

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

DERRICK J. ELLERBE	:	CIVIL ACTION
	:	
v.	:	
	:	
U.S. FEDERAL GOVERNMENT OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES	:	NO. 17-1475
	:	
THE CITY OF PHILADELPHIA OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES	:	

MEMORANDUM

MCHUGH, J.

APRIL 6, 2017

Derrick J. Ellerbe regularly files *pro se* civil cases in this Court against government actors based on his belief that he is the victim of a vast government conspiracy. *See Ellerbe v. U.S. Gov't*, No. CIV.A. 14-5041, 2014 WL 4446128, at *1 (E.D. Pa. Sept. 8, 2014) (“The gist of Mr. Ellerbe’s “Emergency” Criminal Complaint’ is that federal, state and local governmental departments and agencies are engaged in a ‘criminal conspiracy’ against him that is primarily being driven by the United States Postal Service.”). In the instant civil action, Ellerbe sued “U.S. Federal Government Officials, Officers, Agents and Employees,” and “The City of Philadelphia Officials, Officers, Agents and Employees,” apparently on the basis that he is the victim of a conspiracy that violates the Racketeer Influenced and Corrupt Organizations Act (“RICO”). He also seeks leave to proceed *in forma pauperis*. The Court will grant Ellerbe leave to proceed *in forma pauperis* and dismiss his complaint.

I. FACTS

Ellerbe alleges that between April 2, 2013 and October 4, 2013, he was “kidnapped and held captive at four (4) different Phila. County jails.” (Compl. at 3.) He appears to be

contending that his incarceration was the product of RICO violations and/or a RICO conspiracy. He also alleges that the defendants are “blocking, delaying and/or destroying” his legal mail, that “emails from a Phila. library system are also blocked from the State General Assembly and the U.S. Congress,” and that his telephone calls are being redirected. (*Id.*) Ellerbe claims the following injuries:

irreparable harm, physical violence, terroristic threats, harassment, stalking, third party interference with employment and independent contractor rights, civil rights violations, civil liberties violations, U.S. Constitutional violations (Federal and State which are ongoing and continual), Pa. Constitutional violations, Federal and State Statutory (criminal and civil) violations including Racketeer Influenced and Corrupt Organizations Act and the Pennsylvania Corrupt Organizations Act.

(*Id.* at 4.) He seeks damages, various declarations (including a declaration that he is eligible for witness protection) and unspecified injunctive relief.

II. STANDARD OF REVIEW

The Court grants Ellerbe leave to proceed *in forma pauperis* because it appears that he is incapable of paying the fees to commence this civil action. Accordingly, 28 U.S.C. § 1915(e)(2)(B)(i) and (ii) require the Court to dismiss the complaint if it is frivolous or fails to state a claim. A complaint is frivolous if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). It is legally baseless if “based on an indisputably meritless legal theory,” *Deutsch v. United States*, 67 F.3d 1080, 1085 (3d Cir. 1995), and factually baseless “when the facts alleged rise to the level of the irrational or the wholly incredible.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). To survive dismissal for failure to state a claim, the complaint must contain “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations omitted). Conclusory statements and naked assertions will not suffice. *Id.* As

Ellerbe is proceeding *pro se*, the Court construes his allegations liberally. *Higgs v. Att’y Gen.*, 655 F.3d 333, 339 (3d Cir. 2011).

III. DISCUSSION

Ellerbe’s complaint is factually frivolous. Several of his allegations appear to be the byproduct of delusions or paranoia, including his allegation that there is a vast government conspiracy against him. Especially in light of his prior filings in this district—including two other cases that Ellerbe filed simultaneously with this case—the Court concludes that Ellerbe’s complaint is factually frivolous because it is based on allegations that rise to the level of irrational and incredible. *See Ellerbe v. U.S. Gov’t Officers, Agents and Employees*, Civ. A. No. 17-1474 (E.D. Pa.); *Ellerbe v. The U.S. Att’y Gen.*, Civ. A. No. 17-1473 (E.D. Pa.); *see also Ellerbe*, No. CIV.A. 14-5041, 2014 WL 4446128, at *2 (dismissing complaint as frivolous where “[t]he thrust of Mr. Ellerbe’s complaints is that every branch of government on the federal, state, and local level are conspiring to harm him, torture him, harass him, and deprive him of his constitutional rights,” and listing other cases filed in this district); *see also Walton v. Walker*, 364 F. App’x 256, 258 (7th Cir. 2010) (“[T]he district court was entitled to draw upon its familiarity with Walton’s prior meritless litigation (again describing sprawling conspiracies) to conclude that his complaint consisted only of ‘claims describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar.’” (quoting *Neitzke*, 490 U.S. at 328)).

Furthermore, Ellerbe has not stated a RICO claim. The federal civil RICO statute provides that “[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter[, which prohibits racketeering activity,] may sue therefor in any appropriate United States district court” 18 U.S.C. § 1964(c). “[I]n construing the federal RICO law, [the Third] Circuit has rejected the argument that personal injuries qualify as RICO injuries to

‘business or property.’” *Williams v. BASF Catalysts LLC*, 765 F.3d 306, 323 (3d Cir. 2014) (citing *Maio v. Aetna, Inc.*, 221 F.3d 472, 492 (3d Cir. 2000)). Furthermore, RICO does not provide a cause of action where the damages alleged are “speculative.” *Maio v. Aetna, Inc.*, 221 F.3d 472, 495 (3d Cir. 2000) (speculative damages that were “predicated exclusively on the possibility that future events might occur” could not form the basis of a RICO injury).

Nothing in the complaint provides a plausible for concluding that Ellerbe suffered a non-speculative injury to business or property that would give him standing to raise a RICO claim.¹ In particular, Ellerbe cannot state a RICO claim based injuries he sustained by virtue of his imprisonment—including any lost employment opportunities—because those injuries are not are not injuries to “business or property” for purposes of RICO.² *See, e.g., Etti ben-Issaschar v. ELI Am. Friends of the Israel Ass’n for Child Prot., Inc.*, No. CV 15-6441, 2016 WL 97682, at *3 (E.D. Pa. Jan. 7, 2016) (“The type of harm suffered by [plaintiff] for which she seeks to recover in this action—i.e., harm related to her detention and the alleged abuse she suffered while detained—is not an injury to ‘business or property’ that is cognizable under the RICO laws.”); *Clark v. Conahan*, 737 F. Supp. 2d 239, 255 (M.D. Pa. 2010) (observing that “[m]ental distress, emotional distress, and harmed reputations do not constitute injury to business or property sufficient to confer standing on a RICO plaintiff” and explaining that “injury for RICO purposes requires proof of concrete financial loss, not mere injury to an intangible property interest”). Ellerbe’s failure to allege an injury to business or property is also fatal to his RICO conspiracy claims. *Magnum v. Archdiocese of Phila.*, 253 F. App’x 224, 229 (3d Cir. 2007) (“A plaintiff

¹ The Court need not credit any conclusory allegations that Ellerbe suffered harm to business or property absent factual support for those allegations.

² A lost opportunity to pursue a personal injury claim is also not “business or property” for purposes of RICO. *See Magnum v. Archdiocese of Phila.*, 253 F. App’x 224, 226 (3d Cir. 2007).

alleging a civil RICO violation under *either* § 1962(c) or (d) must plead a cognizable injury to ‘business or property’ under § 1964(c).”.

Finally, in the event Ellerbe sought to raise claims under criminal statutes or file criminal charges, there is no legal basis for his claims. *See Cent. Bank of Dover, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 190 (1994) (“We have been quite reluctant to infer a private right of action from a criminal prohibition alone[.]”); *Mikhail v. Kahn*, 991 F. Supp. 2d 596, 636 (E.D. Pa. 2014) (“[I]t is today beyond all reasonable doubt that the prosecution of violations of federal criminal law in federal court is a function of the federal government, not private parties, and federal courts lack the power to direct the filing of criminal charges[.]” (citations, quotations, and alteration omitted)), *aff’d*, 572 F. App’x 68 (3d Cir. 2014) (per curiam). “Indeed, Mr. Ellerbe has been repeatedly informed that he may not initiate a criminal case by filing a lawsuit.” *Ellerbe*, No. CIV.A. 14-5041, 2014 WL 4446128, at *3 (E.D. Pa. Sept. 8, 2014) (citing cases).

IV. CONCLUSION

For the foregoing reasons, the Court will dismiss the complaint. Ellerbe will not be given leave to amend because amendment would be futile. An appropriate order follows, which shall be docketed separately.

BY THE COURT:



GERALD A. MCHUGH, J.