto Rico Law Firm, or the Chicago Law Firm, within the confines of due process, Mey had to allege—but fatally failed to—that each of the P&M Defendants had sufficient "minimum contacts" with the forum state such that it is consistent with "fair play and substantial justice" to evaluate whether there is personal jurisdiction. *Id.* Mey made *no* allegations under West Virginia's long arm statute and no allegations about satisfying due process under the Constitution. Mey's failure to make even the most perfunctory allegations of personal jurisdiction are fatal.

Instead, the *only* personal jurisdiction allegations are in paragraphs 7, 8, and 9 of the Complaint. But critically, these threadbare and conclusory allegations *do not* show that the exercise of personal jurisdiction satisfies the statutory and constitutional requirements, as to each claim and each defendant challenging personal jurisdiction. *See, e.g., Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty.*, 582 U.S. 255, 268(2017) (specifying that"[t]he requirements of *International Shoe* . . . must be met as to each defendant."). Because Mey has not alleged or established personal jurisdiction over William Pintas, P&M Law (PR), or P&M Law, the Court must dismiss Mey's Complaint following Rule 12(b)(2).

E. <u>Venue is improper in this Court.</u>

Next, a substantial part of the events or omissions giving rise to Mey's claims occurred in Puerto Rico, so venue in this District is wrong. Rule 12(b)(3) provides for dismissal of cases for improper venue. When there is a challenge to venue, the court decides whether the case falls within

one of the three categories set out in § 1391(b). If it does, venue is proper; if it does not, venue is improper, and the case must be dismissed or transferred under § 1406(a). *See Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Texas*, 571 U.S. 49, 56 (2013). The only subsection of the general venue statute, 28 U.S.C. § 1391, at issue here is subsection (b)(2)—that is, whether a substantial part of the events or omissions giving rise to the claims occurred in Puerto Rico? "In determining whether the events or omissions are sufficiently substantial to support venue . . . a court *should not focus only on those matters that are in dispute* or that directly led to the filing of the action." *See White v. Diamond Warranty Corp., No.* 2:12-CV-01771, 2012 WL 3778850, at *2 (S.D. W. Va. Aug. 30, 2012) (quoting *Mitrano v. Hawes,* 377 F.3d 402, 405 (4th Cir. 2004)) (emphasis added). Rather, courts look at "the *entire sequence* of events underlying the claim." *Id.* (emphasis added); *Woodke v. Dahm*, 70 F.3d 983, 985 (8th Cir. 1995) (explaining that "Congress meant to require courts to focus on relevant activities of the defendant, not of the plaintiff.").

In these circumstances, Mey used a deceptive fake identity to contact the Puerto Rico Law Firm to invite telephone and online contact with her. Mey's use of a false identity gave rise to the fraud claims that the Puerto Rico Law Firm filed against her in Puerto Rico. In that lawsuit, she made an appearance, filed papers (a motion to dismiss and an answer), attended hearings, sought rulings, and resisted discovery. *See* Baralt Declaration at ¶ 8 and Tab C. A year later, Mey launched an inappropriate counter-offensive and sued Pintas, the managing member of the Puerto Rico Law Firm, along with the Puerto Rico Firm and the Chicago Firm. Mey seeks judgment against Pintas individually and directs each Count, as each heading in her Complaint alleges, primarily against him, the only defendant named in each of her five Counts. *See* Mey Complaint, Count Headings pp. 15, 16, 17 & 18. She also looks for "Judgment against Pintas" individually.

By her allegations, Mey establishes that there is a remarkably close nexus between her claims and Puerto Rico—where Pintas lives—showing that this Court is the wrong venue for her action. A "district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). The substantial events giving rise to Mey's claims occurred in Puerto Rico, making venue in the Northern District of West Virginia improper to each defendant. *See, e.g.*, *Harrison Prosthetic Cradle Inc. v. Roe Dental Lab'y, Inc.*, 608 F. Supp. 3d 541, 546 (N.D. Ohio 2022) ("[A]s firmly established by judicial decisions, in an action involving multiple defendants[,] venue and jurisdiction requirements must be met as to each defendant."). Venue properly rests in the Commonwealth of Puerto Rico, not here.

F. Mey's Complaint should be dismissed for insufficiency of process.

Moving on, the summons served on William Pintas, P&M Law (PR) and P&M Law are not embossed with either the courts or clerk's seal and are therefore defective and objectionable. "A Rule 12(b)(4) motion constitutes an objection to the form of process or the content of the summons rather than the method of its delivery." *See, e.g., Gallan v. Bloom Bus. Jets, LLC*, 2020 WL 4904580 (D. Colo. Aug. 20, 2020) (internal citation omitted). Rule 4 sets the procedure for service of process, *i.e.,* how a defendant receives notice of a civil lawsuit. A summons must bear, among other things, "the court's seal." *See* Fed. R. Civ. P. 4(a)(1)(G); *see also* United States District Court for the Northern District of West Virginia, *Guide for Filing Federal Civil Suits*, https://www.wvnd.uscourts.gov/sites/wvnd/files/sites/wvnd/files/Pro%20Se%20Packet%2012-05-2013.pdf (last visited May 6, 2024), at 2.

Here, Pintas, the Puerto Rico Law Firm, and the Chicago Law Firm object to the form and content of each summons, which does not follow Rule 4, does not adhere to this Court's Guidance on the issue, and does not bear the Court or Clerk's seal.

G. Service of process is also insufficient.

Additionally, Mey did not serve process properly on Pintas and the Puerto Rico Law Firm under the laws of Puerto Rico, or the Chicago Law Firm under Illinois law. *See* Declarations on service of process of record as ECF Nos. # 4, 5 and 6. Service of process is a prerequisite for personal jurisdiction. *See, e.g., Burnam v. Weld Cnty. Sheriffs*, 2024 WL 1051949, at *2 (D. Colo. Mar. 11, 2024) (plaintiff "bears the burden of making a prima facie case that he has satisfied statutory and due process requirements to allow the court to exercise personal jurisdiction over the defendant). Courts cannot exercise adjudicating power over a defendant who has not been served properly. *See, e.g.*, *Hardy v. Joseph I. Sussman, P.C.,* 953 F. Supp. 2d 102, 107 (D.D.C. 2013) (recognizing that if a defendant has not been properly served, the Court "ordinarily would be powerless to proceed with the case" as against that defendant).

Service of process is insufficient if, for example, the mode of delivery is invalid or is made on an improper person. *See Gallan v. Bloom Bus. Jets, LLC,* 2020 WL 4904580, at *2 (D. Colo. Aug. 20, 2020). A Rule 12(b)(5) motion challenges the mode or lack of delivery of a summons and complaint. When the sufficiency of process is challenged, the plaintiff must show that the procedure employed to effect service satisfied the requirements of Rule 4 of the Federal Rules of Civil Procedure. *See Gallan,* 2020 WL 4904580, at *2.

Here, Mey left the Complaint with the objectionable and defective summons for Pintas, the Puerto Rico Law Firm, and the Chicago Law Firm with a non-managerial, hourly employee at the Chicago Law Firm. *See* the Pintas, Puerto Rico Law Firm, and the Chicago Law Firm Declarations. The procedure Mey employed to effect service did not satisfy the requirements of Rule 4.

H. <u>Mey does not state a plausible claim for relief, such that her Complaint should be dismissed with prejudice</u>.

Mey's Complaint as to the Chicago Firm fails.

1). Mey filed a shot-gun pleading, which lacks the clarity needed for defendants to frame their responsive pleading.

As a threshold matter, not *one* of the five Counts Mey asserts includes any mention of the P&M Law Firm in Chicago by name. Indeed, the headings for the five respective Counts specifically *exclude* the Chicago Law Firm. The only place that Mey even mentions the Chicago Law Firm by name in her Complaint is in Paragraphs 7, 9, 16, 18, 19, 20, 21, 39, and 46. Thereafter, in Paragraphs 12, 61, 76, 78, 83-86, and 101 and the "WHEREFORE" clause at Paragraphs G, H, and J, Mey uses the generic term "Defendants," which includes not only Pintas and the Puerto Rico Firm, but also Reliance Litigation LLC and James Ryder Interactive, LLC and likewise generically uses the terms "law firm" and "affiliates." These terms do not articulate claims against the Chicago Firm with sufficient clarity to allow it, Pintas, or the Puerto Rico Law Firm to frame a responsive pleading. For example, as alleged, it is impossible to know which allegations of fact Mey intended to support which claims for relief against the Chicago Firm.

Mey's Complaint is a classic "shotgun" complaint. It has five counts, each one incorporating by reference the general allegations and allegations of each of the prior counts lending confusion about which defendant, law firm, or affiliate did what to whom. Federal courts—including this Court—disfavor such pleadings. *See, e.g.*, *Weller v. JP Morgan Chase Bank, Nat'l Ass'n*, 2017 WL 5158681, at *2 (N.D. W. Va. Jan. 30, 2017) (citing *Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp.*, 305 F.3d 1293, 1295-97 (11th Cir. 2002)). The rationale is simple: such pleadings require the court and litigants "to engage in constant cross-referencing to locate relevant allegations." *Id.*; *see also Knouse v. Primecare Med. of W. Va.*, 333 F. Supp. 3d

584, 592 (S.D. W. Va. 2018) ("A complaint that 'fails to articulate claims with sufficient clarity to allow the defendant[s] to frame a responsive pleading . . . or [one in which] it is virtually impossible to know which allegations of fact are intended to support which claims for relief' constitutes a 'shotgun pleading'." (internal citation omitted). For this reason, the Court must dismiss.

2). Count I -- Violations of the TCPA (Pintas and the Puerto Rico Law Firm).

Next, Mey's TCPA claim is a thinly disguised effort to enjoin the Puerto Rican court. As discussed above, the attack on that court's jurisdiction this Court is "not bound to accept as true [Mey's] legal conclusion couched as a factual allegation." *See Papasan v. Allain*, 478 U.S. 265, 286 (1986). Mey's TCPA claim, as alleged, is nothing more than legal conclusions predicated on her deceptive and fraudulent behavior. Also as discussed above, Mey was bound to—but did not—nudge her claims of intentional and knowing TCPA violations based on her invitation to call, text, and email across the line from conceivable to plausible violations of the TCPA.

3). **Count II – Fraudulent Legal Process -- W.Va. Code § 61-5-27a(h).**

West Virginia's fraudulent legal process statute, by its terms, does not have extra territorial reach. The central allegation in support of Mey's claim in Count II for "fraudulent legal process" is that Pintas and the Puerto Rico Law Firm violated West Virginia law—specifically, W. Va. Code § 61-5-27a(h) "by directing the filing of the Puerto Rican Action." *See* Mey Complaint at ¶¶ 91-92. Mey cites Section 61-5-27(b) and (c) as the alleged misconduct, "fraudulent" and "fraudulent official proceeding." *Id.* at ¶¶ 89 & 90. Section 61-5-27a, subsection (a) explains that the definitions for Section 61-5-27a are in § 61-5-27. Looking at the definitions in Section 61-5-27, "'Fraudulent' means not legally issued or sanctioned *under the laws of this state* or of the United States, including forged, false, and materially misstated." *See* W. Va. Code Ann. § 61-5-27. Meanwhile, "'Official proceeding' means a proceeding involving a legal process or other process

of a tribunal *of this state* or of the United States." *See* W. Va. Code Ann. § 61-5-27. The offenses of which Mey complains did *not* occur in this state. Mey cannot use this claim to seek damages or attorneys' fees for acts alleged to have occurred outside this state in Puerto Rico.

4). Count III – Abuse of Process (Pintas and the Puerto Rico Law Firm)

Mey alleges Pintas and the Puerto Rico Law Firm "filed, served, and are pursuing" the Puerto Rico Lawsuit "not for any legitimate purpose." *See* Mey Complaint at ¶ 96. Mey then generically alleges all the defendants are liable for abuse of process. *Id.* at ¶¶ 97 & 98.

The elements of abuse of process are (1) an ulterior purpose and (2) "a willful act in the use of the process not proper in the regular conduct of the proceeding." *See Ballock v. Costlow*, 430 F. Supp. 3d 146, 158 (N.D. W. Va. 2019) (internal citation omitted); *accord Zappin v. Ramey*, 2023 WL 1469995, at *13 (S.D. W. Va. Feb. 2, 2023), *aff'd*, 2024 WL 399098 (4th Cir. Feb. 2, 2024). Mey's abuse of process claim is nothing more than a bare legal conclusion of coercion masked as a fact. Furthermore, even if the Court overlooks that Pintas and the Chicago Law Firm are *not* parties to the Puerto Rico Lawsuit, Mey does not (nor can she) offer any plausible set of facts to support the abuse of process claim because "there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions." *See Ballock v. Costlow*, 430 F. Supp. 3d 146, 158 (N.D. W. Va. 2019).

Moreover, even if Pintas and the two Law Firms had bad intentions (*i.e.*, an ulterior purpose), the *only* plaintiff in the Puerto Rico Lawsuit is the Puerto Rico Firm, which did nothing more than carry out legal process to its authorized conclusion. Mey did not show each of the necessary elements to state a claim for relief against any one of these defendants.

5). Count IV – Intentional Infliction of Emotional Distress (Pintas).

Next, Pintas did not file nor pursue the Puerto Rico Lawsuit. Mey offers not a single allegation from which to glean what Pintas did that is atrocious and utterly intolerable in a civilized community. The extreme and outrageous requirement is a notoriously high burden to meet and Mey's allegations do not raise the specter of the intent to inflict emotional distress. For example, in *Bourne v. Mapother & Mapother, P.S.C.*, 998 F. Supp. 2d 495, 507 (S.D. W. Va. 2014), a consumer brought an action against a law firm and attorney, in the West Virginia Circuit Court, Mercer County, asserting claims for violations of West Virginia Consumer Credit and Protection Act ("WVCCPA"), negligence, intentional infliction of emotional distress ("IIED"), and invasion of privacy, relating to auto dialer telephone calls to consumer's home, for collection of debts after consumer had notified defendants that he disputed the debts. After removal, defendants filed a motion for summary judgment, which the Court granted on all grounds, including IIED.

In granting summary judgment, the *Bourne* Court explained that the extreme and outrageous requirement is a notoriously high burden to meet. *See Bourne*, 998 F. Supp. 2d at 507. Even acts with tortious or even criminal intent are not enough. *Id.* Rather, the actions must "be regarded as atrocious, and utterly intolerable in a civilized community." *See Tanner v. Rite Aid of West Virginia, Inc.,* 461 S.E.2d 149, 157 (W. Va. 1995) (quoting from the comments to the *Restatement of Torts (Second),* § 46). The *Bourne* Court thusly ruled that twenty-seven (27) unanswered phone calls over the course of eight months at regular hours of the day is not atrocious or utterly intolerable in a civilized community. *See Bourne*, 998 F. Supp. 2d at 507.

The *Bourne* Court observed that, even if defendants intended to inflict emotional distress, the uncontradicted evidence shows that defendants intended to contact another individual and *not* the named plaintiff. Moreover, the doctrine of transferred intent is not proper in the IIED context—

given the personal nature of the tort. *See generally* William L. Prosser, *Insult and Outrage,* 44 CAL. L. REV. 40, 56–59 (1956). Mey cannot state a claim based on her fake identity and she cannot, for that matter, allege plausible facts sufficient to overcome the notoriously high burden needed to show extreme and outrageous behavior on the part of William Pintas.

6). Count V – Injunctive Relief (Pintas and the Puerto Rico Law Firm)

In Count V of the Complaint, Mey attempts to divest the Puerto Rican court of jurisdiction over the Puerto Rican Lawsuit. Mey's bare assertion that the Puerto Rican judge is depriving "her right to have her TCPA claims decided by this Court" is an attack on the Puerto Rican legal system and that court's jurisdiction as an excuse to forum shop. *See* Mey Complaint at ¶ 109. Mey, however, does not state a claim for injunctive relief under either the AIA or common law. For example, Mey's use of a pseudonym (to invite at least 19 separate communications she alleges are TCPA violations) is fraudulent and unconscionable conduct, such that Mey loses the right to invoke equity. Indeed, the equitable maxim that a party who seeks equity must come with clean hands precludes Mey's attempt to manufacture jurisdiction to obtain injunctive relief. *Est. of Tilley by & through Graybeal v. Just.*, No. 22-0333, 2024 WL 1924978, at *4 (W. Va. May 1, 2024)

For one thing, federal and state courts—without question—have concurrent jurisdiction over private suits arising under the TCPA. *See Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 372 (2012). Mey also overlooks that she gave up her right to seek relief in federal court when she did not remove the Puerto Rico Lawsuit to federal court. *See Mims*, 565 U.S. at 376 (federal courts have federal-question jurisdiction over private TCPA suits.). The fact that there is *concurrent* jurisdiction negates Mey's assertion that declarations in the Puerto Rician court "seriously impair this Court's flexibility and authority to decide Mey's TCPA claim." *See* Complaint at ¶ 108.

For another, Mey's allegations, as discussed above, cannot elude the second exception in the AIA, which forecloses her attempt to have this Court enjoin the Puerto Rican court under a common law theory. The court in *Sogefi USA, Inc. v. Interplex Sunbelt, Inc.*, 538 F. Supp. 3d 620, 625 (S.D. W. Va. 2021), explained that, in order to obtain a preliminary injunction a party must establish four elements: "[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citation omitted). As such, the party looking to obtain a "preliminary injunction must demonstrate by a clear showing that, among other things, it is likely to succeed on the merits at trial." *Dewhurst*, 731 F. Supp. 2d at 515 (internal quotation marks and citations omitted). As Mey knows, the Puerto Rican court has been overseeing the Puerto Rican Lawsuit for over a year. She has not alleged any of the requisite injunction elements, and she will be unable to do so because there is no irreparable harm and using a fake identity to create a "gotcha" moment is deceptive and should not be rewarded. The equities weigh in favor of the Defendants.

V. CONCLUSION

The Court must dismiss the Complaint with prejudice for the foregoing reasons.

Respectfully submitted,

/s/ Blake N. Humphrey
Jared M. Tully (WVSB 9444)
Blake N. Humphrey (WVSB 14132)
Frost Brown Todd LLP
500 Virginia Street E, Suite 1100
Charleston, WV 25301
Telephone: 304-345-0111
jtully@fbtlaw.com
bhumphrey@fbtlaw.com

Richard W. Epstein*
GREENSPON MARDER LLP
200 East Broward Blvd, Suite 1800
Fort Lauderdale, FL 33301
Telephone: 954-491-1120
richard.epstein@gmlaw.com

Carlos R. Baralt Suárez*
BARALT LAW LLC
P.O. Box 190751
San Juan, PR 00919
Telephone: 939-625-3712
cbaralt@baraltlaw.com

**Admitted pro hac vice*

Counsel for William Pintas, P&M Law Firm LLC, & P&M Law Firm (PR), LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DIANA MEY, on behalf of herself
and a class of others similarly situated,

Plaintiff,

v. **Civil Action No. 5:24-cv-55**

WILLIAM PINTAS, P&M LAW
FIRM, LLC, P&M LAW FIRM (PR), LLC,
RELIANCE LITIGATION, LLC, and JAMES
RYDER INTERACTIVE, LLC,

Defendants.

CERTIFICATE OF SERVICE

I, Blake N. Humphrey, certify that on May 6, 2024, the foregoing ***William Pintas, P&M Law Firm (PR), LLC, and P&M Law Firm, LLC's Memorandum of Law in Support of Motion to Dismiss*** was electronically filed via the Court's CM/ECF filing system.

/s/ Blake N. Humphrey
Blake N. Humphrey