

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

B.W., et al. : CA 3:09-cv-286
 :
 v. :
 :
 Powell, et al : :

Conway, et al. : CA 3:09-cv-291
 :
 v. :
 :
 Conahan, et al. : :

H.T., et al. :
 :
 v. : CA 3:09-cv-357
 :
 Ciavarella, et al. : :

Humanik :
 :
 v. : CA 3:09-cv-630
 :
 Ciavarella, et al. : :

Judge Caputo

**MOTION TO DISMISS BY MID-ATLANTIC YOUTH SERVICES CORP, PA
CHILD CARE, LLC AND WESTERN PA CHILD CARE, LLC**

MOTION TO DISMISS BY MID-ATLANTIC YOUTH SERVICES CORP., PA
CHILD CARE, LLC AND WESTERN PA CHILDCARE, LLC

AND NOW, come Defendants, Mid-Atlantic Youth Services Corp., PA Child Care, LLC and Western PA Child Care, LLC, and move this Court to dismiss the Individual Plaintiffs' Master Long Form Complaint¹ and the Mater Complaint For Class Actions in the above captioned actions, and in support thereof aver as follows:

1. Numerous juveniles who appeared before Judge Mark A. Ciavarella ("Ciavarella") in the Juvenile Division of the Court of Common Pleas of Luzerne County ("Juveniles"), and the Juveniles' parents ("Parents") have sued in this Court: Ciavarella and ex- Judge Michal T. Conahan ("Conahan") (collectively, "judges"); Beverage Marketing of PA, Inc., a corporation owned by Conahan; the judges' wives, Cindy Ciavarella, and Barbara Conahan; Pinnacle Group of Jupiter, LLC, a limited liability company owned by the wives; Robert Mericle ("Mericle") and his construction company, Mericle Construction Inc.; Robert Powell ("Powell"), his law firm, Powell Law Group, P.C. and his limited liability company, Vision Holdings, LLC; Perseus House, Inc., a juvenile treatment facility;

¹ Several Individual Plaintiffs have also filed Short Form Complaints that incorporate the Individual Plaintiffs' Master Long Form Complaint . They should also be dismissed for the reasons set forth herein and the supporting brief, although Provider Defendants will not address them separately.

Luzerne County; Frank Vita, a psychologist on contract to Luzerne County; Mid-Atlantic Youth Services Corp. (“MAYS”), and two limited liability companies that own juvenile treatment facilities that MAYS contracts to operate, PA Child Care, LLC (“PACC”) and Western PA Child Care, LLC (“WPACC”) (MAYS, PACC and WPACC will be referred to collectively as “Provider Defendants”). Plaintiffs initially sued Gregory Zappala (“Zappala”), allegedly an owner, shareholder, officer, or operator of MAYS, PACC and WPACC, but voluntarily dismissed him.²

2. Originally, there were two class action complaints (*H.T, et al. v. Ciavarella, et al.*, 3:09-cv-0357 and *Conway, et al. v. Conahan, et al.*, 3:09-cv-0291) and two complaints by individuals (*Wallace et al v. Powell, et al.*, 03:09-cv-0286 and *Humanik v. Ciavarella, et al.*, 03:09-cv-0630). After several amendments and consolidations the operative complaints have been reduced to a *Master Complaint for Class Actions at 3:09-cv-0357 and 3:09-cv-0291* and an *Individual Plaintiffs’ Long Form Complaint at 03:09-cv-0286 and 03:09-cv-0630*. (Collectively, the “Complaints”.)

3. The Complaints allege federal claims under 42 USC § 1983 and the Racketeer Influenced and Corrupt Organizations Act, as well as Pennsylvania common law claims for conspiracy and false imprisonment.

² Plaintiffs also dropped Sandra Brulo and Robert Matta from the suit.

4. Some Defendants, including Provider Defendants, have filed a common motion to dismiss and supporting brief addressing issues common to them. The Provider Defendants file this brief in support of their Rule 12 motions in order to address issues more specifically related to them or to more specifically apply arguments to their circumstance.

5. For the reasons more fully set forth in the accompanying brief, this Court should dismiss all §1983 claims because:

a. The Complaints' allegations are insufficient to show that Provider Defendants acted under color of state law.

b. The Complaints' allegations are insufficient to show that provider defendants had policies to violate the Juveniles' rights.

6. For the reasons more fully set forth in the accompanying brief, this Court should dismiss all RICO claims because:

a. The allegations do not establish any actions by provider defendants .

b. The allegations do not establish that plaintiffs injuries arising from the RICO conspiracy were caused by an overt predicate act.

7. For the reasons more fully set forth in the accompanying brief, this Court should dismiss all false imprisonment claims because:

a. The allegations do not establish lack of probable cause.

b. Mays could not have falsely imprisoned juveniles who resided At PACC before may 5, 2005.

c. PACC could not have falsely imprisoned juveniles sentenced to WPAAC, only.

e. WPACC could not have falsely imprisoned juveniles sentenced to PACC, only .

f. The complaints do not sufficiently allege that pre-hearing detentions were caused by provider defendants or lacked probable Cause .

g. The statute of limitations on false imprisonment has run as to those juveniles who reached majority two years before filing this action .

8. For the reasons more fully set forth in the accompanying brief, this Court should dismiss all false t claims because the complaints do not plausibly allege causation .

WHEREFORE, MAYS, PACC AND WPACC respectfully move this Court to dismiss Plaintiffs' complaints with prejudice.

Respectfully submitted,

/s/ Bernard M. Schneider
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CERTIFICATE OF SERVICE

I, Bernard M. Schneider, hereby certify that, on this 22nd day of March, 2010, the foregoing Brief was filed and made available via CM/ECF to all counsel of record. Additionally, the foregoing response was served by first class mail upon the following:

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