

In the  
Maryland Circuit Court  
for  
Anne Arundel County

Matthew O'Reilly

*Plaintiff, Pro Se*

v.

Waste Management, *et al.*

*Defendants*

Case No.: C-02-CV-24-000546

PLAINTIFF'S SUPPLEMENTAL BRIEF ON THE  
DEFENDANTS' MOTION TO DISMISS THE THIRD  
AMENDED COMPLAINT

Plaintiff O'Reilly respectfully submits this Supplemental Brief on the Defendants' Motions to Dismiss the Third Amended Complaint.

As a preliminary matter, new discovery showing additional defamation against Mr. O'Reilly by a previously-concealed defendant, Paul Marker, was deliberately withheld by the WM Defendants until December 12<sup>th</sup>, 2024, long after the amendment period for complaints had closed. Mr. O'Reilly requests leave of the Court to amend the complaint to join Paul Marker as a defendant.

## SUMMARY

- Several causes of action in the *Third Amended Complaint* are unequivocally not subject to the present motions to dismiss. For example, the only documents showing that Defendant Roy Palmer and WM employee Paul Marker individually directly defamed Mr. O'Reilly (WM\_00013-14, *Exhibit 1*), (WM\_0000097, *Exhibit 2*), were deliberately and fraudulently concealed until September and December of 2024, respectively. These therefore could not have been previously adjudicated and cannot be subject to res judicata, and both are well within the statute of limitations. In addition, several causes of action are alleged to have occurred between the dismissal of the federal case and the date of the Third Amended Complaint and similarly could not have been previously adjudicated.
- During the December 12<sup>th</sup>, 2024 Second Hearing on Mr. O'Reilly's Motion to Compel, this Court ordered of the Defendants that "All discovery related to jurisdiction, res judicata, collateral estoppel [and] statute of limitations be provided by [...] January 15th." Yet since December 12<sup>th</sup>, 2024, the Defendants have produced NO new discovery whatsoever.
- "Waste Management" is not an entity, but rather 500+ companies in a high-viz trench coat, all governed, directed, and closely controlled by Waste Management, Inc.
- Waste Management, Inc. is the only defendant asserting a jurisdictional defense.

- Waste Management, Inc. was the USPTO-registered owner (*Exhibit 5*) of the character mark “WM” which was licensed for use by Waste Management of Maryland, Inc., conclusively proving that it did business (either directly or through an agent) in Maryland during the events of 2016 and 2017.
- Waste Management, Inc. is listed as the Technical Contact for the official [wm.com](http://wm.com) ICANN record (*Exhibit 4*), and has been since at least 2017, showing that it directly maintains control of the entire online presence – worldwide – of the Waste Management syndicate, including across all of the jurisdictions in which WM does business.
- The Twombly/Iqbal “plausibility” pleading standard employed by the District Court is not recognized by Maryland courts and does not qualify as “on the merits”.
- 26 or more of the causes of action before the District Court were dismissed as “Abandoned”, a uniquely heightened pleading standard that has never been recognized by the Maryland state courts. While the Defendants wish desperately to paint this (strictly procedural) dismissal as “on the merits”, it does not pass even the barest scrutiny. The District Court did not address the substance of any of the “Abandoned” causes of action whatsoever.
- The Defendants have produced no discovery responsive to the statutes of limitation, and the allegations in the Third Amended Complaint must, at the motion-to-dismiss stage, be accepted as true and all possible inferences resolved in favor of the Plaintiff.

## ARGUMENT

### I. Personal Jurisdiction of Waste Management, Inc.

#### a. The deposition of WMI confirms that it does business in Maryland

Jeffrey Viola, WMI's designated corporate representative, testified that WMI is a holding company that owns stock in its subsidiary, Waste Management Holdings, Inc., which in turn owns and directs the activities of operational entities, including Waste Management of Maryland, Inc. (WMMD). However, Viola's testimony contained several key admissions that undermine WMI's argument that it lacks sufficient minimum contacts with Maryland:

- Viola acknowledged that WMMD does not operate independently and follows directives from parent entities within the Waste Management corporate structure. When asked whether WMMD could "just do whatever it wants," Viola responded that it could not and is required to follow the direction of its parent entities. This admission contradicts the claim that WMI is merely a passive investor with no control over Maryland operations.
- Viola confirmed that WMI's subsidiaries, including WMMD, use shared infrastructure, including IT systems, Human Resources, *required unified branding*, and operational technologies. Although Viola attempted to characterize these as part of an arms-length service agreement, he conceded that these systems are centralized and provided by other Waste Management entities under a coordinated management structure.

- Viola was unprepared to answer numerous questions regarding financials, corporate directives, human resources (including the “actual” employer of many WM employees) and branding, despite being designated as WMI’s corporate representative. Under Maryland law, a corporate designee must testify on behalf of the entity with full preparation on the noticed topics. WMI’s failure to provide a fully prepared witness should be construed against it.

b. “Waste Management” does not exist

“Waste Management” is the alter ego of the conglomerate of subsidiaries under the ownership, control, and direction of Waste Management, Inc. (“WMI”). It is not an incorporated entity and cannot be sued.

While most corporations are structured with departments – Marketing, Sales, Human Resources, etc. – WMI has opted to establish each of those departments as corporations. None of the companies enjoy any greater autonomy than a department, however, as each company agrees to abide by a master “Managed Services Agreement”, including following the direction of the CEO of WMI, a position that WMI fills by renting an employee from “USA Waste Management Resources, LLC”, one of the wholly-owned subsidiaries of Waste Management, Inc.

c. USPTO and ICANN records are self-authenticating

Defendants’ assertion that documents such as the USPTO and ICANN records, are “unauthenticated” is legally baseless. Under Maryland Rule 5-902(a), which mirrors Federal Rule of Evidence 902, official records issued by

recognized governmental or quasi-governmental entities are self-authenticating and do not require extrinsic evidence to establish their authenticity. Specifically, Rule 5-902(4) includes copies of public records, and Rule 5-902(6) explicitly covers domestic records of regularly conducted activity.

Additionally, for USPTO records, “Certification is not necessary as a condition to admissibility when the evidence to be submitted is a record of the [United States Patent and Trademark] Office to which all parties have access.” 37 CFR § 42.61(b).

The USPTO documentation concerning trademarks and the ICANN records for domain ownership meet these criteria. They are issued and maintained by entities tasked with recording and certifying such information, making them inherently trustworthy. Defendants’ attempt to dismiss this evidence as “unauthenticated” is not grounded in evidentiary law and represents a deliberate misrepresentation to evade jurisdictional scrutiny.

Furthermore, these records directly demonstrate WMI’s connection to Maryland through the control of wm.com and related branding efforts targeting Maryland consumers. This evidence supports the conclusion that WMI’s involvement in Maryland extends beyond passive ownership, contributing to its “minimum contacts” within the state.

## II. Privity

### a. The Defendants have produced NO evidence supporting privity

Maryland courts have repeatedly held that privity is a factual inquiry that cannot be presumed or resolved at the motion-to-dismiss stage without factual evidence already established on the record. Here, Defendants dispute – having produced no evidence whatsoever – the employment relationships between WMI, WMMD, and the individual defendants to assert privity.

On a motion to dismiss, a single, unsubstantiated statement by a party is insufficient to establish privity between defendants, particularly where no supporting evidence is provided and only a *prima facie* showing is required. Moreover, the mere assertion of an employment relationship does not, by itself, establish privity, which “in the *res judicata* sense generally involves a person so identified in interest with another that he represents the same legal right.” *FWB Bank v. Richman*, 354 Md. 472, 498 (1999).

The current record does not allow for a determination of privity between any of the defendants, and any such relationship between Tsottles and certain defendants would necessarily exclude privity with others, further undermining the argument for its application.

The Defendants’ continued refusal to comply with discovery – even when directly ordered by this Court to provide it – is a strategic attempt to sidestep factual disputes that preclude dismissal. If privity were truly a settled issue, the Defendants would have been eager to produce records substantiating their

claim; instead, their silence speaks volumes. The Court should consider their failure to provide the ordered discovery as further evidence that privity cannot be established at this stage, making dismissal improper.

b. None of the other defendants participated with Tsottles in the previous action

"The general rule, as noted in the RESTATEMENT (SECOND) OF JUDGMENTS, § 34 comment b, is that "a party is bound by the determination of an issue only if he actually participates in its adjudication. Accordingly, issues determined before he became a party or after he ceased to be a party are not conclusive upon him." *FWB Bank v. Richman*, 354 Md. 472, 497 (1999) (internal citations omitted).

Had the District Court ruled that Tsottles was liable for the claims as alleged, the other Defendants would be screaming bloody murder if the court found that they were liable with him by being in privity without being parties to the action; it does not follow that any should share in the benefit of dismissal if they would not also have shared in the liability.

In the Federal action, WMI was dismissed under Rule 12(b)(1) prior to any further determination. Thus the only defendant who was a party to the adjudication at the time of dismissal was Adam Tsottles, and as such, no other defendant should be allowed to claim privity with him now.

### III. Res Judicata

- a. The pleading standards used by the District Court differ from Maryland, and do not count as “on the merits”

The Defendants’ reliance on the federal dismissal as a “final judgment on the merits” is legally incorrect. Maryland courts follow a fact-pleading standard under Rule 2-303 that is less stringent than those used to dismiss the federal case, and where claims have been dismissed under more stringent procedural standards, Maryland courts have declined to apply res judicata.

While Federal Rule 12(b)(6) dismissals are often considered merits-based, in this instance the District Court applied heightened pleading standards under the “plausibility” analysis of *Twombly* and *Iqbal*, and under the its own unique and exclusive application of “Abandonment”, neither of which are recognized as “on the merits” dismissals by Maryland courts.

No Maryland state court has ever recognized the “Abandonment” pleading standard adopted – only – by the United States District Court of Maryland, and it would be a travesty for this Court to do so for the first time on a motion to dismiss. “Abandonment” is strictly procedural, and there is not a single mention of any of the substance of the claims being dismissed under this standard in the District Court’s 2020 opinion.

b. The pleading in the Third Amended Complaint is not identical to the Federal complaint

In addition or in the alternative, while the claims in the current complaint are indeed *fundamentally* similar to those in the federal suit, they are not identical to those in the prior case. The current complaint applies to Maryland law rather than Federal, and many of the factual elements underpinning the claims have been refined, modified, or added to represent parity with the state law claims.

When resolving all possible inferences and viewing in the light most favorable to the plaintiff (as the Court must in this posture), the claims are distinct from those pleaded before the District Court, and res judicata should not apply.

c. The District Court's dismissals were purely procedural, and not conclusive, final, or substantive.

The Defendants incorrectly assert that any dismissal under Rule 12(b)(6) constitutes a final judgment on the merits for res judicata purposes. Maryland courts should not rely solely on the label of the dismissal, but instead examine the basis for the ruling: if the dismissal was procedural in nature, such as for lack of jurisdiction or improper venue, it does not bar re-litigation, even if framed as failure to state a claim. It is only when an "issue of fact or law is actually litigated and determined by a valid final judgment, and that determination is essential to the judgment, the determination is conclusive in a later action between the parties" (*emphasis added*) *Potomac Design, Inc. v. Eurocal Trading, Inc.*, 839 F. Supp. 364, 391 (1993).

The Defendants fail to address the Federal Court's ambiguous rulings on jurisdiction and merit. The Federal Court did not conclusively determine whether WMI was subject to jurisdiction in Maryland, nor did it fully resolve Plaintiff's state-law claims. Without clear findings, res judicata cannot apply with the certainty Defendants suggest, and the Maryland appellate courts have emphasized that res judicata must not be applied where procedural ambiguities exist in the predicate action.

#### IV. Statutes of Limitation

As stated in the previous oppositions to the motions to dismiss, the District Court declined to exercise its discretionary jurisdiction over the state law claims. The instant action was timely filed, and per the United States Supreme Court decision in *Boechler v. Commissioner*, 596 U.S. \_\_\_\_ (2022), the statutes of limitation were tolled during the pendency of the Federal action.

The Defendants have produced NO discovery or documentation relevant to the statutes of limitation, and the extensive allegations in the Third Amended Complaint that the limitations period were not expired must be accepted as true and all reasonable inferences resolved in favor of Mr. O'Reilly at this stage.

## CONCLUSION

At this stage, the Court must accept all well-pleaded facts and allegations as true and draw all reasonable inferences in Mr. O'Reilly's favor. The Third Amended Complaint presents more than sufficient allegations and prima facie evidence to warrant further proceedings, and given the reasonable factual disputes, deliberate and willful evidentiary gaps in the Defendants' disclosures, and the obvious need for further development of the record, dismissal is unwarranted at this time.

Respectfully submitted this 31<sup>st</sup> day Of January, 2025

  
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*Plaintiff, Pro Se*

CERTIFICATE OF SERVICE

I hereby certify that on this 31<sup>st</sup> day Of January, 2025, a copy of the foregoing  
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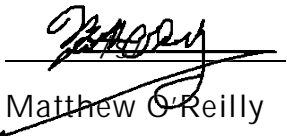
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