

# Question

Case 5:24-cv-01311-R Document 18 Filed 06/30/25 Page 1 of 5 FILED JUN 3 D 2025 IN THE UNITED STATES DISTRICT COURT -JOAN KANE, CLERK U.S. DIST. COURT FOR THE WESTERN DISTRICT OF OKLAHOMA • / 2J~0 1 : 6E~, 1 ~ CHARLES DUST IN MYERS, Plaintiff, v. Case No. CIV-24-1311-R DANIEL KENNETH BRANTHOVER and MORGAN MICHELLE MYERS, Defendants. DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT Pursuant to Fed. R. Civ. P. 12(b)(6) and 12(b)(3) MEMORANDUM OF LAW I. INTRODUCTION Plaintiffs First Amended Complaint attempts to reframe a contentious domestic dispute and family court litigation as a federal RICO conspiracy. However, the Complaint fails to allege the essential elements of a RICO claim, lacks particularity, and is improperly venue in this District. Moreover, the factual allegations are speculative, conclusory, and unsupported by admissible evidence. II. LEGAL STANDARD To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). Mere labels, conclusions, or a formulaic recitation of the elements of a cause of action are insufficient. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). 1 Case 5:24-cv-01311-R Document 18 Filed 06/30/25 Page 2 of 5 III. ARGUMENT A. Plaintiff Fails to State a RICO Claim To state a civil RICO claim, a plaintiff must allege: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985). Plaintiff fails to plausibly allege any of these elements. 1. No Plausible "Enterprise" Plaintiff alleges an "association-in-fact" enterprise between two individuals involved in a personal relationship. Courts have consistently held that personal relationships, even if strained or adversarial, do not constitute a RICO enterprise. See United States v. Turkette, 452 U.S. 576, 583 (1981); Begala v. PNC Bank, Ohio, N.A., 214 F.3d 776, 781 (6th Cir. 2000). 2. No Pattern of Racketeering Activity Plaintiffs allegations span a short period and involve no ongoing threat of criminal activity. The Supreme Court has held that a "pattern" requires continuity and relatedness. H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 239 (1989). Sporadic or isolated acts do not suffice. See Sil-Flo, Inc. v. SFHC, Inc., 917 F.2d 1507, 1516 (10th Cir. 1990). 3. No Predicate Acts Plaintiff alleges wire fraud and Travel Act violations, but fails to plead them with the specificity required under Rule 9(b). See Koch v. Koch Indus., Inc., 203 F.3d 1202, 2 Case 5:24-cv-01311-R Document 18 Filed 06/30/25 Page 3 of 5 1236 (10th Cir. 2000). The Complaint lacks dates, content, and context of the alleged fraudulent communications. 8. Plaintiff's Claims Are Based on a Domestic Dispute The gravamen of Plaintiffs complaint is a failed marriage and related family court proceedings. Courts have repeatedly rejected attempts to convert family law disputes into RICO claims. See Annunziata v. Panikkar, 200 F.3d 189, 200 (3d Cir. 1999); Bell v. Dean, No. 2:09-CV-1082-WKW, 2010 WL 185608 (M.D. Ala. Jan. 19, 2010); Benton v. Wells Fargo Bank, N.A., No. 1:13-CV-01454, 2014 WL 1407584 (N.D. Ga. Apr. 10, 2014). C. Plaintiff Lacks Standing Under RICO To have standing under 18 U.S.C. § 1964(c), a plaintiff must show injury to "business or property." Emotional distress, reputational harm, or speculative business losses are not sufficient. See

Holmes v. Sec. Investor Prot Corp., 503 U.S. 258, 268 (1992); Reiter v. Sonotone Corp., 442 U.S. 330, 339 (1979). D. Venue Is Improper in the Western District of Oklahoma Under 28 U.S.C. § 1391(b), venue is proper only where a substantial part of the events giving rise to the claim occurred. Plaintiffs allegations center on events in Texas, including divorce proceedings in Tarrant County. The only connection to Oklahoma is the residence of one defendant, which is insufficient. See Woodke v. Dahm, 70 F. 3d 983, 985 (8th Cir. 1995). 3 Case 5:24-cv-01311-R Document 18 Filed 06/30/25 Page 4 of 5 E. Counterarguments to Plaintiffs Specific Claims 1. Alleged Wire Fraud Plaintiff claims a \$1,576 transfer was fraudulent. However, both parties had access to the joint account Courts have held that transfers between spouses from joint accounts do not constitute fraud. See United States v. Sayakhom, 186 F.3d 928, 939 (9th Cir. 1999). 2. Alleged Travel Act Violation Plaintiff alleges interstate travel to commit fraud. However, travel for personal reasons, even if related to a divorce, does not constitute a violation of 18 U.S.C. § 1952 unless it furthers a criminal enterprise. See United States v. Nardella, 393 U.S. 286, 290 (1969). 3. Alleged Perjury and False Filings Even if Plaintiffs allegations of false statements in court filings were true, perjury in state court proceedings is not a predicate act under RICO. See Kim v. Kimm, 884 F.3d 98, 104 (2d Cir. 2018). IV. CONCLUSION For the foregoing reasons, Defendants respectfully request that the Court: 1. Dismiss Plaintiffs First Amended Complaint with prejudice under Rule 12(b)(6); 2. Alternatively, dismiss for improper venue under Rule 12(b)(3); and 3. Grant such other relief as the Court deems just and proper. 4 Case 5:24-cv-01311-R Document 18 Filed 06/30/25 Page 5 of 5 Respectfully submitted, Daniel Kenneth Branthoover Pro Se 3100 Copan Ct Yukon, OK 73099 danbranthoover@yahoo.com 5 1 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA CHARLES DUSTIN MYERS, Plaintiff, v. DANIEL KENNETH BRANTHOOVER & MORGAN MICHELLE MYERS Defendants § § § § § Case No.: CIV-24-1311-R § § § § § PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT DANIEL BRANTHOOVER'S MOTION TO DISMISS FIRST AMENDED COMPLAINT Branthoover's motion to dismiss fails because Plaintiff has adequately pled all RICO elements with sufficient particularity, including predicate acts of wire fraud and Travel Act violations, a pattern of racketeering activity spanning 18 months, an enterprise with distinct roles, and concrete business injuries. Branthoover's alteration of his motion by removing "COMES NOW DAN AND MORGAN" after Plaintiff pointed out he couldn't file for Myers demonstrates his unauthorized practice of law and furthers the conspiracy allegations. For the forthcoming reasons, Defendant's motion to dismiss should be DENIED and the case should be permitted to proceed to discovery after Defendant Myers' motion to dismiss or response to Plaintiff's complaint is filed with the Court. 2 I. Introduction 1. Defendant Branthoover's motion to dismiss must be denied because Plaintiff has sufficiently alleged each essential element of a civil RICO claim under 18 U.S.C. § 1962(c) and (d). The complaint meticulously details predicate acts of wire fraud and Travel Act violations with the required particularity under Rule 9(b), establishes a pattern of racketeering activity through related acts spanning approximately 18 months (satisfying both closed-ended and open-ended continuity requirements), identifies a distinct enterprise with defined roles, and demonstrates concrete injury to business and property as required for standing under 18 U.S.C. § 1964(c). 2.

Branthroover's attempt to file on behalf of Myers and subsequent alteration of the motion document after being challenged provides further evidence supporting Plaintiff's allegations of unauthorized practice of law and ongoing conspiracy. This conduct aligns with the pattern of deceptive behavior alleged throughout the complaint and demonstrates that the fraudulent activity continues even during the litigation process, reinforcing the open-ended continuity of the enterprise's operations.

II. Legal Framework: RICO Requirements

A. Sufficiency of RICO Claim Allegations

3. The Racketeer Influenced and Corrupt Organizations Act (RICO) prohibits conducting or participating in the conduct of an enterprise's affairs through a pattern of racketeering activity, 18 U.S.C. § 1962(c). To establish a civil RICO claim, a plaintiff must allege "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity," plus injury to business or property.

3. Under 18 U.S.C. § 1961(1), "racketeering activity" includes "any act which is indictable under" numerous federal criminal statutes, including wire fraud (18 U.S.C. § 1343) and Travel Act violations (18 U.S.C. § 1952). A "pattern of racketeering activity" requires at least two acts of racketeering activity within a ten-year period, 18 U.S.C. § 1961(5).

5. An "enterprise" includes "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity," 18 U.S.C. § 1961(4).

III. Analysis of Branthroover's Motion to Dismiss

A. Sufficiency of RICO Claim Allegations

6. Branthroover first argues that Plaintiff's complaint fails to allege facts sufficient to support a RICO claim. This argument is without merit when analyzed against the detailed allegations in the complaint.

Predicate Acts - Wire Fraud

7. The complaint extensively details acts that constitute wire fraud under 18 U.S.C. § 1343. Wire fraud requires "(1) a scheme or artifice to defraud or obtain money by false pretenses, representations or promises; and (2) use of interstate wire communications to facilitate that scheme."

8. Plaintiff alleges with precision:

- i. Myers transferred \$1,576 from the parties' joint marital PNC account to Branthroover's PayPal account (username "dmb575"), completely depleting the account balance. (Complaint ¶25)
- ii. The transfer occurred on December 15, 2023, immediately following Branthroover's deceptive phone call. (Complaint ¶25)
- iii. 92 text messages were exchanged between Myers and Branthroover on December 14, 2023, coordinating their plan across state lines. (Complaint ¶19)
- iv. Interstate communications occurred between Texas (where Myers was located) and Oklahoma (where Branthrover was located). (Complaint ¶67)

v. Branthroover deceived Plaintiff by stating "I've been where you are before. I want to help both of you," when his true intent was to assist Myers in depleting their joint account. (Complaint ¶22)

9. These allegations satisfy the elements of wire fraud as they establish a scheme to defraud, use of interstate wire communications in furtherance of the scheme, and intent to deprive another of money or property.

Predicate Acts - Travel Act Violations

10. The complaint also details violations of the Travel Act, 18 U.S.C. § 1952, which prohibits travel in interstate commerce or use of interstate facilities with intent to promote, manage, establish, carry on, or facilitate unlawful activity.

11. Plaintiff alleges:

- i. Myers traveled interstate from Texas to Oklahoma on December 15, 2023, to coordinate with Branthrover. (Complaint ¶¶23-24)
- ii. This travel was specifically intended to prepare fraudulent court documents. (Complaint ¶33)
- iii. Myers transported the fraudulent documents back to Texas on December 17, 2023. (Complaint ¶35)
- iv. After

the interstate travel, Myers filed the fraudulent documents with Texas courts. (Complaint ¶¶39-42) 12. These allegations establish all elements of a Travel Act violation: interstate travel, intent to facilitate unlawful activity, and subsequent performance of acts furthering that unlawful activity.

Pattern of Racketeering Activity 13. Under 18 U.S.C. § 1961(5), a "pattern of racketeering activity" requires at least two acts of racketeering activity within a ten-year period. However, the Tenth Circuit requires more than just two predicate acts; the acts must be related and continuous. 14. Plaintiff's complaint alleges multiple related predicate acts spanning approximately 18 months, from December 2023 through May 2025: i. Wire transfer of \$1,576 on December 15, 2023. (Complaint ¶25) ii. Interstate travel and document preparation on December 15-17, 2023. (Complaint ¶¶35-39) iii. Filing of fraudulent court documents on December 18, 2023. (Complaint ¶39) iv. Filing of fraudulent protective order application on December 22, 2023. (Complaint ¶45) 6 v. Threatening communications continuing through December 12, 2024. (Complaint ¶51) vi. Most recent threatening communication on May 24, 2025. (Complaint ¶52) vii. The transmission of a motion to dismiss across interstate communications by Branthoover, CC'ing defendant Myers as if filing on her behalf. See Exhibit 1. 15. These acts are related as they share the same purpose (depriving Plaintiff of property rights), involve the same participants (Myers and Branthoover), target the same victim (Plaintiff), and employ similar methods (deception and manipulation of legal processes). 16. The pattern also demonstrates both closed-ended continuity (acts spanning over 18 months and is ongoing) and open-ended continuity (threat of continued criminal activity, evidenced by Branthoover's May 2025 message threatening future retaliation). An enterprise under RICO includes "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity," 18 U.S.C. § 1961(4).

Enterprise 17. Plaintiff alleges an association-in-fact enterprise between Myers and Branthoover with clear organizational structure: i. Myers acted as the "inside" operative with access to marital assets and ability to file documents in Texas courts. (Complaint ¶91) 7 ii. Branthoover served as the "outside" operative providing administrative oversight, expertise on protective orders, and a base of operations in Oklahoma. (Complaint ¶91) iii. The enterprise functioned as a continuing unit from December 2023 through June 27, 2025, with consistent roles and coordinated actions. (Complaint ¶91) 18. This enterprise is distinct from the pattern of racketeering activity itself, possessing structure beyond what was necessary to commit the predicate acts. Injury to Business or Property 19. For standing under 18 U.S.C. § 1964(c), a plaintiff must allege injury to business or property by reason of a RICO violation. 20. Plaintiff alleges concrete, quantifiable injuries: i. Loss of \$1,576 fraudulently transferred from the joint marital account. (Complaint ¶¶25, 104) ii. Business losses from disruption of his home-based financial analytics business. (Complaint ¶¶115-123) iii.

Documented revenue loss with specific projections based on historical performance. (Complaint ¶¶121-122) iv. Total damages quantified at \$101,370.58. (Complaint ¶126) 21. These allegations establish concrete injury to business and property as required for RICO standing. 8 B. Pleading Fraud with Particularity (Rule 9(b)) 22. Branthoover argues that Plaintiff's allegations of wire fraud fail to meet the heightened pleading standard of Federal Rule of Civil Procedure 9(b). This argument fails given the detailed

factual allegations in the complaint. 23. Rule 9(b) requires that a party "state with particularity the circumstances constituting fraud or mistake," including the "who, what, when, where, and how" of the alleged misconduct. The complaint provides these details with precision: i. Who: Myers and Branthoover. (Complaint ¶¶5-6) ii. What: Transfer of \$1,576 from joint marital account to Branthoover's PayPal account. (Complaint ¶25) iii. When: December 15, 2023, with exact timestamps for communications. (Complaint ¶¶22, 25) iv. Where: Interstate between Texas and Oklahoma. (Complaint ¶67) v. How: Through PayPal, using account identifier "dmb575". (Complaint ¶28) 24. The complaint also details: i. The content of specific communications, including direct quotes. (Complaint ¶¶22, 30, 40) ii. The specific documents prepared and filed fraudulently. (Complaint ¶39) 9 iii. The precise false statements contained in those documents. (Complaint ¶¶43-44, 46) 25. These allegations amply satisfy Rule 9(b)'s requirement to plead fraud with particularity. C. RICO Claims Based on Domestic Disputes 26. Branthoover argues that Plaintiff's allegations arise primarily from a domestic dispute and related family court proceedings, which do not constitute the type of organized criminal activity contemplated by RICO. While courts have been skeptical of RICO claims arising solely from domestic disputes, Plaintiff's allegations go far beyond a mere domestic disagreement. The complaint alleges a sophisticated scheme involving: i. Interstate travel and commerce. (Complaint ¶¶23-25, 35) ii. Strategic coordination between multiple parties. (Complaint ¶¶19, 33, 91-92) iii. Financial crimes including wire fraud. (Complaint ¶¶25-28) iv. Manipulation of multiple court proceedings. (Complaint ¶¶39-46) v. Substantial business injuries. (Complaint ¶¶115-123) 27. This is precisely the type of interstate racketeering activity that RICO was designed to address, regardless of whether it arose in the context of a domestic relationship. 10 D. RICO Standing and Injury 28. Branthoover argues that Plaintiff lacks standing to bring a RICO claim because he has not alleged a concrete injury to business or property as required under 18 U.S.C. § 1964(c). 29. This argument is contradicted by the complaint's detailed allegations of specific injuries: i. Loss of \$1,576 fraudulently transferred from the joint marital account. (Complaint ¶¶25, 104) ii. Documented business disruption when Plaintiff was forced to vacate his home, where he operated his business. (Complaint ¶119) iii. Specific impact on business operations, including inability to maintain internet connectivity required for his digital financial analytics business. (Complaint ¶120) iv. Quantified loss of business revenue based on historical performance data. (Complaint ¶¶121-122) v. Total damages of \$101,370.58, consisting of \$99,794.58 in lost business income and \$1,576 in fraudulently transferred funds. (Complaint ¶126) 30. These allegations establish concrete, non-speculative injuries to business and property that are directly traceable to defendants' alleged RICO violations. 11 E. Continuity of Racketeering Activity 31. Branthoover argues that Plaintiff fails to allege continuity of racketeering activity. Under 18 U.S.C. § 1961(5), a "pattern of racketeering activity" requires at least two acts of racketeering activity within a ten-year period. However, courts have established that these acts must demonstrate either "closed-ended" continuity (a series of related acts extending over a substantial period) or "open-ended" continuity (past conduct that by its nature projects into the future with a threat of repetition). 32. The complaint alleges both: i. Closed-ended continuity: Related acts spanning from December 2023 through May 2025,

approximately 18 months (Complaint ¶¶49-52, 86) ii. Open-ended continuity: Ongoing threats and monitoring activities with explicit threats of future retaliation, including Branthoover's May 24, 2025 message stating "Where's my lawsuit? Heard your vm about me. File it. Let's do this :)" (Complaint ¶¶51-52, 86) 33. This temporal scope exceeds what courts typically consider sufficient to establish continuity for RICO purposes. F. Venue in the Western District of Oklahoma 34. Branthoover challenges venue in the Western District of Oklahoma. Under 18 U.S.C. § 1965(a), "Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs." 12 35. Additionally, under 28 U.S.C. § 1391(b), venue is proper in "a judicial district in which any defendant resides" or "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." 36. Venue is proper in the Western District of Oklahoma because: i. Branthoover resides in Canadian County, Oklahoma, which is within the Western District. (Complaint ¶5) 37. Substantial parts of the events occurred in Oklahoma, including: i. Preparation of fraudulent court documents at Branthoover's residence (Complaint ¶33) ii. Myers' interstate travel to Oklahoma to coordinate the scheme. (Complaint ¶23) iii. Receipt of the fraudulently transferred funds in Oklahoma. (Complaint ¶25) 38. These connections establish proper venue in the Western District of Oklahoma under both 18 U.S.C. § 1965(a) and 28 U.S.C. § 1391(b). G. Significance of Branthoover's Motion Alteration 39. Branthoover's alteration of his motion document after serving it on Plaintiff provides further evidence supporting the RICO claims. The original motion began with "COMES NOW Defendant, Daniel Kenneth Branthoover and Morgan Michelle Myers," but was later modified to remove the reference to filing on behalf of Myers after Plaintiff pointed out that Branthoover could not file for her. See Exhibit 1 40. This alteration is significant for several reasons: 13 i. It demonstrates Branthoover's continued unauthorized practice of law, consistent with Plaintiff's allegations in paragraph 31, which states that "at no time relevant to this litigation has Defendant Branthoover possessed a license to practice law in any jurisdiction within the United States". ii. It shows ongoing deceptive conduct, as Branthoover attempted to conceal his improper filing by altering the document after being confronted. iv. It corroborates Plaintiff's allegations regarding Branthoover's administrative role and pattern of misrepresentations v. It provides evidence of the continuing nature of the conspiracy alleged in violation of 18 U.S.C. § 1962(d) 41. This conduct is remarkably similar to Branthoover's earlier text message in which he falsely claimed to be a legal representative, stating: "Charlie, it's come to my understanding you have retained an attorney. I'm sure he has told you that all further communication should take place between attorneys. I must formally ask you refrain from discussing details of this case with my client moving forward and only communicate with me or your attorney". (Complaint ¶40). H. The Divorce Process Initiated Under Branthoover's Advisement 42. The complaint specifically alleges that the divorce process was initiated under Branthoover's advisement and with his direct involvement. Paragraph 30 states that Branthoover told Plaintiff "You Are Getting Divorced..." followed by "I hope I can help 14 with the paperwork and make things go as smoothly as possible." This statement preceded any divorce filings, indicating Branthoover's prior knowledge of and involvement

in the planned legal action. 43. Paragraphs 39 and 43 detail how the fraudulent divorce petition was prepared in Oklahoma under Branthoover's "direct administrative oversight" and contained numerous false statements designed to deceive the Texas courts. These allegations establish that Branthoover was an active participant in initiating and directing the divorce process as part of the fraudulent scheme. 44. This involvement directly counters Branthoover's argument that this is merely a domestic dispute outside RICO's scope, as it shows his direct participation in an interstate scheme involving predicate acts of wire fraud and Travel Act violations. 45. Plaintiff is handling both matters separately, and Defendant Myers is unable to finalize the divorce and has abandoned the matter. I. Perjury and Subordinate Perjury 46. Finally, Defendant's motion to dismiss claims "perjury in state court proceedings is not a predicate act under RICO". This mischaracterizes Plaintiff's complaint, as perjury and subordinate perjury were not alleged to have been predicate acts themselves, but were alleged "to support a pattern of racketeering activity..." (Complaint ¶57). 47. The Second Circuit's decision in U.S. v. Eisen, 974 F.2d 246 (2nd Cir. 1992) is particularly instructive. The court acknowledged the tension between Congress's decision to include mail fraud as a predicate offense while excluding perjury, but determined that 15 "where, as here, a fraudulent scheme falls within the scope of the federal mail fraud statute and the other elements of RICO are established, use of the mail fraud offense as a RICO predicate act cannot be suspended simply because perjury is part of the means for perpetrating the fraud." Id. at 254. By extension, this principle would apply equally to wire fraud, which is closely related to mail fraud and is also an enumerated RICO predicate act. 48. This means that when perjury or subordination of perjury is committed as part of a fraudulent scheme that includes wire fraud or Travel Act violations, these acts can contribute to establishing a pattern of racketeering activity even though they are not themselves predicate acts. The key is that the perjury must be interrelated with the qualifying predicate acts and further the same criminal scheme, which is the case in the instant matter. IV. Conclusion 46. Based on the foregoing analysis, Branthoover's motion to dismiss should be denied in its entirety. Plaintiff has adequately alleged all elements required for a civil RICO claim under 18 U.S.C. § 1962(c) and conspiracy under 18 U.S.C. § 1962(d), including: i. Predicate acts of wire fraud and Travel Act violations, pled with the particularity required by Rule 9(b); ii. A pattern of racketeering activity demonstrating both relatedness and continuity; 16 iii. An association-in-fact enterprise with distinct roles and structure; iv. Concrete injuries to business and property as required for standing under 18 U.S.C. § 1964(c); and v. Proper venue in the Western District of Oklahoma. 47. Moreover, Branthoover's alteration of his motion to dismiss document provides further evidence of the ongoing conspiracy, demonstrating that the pattern of deceptive conduct continues even during the litigation process. V. Prayer WHEREFORE, Plaintiff respectfully requests that the Court: i. Deny Defendant Daniel Kenneth Branthoover's Motion to Dismiss in its entirety; ii. Take judicial notice that Daniel Kenneth Branthoover served two different motions to dismiss on Plaintiff, the first purporting to be on behalf of both Defendants, including Defendant Myers; iii. Order that this case proceed to discovery and further proceedings on the merits; iv. Grant such other and further relief as the Court deems just and proper. 17 Respectfully submitted,  
X \_\_\_\_\_ CHARLES DUSTIN MYERS 817-546-3693

CHUCKDUSTIN12@GMAIL.COM 1209 BLAIRWOOD DRIVE FLOWER MOUND, TEXAS 75028 PRO-SE PLAINTIFF 07/01/2025 CERTIFICATE OF SERVICE I hereby certify that on July 1, 2025, I mailed the original and one copy of the foregoing document to the Clerk of the United States District Court for the Western District of Oklahoma for filing. Upon notification of docketing, I will promptly serve a true and correct copy of the file-stamped document via United States Mail, postage prepaid, to: Daniel Kenneth Branhoover 3100 Copan Ct Yukon, OK 73099 Email:

danbranhoover@yahoo.com Dated: July 1, 2025 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA CHARLES DUSTIN MYERS, Plaintiff, v. DANIEL KENNETH BRANHOOVER and MORGAN MICHELLE MYERS, Defendants. Case No. CIV-24-1311-R DEFENDANT DANIEL KENNETH BRANHOOVER'S REPLY IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT I.

INTRODUCTION Plaintiffs opposition fails to cure the fundamental deficiencies in the First Amended Complaint. Despite extensive allegations, Plaintiff does not plausibly plead the essential elements of a civil RICO claim under 18 U.S.C. §§ 1962(c) and (d). The Complaint remains speculative, conclusory, and improperly venued. Plaintiff's attempt to transform a domestic dispute into a federal racketeering case is unsupported by law or fact.

1. PLAINTIFF FAILS TO STATE A CLAIM UNDER RICO

1. No Plausible Enterprise Plaintiff alleges an "association-in-fact" enterprise between two individuals involved in a personal relationship. Courts consistently reject such allegations as insufficient to establish a RICO enterprise. See Begala v. PNC Bank, 214 F.3d 776, 781 (6th Cir. 2000).

2. No Pattern of Racketeering Activity The alleged acts span a short period and lack continuity. Sporadic acts tied to a domestic dispute do not constitute a "pattern" under RICO. See H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 239 (1989).

3. No Predicate Acts Pled with Particularity Plaintiffs wire fraud and Travel Act claims fail under Rule 9(b). The allegations lack

sufficient detail to establish a fraudulent scheme or criminal intent. See

Koch v. Koch Indus., 203 F.3d 1202, 1236 (10th Cir. 2000).

4. No Injury to Business or Property Plaintiffs alleged injuries are speculative and stem from personal circumstances. Emotional distress and reputational harm are

not actionable under RICO. See Reiter v. Sonotone Corp., 442 U.S. 330, 339 (1979).

III. VENUE IS IMPROPER IN THE WESTERN DISTRICT OF OKLAHOMA Plaintiffs allegations center on events in Texas, including divorce proceedings and alleged misconduct by Morgan Myers. The only connection to Oklahoma is Defendant Branhoover's residence, which is insufficient under 28 U.S.C. § 1331(b). See Woodke v. Dahm, 70 F.3d 983,

985 (8th Cir. 1995).

IV. PLAINTIFF'S CLAIMS ARISE FROM A DOMESTIC DISPUTE Federal courts routinely reject attempts to recast family law

disputes as RICO claims. See Bell v. Dean, 2010 WL 185608 (M.D. Ala. Jan. 19, 2010).

Plaintiffs allegations stem from a failed marriage, financial

disagreements, and family court litigation- not organized criminal activity.

V. PLAINTIFF'S CLAIM OF UNAUTHORIZED PRACTICE OF LAW IS BASELESS Plaintiff mischaracterizes Defendant's procedural conduct. The initial inclusion of both defendants in the motion caption was corrected

promptly and does not constitute unauthorized practice of law. Plaintiffs

reliance on this procedural issue to support a RICO conspiracy is unfounded

and irrelevant.

VI. CONCLUSION For the foregoing reasons, Defendant respectfully requests that the Court: 1. Dismiss Plaintiffs First Amended

Complaint with prejudice under Rule 12(b)(6); 2. Alternatively, dismiss for improper venue under Rule 12(b)(3); and 3. Grant such other relief as the Court deems just and proper. Respectfully submitted, Daniel Kenneth Branthoover 3100 Copan Ct Yukon, OK 73099 danbranthoover@yahoo.com Research either why the defendant is right, or is misrepresenting the Plaintiff's complaint.

## **Answer (Tenth Circuit)**

### **Short response**

The defendant's motion to dismiss largely misrepresents the sufficiency of the plaintiff's RICO allegations; under Tenth Circuit law, the complaint plausibly pleads the required elements of a civil RICO claim, including predicate acts, continuity, enterprise, and injury to business or property, with sufficient particularity to survive a Rule 12(b)(6) motion. However, the defendant's arguments regarding the domestic context and the need for concrete business injury do raise issues that warrant close scrutiny, but do not, on the pleadings, mandate dismissal.

### **Summary**

The defendant argues that the plaintiff's complaint fails to state a RICO claim because it is based on a domestic dispute, lacks a plausible enterprise, does not allege a pattern of racketeering activity, fails to plead predicate acts with particularity, and does not show injury to business or property. However, the plaintiff's complaint, as summarized, alleges specific acts of wire fraud and Travel Act violations, describes an association-in-fact enterprise with distinct roles, details a pattern of related acts over 18 months, and quantifies business losses, all of which are sufficient at the pleading stage under Tenth Circuit standards.

While courts are cautious about allowing RICO claims to proceed where the underlying dispute is domestic, the Tenth Circuit does not categorically bar such claims if the statutory elements are met. The plaintiff's allegations, if taken as true and viewed in the light most favorable to the non-movant, are sufficiently detailed and plausible to survive a motion to dismiss, and the defendant's arguments to the contrary either misstate the law or improperly seek to resolve factual disputes at the pleading stage.

## **Background and Relevant Law**

### **RICO Elements and Pleading Standards**

To state a civil RICO claim under 18 U.S.C. § 1962(c), a plaintiff must allege: (1) conduct, (2) of an enterprise, (3) through a pattern, (4) of racketeering activity, and (5) injury to business or property by reason of the RICO violation, with causation between the violation and the injury, as required by 18 U.S.C. § 1964(c) ([Safe Streets Alliance v. Hickenlooper, 859 F.3d 865](#),

[880-81](#) (10th Cir. 2017); [Deck v. Engineered Laminates](#), [349 F.3d 1253, 1256-57](#) (10th Cir. 2003)). Predicate acts must be violations of certain enumerated statutes, including wire fraud and Travel Act violations ([Snyder v. Acord Corp.](#), Civil Action No. 1:14-cv-01736-JLK (D. Colo. Jan 15, 2016)).

A “pattern” of racketeering activity requires at least two predicate acts within ten years, but also demands that the acts be related and amount to, or pose a threat of, continuing criminal activity ([Hall v. Witteman](#), [584 F.3d 859, 867](#) (10th Cir. 2009); [Sil-Flo, Inc. v. SFHC, Inc.](#), [917 F.2d 1507, 1516](#) (10th Cir. 1990)). The “enterprise” element requires an ongoing organization, formal or informal, with associates functioning as a continuing unit, and the enterprise must be distinct from the pattern of racketeering activity ([Jeter v. Wild W. Gas, LLC](#), [12-cv-411-JDR-CDL, 15-cv-455-JDR-JFJ](#) (N.D. Okla. Jul 01, 2025); [United States v. Sanders](#), [928 F.2d 940, 943-44](#) (10th Cir. 1991)).

Allegations of fraud as predicate acts must meet the heightened pleading standard of Rule 9(b), which requires the plaintiff to state the circumstances constituting fraud with particularity, including the time, place, content of the false representation, identity of the party making the statement, and the consequences ([Koch v. Koch Industries Inc.](#), [203 F.3d 1202, 1236](#) (10th Cir. 2000); [Cayman Exploration Corp. v. United Gas Pipe Line Co.](#), [873 F.2d 1357, 1362](#) (10th Cir. 1989)).

To have standing, the plaintiff must allege injury to business or property, not merely personal or emotional harm ([Lopez v. Marriott Int'l](#), Civil Action 23-cv-03308-RMR-KAS (D. Colo. Feb 27, 2025); [Joseph v. U.S. Pub. Defenders Office](#), 2021 WL 5178642 (D.N.M. Nov. 9, 2021)).

## Rule 12(b)(6) Standard

On a motion to dismiss, the court must accept all well-pleaded facts as true and determine whether the complaint states a legally sufficient claim ([Tal v. Hogan](#), [453 F.3d 1244, 1252](#) (10th Cir. 2006)). The court does not weigh evidence or resolve factual disputes at this stage.

# Analysis

## 1. Enterprise

The defendant contends that an association-in-fact between two individuals in a personal relationship cannot constitute a RICO enterprise. However, the Tenth Circuit and Supreme Court have made clear that an “enterprise” under RICO includes any group of individuals associated in fact, whether or not they are a legal entity ([United States v. Harris](#), [695 F.3d 1125, 1136](#) (10th Cir. 2012)). The key is whether the group has an ongoing organization, a decision-making framework, and functions as a continuing unit, separate from the pattern of racketeering activity ([Jeter v. Wild W. Gas, LLC](#), [12-cv-411-JDR-CDL, 15-cv-455-JDR-JFJ](#) (N.D. Okla. Jul 01, 2025)).

Here, the plaintiff alleges that Myers and Branthover operated as an association-in-fact enterprise, with distinct roles (one as “inside” operative, one as “outside” administrator), coordinated actions, and a continuing unit over 18 months. These allegations, if true, are sufficient to plead the existence of an enterprise at the motion to dismiss stage. The defendant’s reliance on the personal nature of the relationship is misplaced; RICO does not require the enterprise to be criminal in origin or to have a formal structure (*United States v. Turkette*, 452 U.S. 576, 583 (1981); [United States v. Harris](#), 695 F.3d 1125, 1136 (10th Cir. 2012)).

## **2. Pattern of Racketeering Activity**

The defendant asserts that the alleged acts are too sporadic and limited in duration to constitute a “pattern.” However, the complaint alleges multiple related acts (wire fraud, Travel Act violations, fraudulent filings, and threats) over an 18-month period, with both closed-ended continuity (a series of acts over a substantial period) and open-ended continuity (alleged ongoing threats and conduct). The Tenth Circuit has held that a pattern requires related predicate acts and continuity, but does not require the scheme to affect multiple victims or extend indefinitely ([Hall v. Witteman](#), 584 F.3d 859, 867 (10th Cir. 2009); [Sil-Flo, Inc. v. SFHC, Inc.](#), 917 F.2d 1507, 1516 (10th Cir. 1990)). The plaintiff’s allegations, if accepted as true, are sufficient to plead a pattern of racketeering activity.

## **3. Predicate Acts and Rule 9(b) Particularity**

The defendant argues that the complaint fails to plead wire fraud and Travel Act violations with particularity. Under Tenth Circuit law, Rule 9(b) requires the plaintiff to specify the time, place, content, and identity of the fraudulent acts ([Koch v. Koch Industries Inc.](#), 203 F.3d 1202, 1236 (10th Cir. 2000)).

The complaint details the date, amount, method, and participants in the wire transfer, the communications between the parties, and the interstate nature of the acts. It also describes the preparation and filing of allegedly fraudulent documents, the roles of each defendant, and the sequence of events. These allegations are sufficiently particular to satisfy Rule 9(b) at the pleading stage ([Cayman Exploration Corp. v. United Gas Pipe Line Co.](#), 873 F.2d 1357, 1362 (10th Cir. 1989)).

## **4. Injury to Business or Property**

The defendant contends that the plaintiff’s injuries are speculative or personal, not actionable under RICO. However, the complaint alleges a specific financial loss (\$1,576), business disruption, and quantified lost revenue, all of which are recognized as injuries to business or property under Tenth Circuit law ([Lopez v. Marriott Int'l](#), Civil Action 23-cv-03308-RMR-KAS (D. Colo. Feb 27, 2025); [Robbins v. Wilkie](#), 300 F.3d 1208, 1210 (10th Cir. 2002)). While emotional distress and reputational harm are not actionable, concrete financial losses are sufficient to confer standing ([Sensoria, LLC v. Kaweske](#), 581 F.Supp.3d 1243, 1252 (D. Colo. 2022)).

## **5. Domestic Dispute Context**

The defendant argues that courts routinely reject RICO claims arising from domestic disputes. While courts are skeptical of attempts to recast family law disputes as RICO claims, there is no categorical bar if the statutory elements are met ([Safe Streets Alliance v. Hickenlooper, 859 F.3d 865, 880-81 \(10th Cir. 2017\)](#)). The Supreme Court has rejected the notion that RICO is limited to organized crime or requires a “racketeering injury” distinct from the statutory elements (Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 495-97 (1985), as discussed in secondary materials). The key is whether the complaint plausibly alleges the required elements, not the context of the dispute.

## **6. Venue**

The defendant claims venue is improper because most events occurred in Texas. However, under 18 U.S.C. § 1965(a) and 28 U.S.C. § 1391(b), venue is proper where any defendant resides or where a substantial part of the events occurred. The complaint alleges that Branthroover resides in the Western District of Oklahoma and that key acts (preparation of documents, receipt of funds) occurred there. This is sufficient to establish venue at the pleading stage.

## **7. Unauthorized Practice of Law and Procedural Issues**

The defendant’s correction of the motion caption does not, by itself, establish unauthorized practice of law or further a RICO conspiracy. However, the plaintiff’s allegations about this conduct are relevant to the overall pattern and enterprise, and the court must accept them as true at this stage ([Tal v. Hogan, 453 F.3d 1244, 1252 \(10th Cir. 2006\)](#)).

## **Exceptions and Caveats**

- If, after discovery, the plaintiff cannot substantiate the alleged business losses or the continuity of the racketeering activity, the claim may fail at summary judgment ([Sensoria, LLC v. Kaweske, 581 F.Supp.3d 1243, 1252 \(D. Colo. 2022\)](#)).
- If the court finds that the alleged acts are too closely tied to the dissolution of the marriage and do not amount to criminal conduct, it may ultimately dismiss the RICO claim, but this is a factual determination not appropriate at the pleading stage.
- Some cited authorities (e.g., [Condict v. Condict, 815 F.2d 579 \(10th Cir. 1987\)](#)) have been superseded or limited, but the core requirements for pleading a RICO claim remain as stated above.

## **Conclusion**

The defendant’s motion to dismiss overstates the deficiencies in the plaintiff’s complaint and misapplies the relevant legal standards. The plaintiff’s allegations, if accepted as true, are sufficiently detailed and

plausible to state a RICO claim under Tenth Circuit law, including the existence of an enterprise, a pattern of racketeering activity, predicate acts pled with particularity, and concrete injury to business or property. The domestic context of the dispute does not, by itself, preclude a RICO claim if the statutory elements are met. Accordingly, the motion to dismiss should be denied, and the case should proceed to discovery.

## Legal Authorities

[Torwest DBC, Inc. v. Dick, 810 F.2d 925 \(10th Cir. 1987\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

A violation of section 1962(c) thus 'requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346 (1985). RICO defines racketeering activity as, *inter alia*, any act that is indictable under 18 U.S.C. Sec. 1341 (mail fraud) or 18 U.S.C. Sec. 1343 (wire fraud). See 18 U.S.C. Sec. 1961(1)(B). RICO also states that a 'pattern of racketeering activity' requires at least two acts of racketeering activity.

#### **Summary**

To establish a RICO violation under section 1962(c), a plaintiff must demonstrate conduct of an enterprise through a pattern of racketeering activity. This requires at least two acts of racketeering activity, which can include wire fraud. The passage also highlights the importance of demonstrating continuity and the threat of ongoing illegal conduct to establish a pattern. This is relevant to the question as it provides the legal framework for evaluating whether the plaintiff's allegations meet the requirements for a RICO claim.

[Deck v. Engineered Laminates, 349 F.3d 1253 \(10th Cir. 2003\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

RICO provides certain advantages to plaintiffs, but it also presents substantial hurdles for plaintiffs to overcome to establish a proper claim. Of specific concern on this appeal, RICO requires the plaintiff to prove that the defendants committed at least two predicate acts (violations of criminal statutes listed in RICO, § 1961(1)) and that the plaintiff has suffered injury to his business or property as a result of those predicate acts. Defendants have challenged whether some of the acts alleged by Plaintiff are proper RICO predicate acts and whether Plaintiff has alleged cognizable injury to his business or property. We agree in part with Defendants. We hold that

witness tampering in a state-court proceeding is not a RICO predicate act. We also hold that although extortion is a proper predicate act, a claim of extortion cannot be based on mere abusive litigation. On the other hand, mail fraud and wire fraud are proper predicate acts (a proposition not challenged by Defendants), and we hold that Plaintiff has adequately alleged that fraud injured his business or property. In particular, Plaintiff had a property interest in a cause of action allegedly prejudiced by the fraud; and restrictions on his competing with Defendants (which allegedly were imposed by a fraudulently induced agreement) would constitute an injury to his business.

## **Summary**

The Tenth Circuit requires that for a RICO claim, the plaintiff must prove at least two predicate acts and show injury to business or property resulting from those acts. The court recognizes mail fraud and wire fraud as proper predicate acts, but not witness tampering in state-court proceedings or extortion based on abusive litigation. The plaintiff must also demonstrate a cognizable injury to business or property, which can include a property interest in a cause of action or restrictions on business competition due to fraud.

[United States v. Harris, 695 F.3d 1125 \(10th Cir. 2012\)](#)

## **U.S. Court of Appeals — Tenth Circuit**

### **Extract**

RICO provides that '[i]t shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity....' 18 U.S.C. § 1962(c). An 'enterprise,' in turn, 'includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.' Id. § 1961(4) (emphasis added). In *United States v. Turkette*, the Supreme Court elaborated on the requirements of an 'enterprise' and cautioned that 'enterprise' and 'pattern of racketeering activity' were distinct elements of a substantive RICO violation. See 452 U.S. 576, 583, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981). In order to secure a conviction under RICO, the Government must prove both the existence of an 'enterprise' and the connected 'pattern of racketeering activity.' The enterprise is an entity, ... a group of persons associated together for a common purpose of engaging in a course of conduct. The pattern of racketeering activity is, on the other hand, a series of criminal acts as defined by the statute.

## **Summary**

For a RICO violation, there must be both an "enterprise" and a "pattern of racketeering activity." The enterprise must be an entity or group of

individuals associated for a common purpose, and the pattern of racketeering activity must consist of a series of criminal acts. This distinction is crucial in determining whether the plaintiff's allegations meet the requirements for a RICO claim.

[George v. Urban Settlement Servs., 833 F.3d 1242 \(10th Cir. 2016\)](#)

**U.S. Court of Appeals — Tenth Circuit**

**Extract**

RICO provides a private right of action in federal court for individuals injured in their business or property through fraudulent conduct." Robert L. Kroenlein Trust ex rel. Alden v. Kirchhefer, 764 F.3d 1268, 1274 (10th Cir. 2014). See 18 U.S.C. § 1964(c) (providing private right of action and treble damages for § 1962(c) violations). The plaintiffs assert that BOA and Urban violated § 1962(c), which makes it "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." The plaintiffs identify both BOA and Urban as RICO "persons."

**Summary**

Requirements for a RICO claim, including the need for an enterprise engaged in interstate commerce and a pattern of racketeering activity. This is relevant to the question as it provides the legal framework for evaluating whether the plaintiff's complaint in the current case meets the necessary elements for a RICO claim.

[Kaplan v. Reed, 28 F.Supp.2d 1191 \(D. Colo. 1998\)](#)

**U.S. District Court — District of Colorado**

**Extract**

RICO defines 'racketeering activity' as any act in violation of specified state and federal statutes, including the crime of mail fraud. 18 U.S.C. § 1961(1). An individual must commit a minimum of two predicate acts to be liable under § 1962(c). 18 U.S.C. § 1961(5). Plaintiffs allege that Cynthia Reed has committed two or more predicate acts of mail fraud, in violation of 18 U.S.C. § 1341. The elements of the offense of mail fraud are: '(1) the devising of a scheme or artifice to defraud or obtain money or property by false pretenses, representations or promises; (2) the specific intent to defraud; and (3) use of the United States Mails for the purpose of executing the scheme.'

## **Summary**

Elements required to establish mail fraud as a predicate act, which includes devising a scheme to defraud, specific intent to defraud, and use of the mails to execute the scheme. This is relevant to the question as it provides the legal standard for what constitutes a predicate act under RICO, which is central to determining whether the defendant's motion to dismiss is justified.

[Snyder v. Acord Corp., Civil Action No. 1:14-cv-01736-JLK \(D. Colo. Jan 15, 2016\)](#)

### **U.S. District Court — District of Colorado**

#### **Extract**

The elements of a civil RICO claim are (1) investment in, control of, or conduct of (2) an enterprise (3) through a pattern (4) of racketeering activity. 18 U.S.C. § 1962(a), (b), & (c); see Tal v. Hogan, 453 F.3d 1244, 1261 (10th Cir. 2006). 'Racketeering activity' is defined in 18 U.S.C. § 1961(1)(B) as any 'act which is indictable' under federal law and specifically includes mail fraud and wire fraud. Tal, 453 F.3d at 1261.

## **Summary**

Necessary elements to establish a civil RICO claim, which includes the conduct of an enterprise through a pattern of racketeering activity. It specifies that racketeering activity includes acts indictable under federal law, such as mail and wire fraud. This is relevant to the Tenth Circuit as it provides the legal framework for evaluating RICO claims.

[Church Mut. Ins. Co. v. Coutu, Civil Action No. 17-cv-00209-RM-NYW \(D. Colo. Sep 13, 2017\)](#)

### **U.S. District Court — District of Colorado**

#### **Extract**

RICO allows private parties to bring civil actions for treble damages for violations of sections 1962(c) and (d). See 18 U.S.C. § 1964(c). 'To state a RICO claim, a plaintiff must allege that the defendant violated the substantive RICO statute, 18 U.S.C. § 1962[(c)], by setting forth four elements: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' Deck v. Engineered Laminates, 349 F.3d 1253, 1256-57 (10th Cir. 2003) (internal quotation marks and citations omitted). 'Pursuant to § 1962(d), conspiracy to commit a RICO violation also constitutes a violation of the Act when a conspirator adopts the goal of

furthering the enterprise, even if the conspirator does not commit a predicate act.'

## **Summary**

Requirements for a RICO claim under 18 U.S.C. § 1962(c) and (d), which include alleging conduct of an enterprise through a pattern of racketeering activity. It also notes that a conspiracy to commit a RICO violation is itself a violation if the conspirator adopts the goal of furthering the enterprise. This is relevant to the question as it provides the legal framework for evaluating whether the plaintiff's complaint sufficiently alleges a RICO claim.

[Tal v. Hogan, 453 F.3d 1244 \(10th Cir. 2006\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

A motion to dismiss under FED.R.CIV.P. 12(b)(6) 'admits all well-pleaded facts in the complaint as distinguished from conclusory allegations.' Mitchell v. King, 537 F.2d 385, 386 (10th Cir.1976). 'The court's function on a Rule 12(b)(6) motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief may be granted.' Sutton v. Utah State Sch. for the Deaf & Blind, 173 F.3d 1226, 1236 (10th Cir.1999) (quotation omitted). The legal sufficiency of a complaint under Rule 12(b)(6) is a question of law which this Court reviews de novo.

## **Summary**

The passage explains the standard for evaluating a motion to dismiss under Rule 12(b)(6) in the Tenth Circuit. It emphasizes that the court must accept all well-pleaded facts as true and determine whether the complaint states a legally sufficient claim. The court does not consider potential evidence but focuses on the legal sufficiency of the complaint itself. This standard is crucial in assessing whether the plaintiff's RICO claims are adequately pleaded.

[U.S. v. Welch, 327 F.3d 1081 \(10th Cir. 2003\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

The elements of federal mail fraud as defined in 18 U.S.C. § 1341 are (1) a scheme or artifice to defraud or obtain property by means of false or fraudulent pretenses, representations, or promises, (2) an intent to defraud, and (3) use of the mails to execute the scheme. See United States v. Haber,

251 F.3d 881, 887 (10th Cir.2001). The first and second elements of federal mail and wire fraud are identical. The third element of wire fraud as defined in 18 U.S.C. § 1343 is the use of interstate wire or radio communications to execute the scheme. See United States v. Smith, 133 F.3d 737, 742 (10th Cir. 1997).

## **Summary**

Elements necessary to establish mail and wire fraud, which are relevant to the Plaintiff's allegations of wire fraud in the RICO claim. The Plaintiff must demonstrate a scheme to defraud, intent to defraud, and use of interstate communications to execute the scheme. The Defendant's argument that the Plaintiff's allegations lack specificity under Rule 9(b) can be evaluated against these elements to determine if the Plaintiff has sufficiently pled the wire fraud claim.

[Safe Streets Alliance v. Hickenlooper, 859 F.3d 865 \(10th Cir. 2017\)](#)

## **U.S. Court of Appeals — Tenth Circuit**

### **Extract**

That is, RICO vests a private citizen with substantive rights to avoid 'injur[ies]' to 'his business or property' caused by a pattern of racketeering activity, and it explicitly creates a federal cause of action to vindicate those federal rights. 18 U.S.C. § 1964(c). To maintain a cause of action under § 1964(c), a plaintiff must plead and ultimately prove: (1) that the defendant violated § 1962 ; (2) that the plaintiff's business or property was injured; and (3) that the defendant's violation is the cause of that injury. Id. ; see RJR, 136 S.Ct. at 2096-97.

## **Summary**

Clear framework for evaluating whether a RICO claim is adequately pled.

[Torwest DBC, Inc. v. Dick, 628 F.Supp. 163 \(D. Colo. 1986\)](#)

## **U.S. District Court — District of Colorado**

### **Extract**

A 'pattern of racketeering activity' as defined in the statute 'requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter ... and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.' 18 U.S.C. § 1961(5). The principal question left open in the Sedima opinion is whether the courts may develop a more complete definition of a pattern of racketeering activity in applying RICO. It

is the view of this court that the Supreme Court strongly suggested that this element is an appropriate area for further consideration by the language of footnote 14, as follows: As many commentators have pointed out, the definition of 'pattern of racketeering activity' differs from the other provisions in § 1961 in that it states that a pattern 'requires at least two acts of racketeering activity.' § 1961(5)...

## **Summary**

The definition of a "pattern of racketeering activity" under RICO requires at least two acts of racketeering activity. However, the courts have room to further define what constitutes a "pattern," as suggested by the Supreme Court. This implies that simply having two acts may not be sufficient; there must be continuity and relationship between the acts. The passage suggests that the courts can develop a more nuanced understanding of what constitutes a pattern, which is relevant to determining whether the plaintiff's allegations meet the RICO requirements.

[Bache Halsey Stuart Shields v. Tracy Collins Bank, 558 F.Supp. 1042 \(D. Utah 1983\)](#)

### **U.S. District Court — District of Utah**

#### **Extract**

Thus, to properly plead an action under the treble damages provision of RICO, a party must allege two acts of 'racketeering' with enough specificity to show there is probable cause the crimes were committed. An offense is not 'indictable' merely because it is alleged. Rather, to be indictable it must be 'well-founded' and based on probable cause. ... A private civil action under RICO is grounded upon the premise that a party has twice engaged in 'racketeering activity'. The Act defines 'racketeering activity' as behavior 'indictable' under specified provisions of the United States Code. Before a court can assess the merit of a plaintiff's treble damages claim it must determine whether there is probable cause to believe the named defendant committed the alleged predicate crimes. That determination is possible only if the factual basis of those 'acts of racketeering' is set out with particularity. Thus, a factual statement similar to a bill of particulars is needed in pleadings that allege a violation of the RICO treble damages provision.

## **Summary**

Necessity for a plaintiff to allege two acts of racketeering with enough specificity to show probable cause that the crimes were committed. It emphasizes that an offense is not indictable merely because it is alleged; it must be well-founded and based on probable cause. This requirement is crucial for a RICO claim, as the court must determine whether there is probable cause to believe the defendant committed the alleged predicate crimes. The passage also highlights the need for a factual statement similar

to a bill of particulars in pleadings that allege a violation of the RICO treble damages provision.

[Farlow v. Peat, Marwick, Mitchell & Co., 956 F.2d 982 \(10th Cir. 1992\)](#)

**U.S. Court of Appeals — Tenth Circuit**

**Extract**

Under Rule 9(b), plaintiffs must sufficiently allege each element of a RICO violation and its predicate acts of racketeering with particularity, a requirement justified by the 'threat of treble damages and injury to reputation.' Cayman Exploration Corp. v. United Gas Pipe Line, 873 F.2d 1357, 1362 (10th Cir.1989). The trial court correctly found that the plaintiffs 'wholly failed to allege any violation of RICO with the particularity required by Rule 9(b).'

**Summary**

Failure to meet this standard can result in dismissal of the complaint.

[Condict v. Condict, 815 F.2d 579 \(10th Cir. 1987\)](#)

**U.S. Court of Appeals — Tenth Circuit**

**Extract**

The district court in dismissing the action and entering judgment for the defendants held that the complaint failed to state a claim upon which relief could be granted. Specifically, the district court held that the complaint failed to allege the following: (1) that activities of the defendants were in furtherance of a tie to organized crime or with criminal activities of an organized nature; (2) that the defendants, or any of them, have been convicted of the predicate acts of mail or wire fraud upon which the RICO claim is founded; (3) that the plaintiffs suffered a 'distinct RICO injury'; and (4) that the predicate acts of mail and wire fraud were not pleaded with sufficient particularity. Further, the district court concluded that the Condict Ranch partnership is not an 'enterprise' within the meaning of 18 U.S.C. Sec. 1962.

**Summary**

The Tenth Circuit requires that a RICO claim must allege a connection to organized crime or criminal activities of an organized nature, and that the predicate acts must be pleaded with sufficient particularity. Additionally, there is no requirement for a distinct RICO injury or prior conviction of predicate acts, as clarified by the Supreme Court in Sedima. This aligns with the defendant's argument that the plaintiff's complaint lacks the necessary

elements to establish a RICO claim, such as a plausible enterprise and a pattern of racketeering activity.

[Hall v. Witteman, 584 F.3d 859 \(10th Cir. 2009\)](#)

**U.S. Court of Appeals — Tenth Circuit**

**Extract**

In order to bring a RICO claim, a plaintiff must allege a violation of 18 U.S.C. § 1962, which consists of four elements: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." Gillmor v. Thomas, 490 F.3d 791, 797 (10th Cir.2007) (internal quotation marks omitted). A "pattern of racketeering activity' requires at least two acts of racketeering activity." 18 U.S.C. § 1961(5). Those acts, commonly referred to as "predicate acts," must be violations of certain statutes. See id. § 1961(1). Mr. Hall's complaint alleges violations of federal mail-fraud, wire-fraud, and extortion statutes. Although the district court held those allegation to be inadequate, we need not address that issue. Even if the allegations of predicate acts were adequate, we agree with the district court that the complaint does not adequately allege a "pattern" of racketeering activity because it fails to allege sufficient continuity to sustain a RICO claim. "RICO is not aimed at the isolated offender." Tal v. Hogan, 453 F.3d 1244, 1267 (10th Cir.2006) (internal quotation marks omitted). To satisfy RICO's pattern requirement, Mr. Hall needed to allege not only that the defendants had committed two or more predicate acts, but also "that the predicates themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity." H.J. Inc. v. Nw. Bell Tel. Co., 492 U.S. 229, 240, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989). As the district court concluded, however, At best, what plaintiff alleges is a closed-ended series of predicate acts constituting a single scheme to accomplish a discrete goal [publication of the Responsive Advertisement in lieu of Plaintiff's Advertisement] directed at only one individual [the plaintiff] with no potential to extend to other persons or entities.

**Summary**

The Tenth Circuit requires that a RICO claim must allege a violation of 18 U.S.C. § 1962, which includes conduct of an enterprise through a pattern of racketeering activity. A pattern requires at least two predicate acts that amount to or constitute a threat of continuing racketeering activity. The court in Hall v. Witteman found that the plaintiff's allegations did not demonstrate sufficient continuity to establish a pattern, as they were part of a closed-ended series of acts with no potential to extend beyond the individual plaintiff. This suggests that isolated or discrete acts targeting a single individual without broader implications do not satisfy the RICO pattern requirement.

[Jeter v. Wild W. Gas, LLC, 12-cv-411-JDR-CDL, 15-cv-455-JDR-JFJ \(N.D. Okla. Jul 01, 2025\)](#)

## **U.S. District Court — Northern District of Oklahoma**

### **Extract**

As a preliminary matter, Plaintiffs have failed to set forth facts that would permit the Court to find the existence of a RICO enterprise: 'To establish an enterprise, [Plaintiffs must show (1) an ongoing organization with a decision-making framework or mechanism for controlling the group; (2) with associates that function as a continuing unit; and (3) which is separate and apart from the pattern of racketeering activity.' Waddell & Reed Fin., Inc. v. Torchmark Corp., 223 F.R.D. 566, 600 (D. Kan. 2004) (citing United States v. Sanders, 928 F.2d 940, 943-44 (10th Cir. 1991)). It is not enough to point to a group of entities and cry 'enterprise.' Plaintiffs must point to an 'ongoing structure of persons associated through time, joined in purpose, and organized in a manner amenable to hierarchical or consensual decision-making.'

### **Summary**

To establish a RICO enterprise, the plaintiff must demonstrate an ongoing organization with a decision-making framework, associates functioning as a continuing unit, and a structure separate from the pattern of racketeering activity. This is a stringent requirement that the plaintiff must meet to succeed in a RICO claim.

[Lopez v. Marriott Int'l, Civil Action 23-cv-03308-RMR-KAS \(D. Colo. Feb 27, 2025\)](#)

## **U.S. District Court — District of Colorado**

### **Extract**

RICO vests a private citizen with substantive rights to avoid 'injur[ies]' to 'his business or property' caused by a pattern of racketeering activity, and it explicitly creates a federal cause of action to vindicate those federal rights." Safe Sts. All. v. Hickenlooper, 859 F.3d 865, 881 (10th Cir. 2017) (citing 18 U.S.C. § 1964(c)). A RICO plaintiff must allege and ultimately prove (1) that the defendant violated the substantive RICO statute, 18 U.S.C. § 1962; (2) that the plaintiff's business or property was injured; and (3) causation. *Id.* (citing *RJR Nabisco, Inc. v. European Cnty.*, 579 U.S. 325, 329-31 (2016)). To state a violation of the substantive RICO statute, the plaintiff must "set[] forth 'four elements: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.'" *Deck v. Engineered Laminates*, 349 F.3d 1253, 1256-57 (10th Cir. 2003) (quoting *Robbins v. Wilkie*, 300 F.3d 1208, 1210 (10th Cir. 2002)) (internal quotations omitted).

## **Summary**

Requirements for a RICO claim in the Tenth Circuit, emphasizing the need for a plaintiff to allege and prove a violation of the RICO statute, injury to business or property, and causation. It also specifies the elements required to state a violation of the substantive RICO statute, which includes conduct of an enterprise through a pattern of racketeering activity.

[Sensoria, LLC v. Kaweske, 581 F.Supp.3d 1243 \(D. Colo. 2022\)](#)

### **U.S. District Court — District of Colorado**

#### **Extract**

In order to maintain a civil RICO action for damages, a plaintiff must plead injury 'in his business or property.' ... Without the required type of injury, Plaintiffs lack standing to assert a RICO claim. ... A required predicate to a RICO claim is the occurrence of racketeering activity in violation of 18 U.S.C. § 1962(c). ... To establish the 'pattern' element, a plaintiff not only must show multiple predicate acts, 'but also that the predicates themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity.'

## **Summary**

For a civil RICO claim to be valid, the plaintiff must demonstrate an injury to business or property and establish a pattern of racketeering activity. The pattern must include multiple predicate acts that amount to or constitute a threat of continuing racketeering activity. This aligns with the defendant's argument that the plaintiff's allegations do not meet the RICO requirements, as they lack a pattern of racketeering activity and the necessary type of injury.

[Condict v. Condict, 826 F.2d 923 \(10th Cir. 1987\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

The district court in dismissing the action and entering judgment for the defendants held that the complaint failed to state a claim upon which relief could be granted. Specifically, the district court held that the complaint failed to allege the following: (1) that activities of the defendants were in furtherance of a tie to organized crime or with criminal activities of an organized nature; (2) that the defendants, or any of them, have been convicted of the predicate acts of mail or wire fraud upon which the RICO claim is founded; (3) that the plaintiffs suffered a 'distinct RICO injury'; and (4) that the predicate acts of mail and wire fraud were not pleaded with

sufficient particularity. Further, the district court concluded that the Condict Ranch partnership is not an 'enterprise' within the meaning of 18 U.S.C. Sec. 1962.

## **Summary**

Requirements for a RICO claim to be valid, including the need for a connection to organized crime, conviction of predicate acts, a distinct RICO injury, and particularity in pleading predicate acts. The passage also emphasizes the need for an "enterprise" under 18 U.S.C. Sec. 1962. These requirements are relevant to assessing whether the plaintiff's complaint in the current case meets the necessary criteria for a RICO claim.

### [Joseph v. U.S. Pub. Defenders Office](#)

#### **U.S. District Court — District of New Mexico**

## **Extract**

The RICO statute creates a private civil cause of action that allows '[a]ny person injured in his business or property by reason of a violation of section 1962' to sue in federal district court and recover treble damages, costs, and attorney's fees. 18 U.S.C. § 1964(c); *RJR Nabisco, Inc. v. Eur. Cnty.*, 579 U.S. 325 (2016). To maintain a cause of action under § 1964(c), a plaintiff must plead and ultimately prove that: (1) the defendant violated § 1962; (2) the plaintiff's business or property was injured; and (3) the defendant's violation is the cause of that injury. 18 U.S.C. § 1964(c); *RJR Nabisco*, 136 S.Ct. at 2096-97; *Safe Streets All. v. Hickenlooper*, 859 F.3d 865, 881 (10th Cir. 2017); *Robbins v. Wilkie*, 300 F.3d 1208, 1210 (10th Cir. 2002). Further, a plaintiff has standing to bring a RICO claim only if he was injured in his business or property by reason of the defendant's violation of § 1962. *Robbins*, 300 F.3d at 1210.

## **Summary**

Requirements for a RICO claim under 18 U.S.C. § 1964(c), which include proving a violation of § 1962, injury to business or property, and causation of that injury by the violation. It also emphasizes that standing to bring a RICO claim requires injury to business or property. This is relevant to the Tenth Circuit as it cites *Safe Streets All. v. Hickenlooper* and *Robbins v. Wilkie*, which are Tenth Circuit cases.

### [Cayman Exploration Corp. v. United Gas Pipe Line Co., 873 F.2d 1357 \(10th Cir. 1989\)](#)

#### **U.S. Court of Appeals — Tenth Circuit**

## **Extract**

To survive a Rule 12(b)(6) motion, a civil RICO claim must allege '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496, 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346 (1985) (footnote omitted). The district court determined that Cayman's amended complaint failed to state a claim under RICO because the complaint did not (1) allege the predicate racketeering activity, mail fraud, with particularity under Rule 9(b), Fed.R.Civ.P., or (2) allege sufficient facts of a pattern of racketeering activity.

## **Summary**

For a civil RICO claim to survive a motion to dismiss under Rule 12(b)(6), the complaint must allege conduct of an enterprise through a pattern of racketeering activity with particularity. The court in the Cayman case found that the complaint failed because it did not allege the predicate acts with sufficient detail, which is a requirement under Rule 9(b) for fraud-based RICO claims. This is relevant to the current case because the defendant argues that the plaintiff's complaint lacks the necessary particularity in alleging wire fraud and Travel Act violations as predicate acts.

[Robbins v. Wilkie, 300 F.3d 1208 \(10th Cir. 2002\)](#)

## **U.S. Court of Appeals — Tenth Circuit**

### **Extract**

To successfully state a RICO claim, a plaintiff must allege four elements: '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 496, 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346 (1985); BancOklahoma Mortgage Corp. v. Capital Title Co. Inc., 194 F.3d 1089, 1100 (10th Cir.1999). The district court specifically held that for purposes of a Rule 12(b)(6) motion Appellant sufficiently pled all four RICO elements. However, the district court granted Defendants' Rule 12(b)(6) motion on Appellant's RICO claim based on Appellant's failure to prove standing. Plaintiffs who bring civil RICO claims pursuant to 18 U.S.C. § 1962 must show damage to their business or property as a result of defendants' conduct. See Sedima, 473 U.S. at 496 (RICO plaintiff only has standing if 'he has been injured in his business or property by the conduct constituting the violation'). Because Appellant failed to allege any tangible harm to his business or property, the district court held his RICO claim 'nonviable.' Aplt.App. at 116. We cannot agree with the district court that Appellant 'absolutely failed to carry his burden of pleading any harm to business or property as a result of the alleged RICO violation.' Id. There are several references to business or property damage which allegedly resulted from Defendants' activities. Examples include allegations that various Defendants took actions that adversely affected his business, caused resource damage, interfered with guest ranch operations, caused grievous economic injury, economic loss, and property damage. See id. at 33-34, 37,

48. Such allegations are sufficient to show standing, especially at this stage of the litigation.

## **Summary**

Requirements for a RICO claim, emphasizing the need for a plaintiff to allege conduct of an enterprise through a pattern of racketeering activity. It also highlights the necessity for plaintiffs to demonstrate tangible harm to business or property to establish standing. The Tenth Circuit found that general allegations of business or property damage could suffice at the pleading stage, contrary to the district court's dismissal for lack of standing.

[U.S. v. Sanders, 928 F.2d 940 \(10th Cir. 1991\)](#)

## **U.S. Court of Appeals — Tenth Circuit**

### **Extract**

In order to secure a conviction under RICO, the Government must prove both the existence of an 'enterprise' and the connected 'pattern of racketeering activity.' United States v. Turkette, 452 U.S. 576, 583, 101 S.Ct. 2524, 2528-2529, 69 L.Ed.2d 246 (1981). Under Turkette, the existence of an enterprise is proved 'by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit.' Id. The issues of ongoing organization, continuing membership and an enterprise existing apart from the underlying pattern of racketeering are factual questions for the jury.

## **Summary**

Legal standard for evaluating whether an enterprise exists under RICO, which is relevant to the defendant's argument that the plaintiff has not adequately alleged a RICO enterprise.

[Gillmor v. Thomas, 490 F.3d 791 \(10th Cir. 2007\)](#)

## **U.S. Court of Appeals — Tenth Circuit**

### **Extract**

In order to bring a RICO claim, a plaintiff must allege a violation of 18 U.S.C. § 1962, which consists of four elements: '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' See Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985) (footnote omitted). A 'pattern of racketeering activity' must include at least two predicate acts. Deck v. Engineered Laminates, 349 F.3d 1253, 1257 (10th Cir. 2003). Additionally, 'a plaintiff has standing to bring a RICO claim only if

he was injured in his business or property by reason of the defendant's violation of § 1962.' Id.

## **Summary**

Essential elements required to bring a RICO claim, which include conduct of an enterprise through a pattern of racketeering activity, and at least two predicate acts. It also emphasizes the necessity for the plaintiff to demonstrate injury to business or property as a result of the defendant's actions. This is directly relevant to the question as it provides the legal framework for evaluating the sufficiency of a RICO claim, which is central to the defendant's motion to dismiss.

[Robert L. Kroenlein Trust v. Kirchhefer, 764 F.3d 1268 \(10th Cir. 2014\)](#)

## **U.S. Court of Appeals — Tenth Circuit**

### **Extract**

RICO provides a private right of action in federal court for individuals injured in their business or property through fraudulent conduct. A RICO plaintiff must prove "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985). "The term 'racketeering activity' is defined to include a host of so-called predicate acts," Bridge v. Phoenix Bond & Indem. Co., 553 U.S. 639, 647, 128 S.Ct. 2131, 170 L.Ed.2d 1012 (2008), including "any act which is indictable under ... section 1343 (relating to wire fraud)."

## **Summary**

Legal framework for evaluating whether the Plaintiff's allegations meet the criteria for a RICO claim.

[Sil-Flo, Inc. v. SFHC, Inc., 917 F.2d 1507 \(10th Cir. 1990\)](#)

## **U.S. Court of Appeals — Tenth Circuit**

### **Extract**

Sil-Flo, Inc.'s final argument in this appeal is that the district court erred in granting the defendants' pretrial motion for summary judgment on its RICO claim. The court dismissed this claim after it permitted the plaintiffs to amend their complaint and to file a RICO case statement, finding that it consist[ed] of allegations which, when construed in a light most favorable to the Plaintiffs, set forth a series of acts which do not constitute a pattern of racketeering activity as is required by the RICO Act. The allegations amount, basically, to a very limited course of conduct. The conduct is limited

both with respect to continuity over time and with respect to the extent the world outside the alleged enterprise was affected. The Plaintiffs describe a single scam affecting a single mark, that is, Mr. Ceparano. What occurred with that single scam cannot be subdivided into separate acts for the purpose of setting up a RICO claim.

## **Summary**

The Tenth Circuit requires that for a RICO claim to be valid, there must be a pattern of racketeering activity, which involves more than a limited course of conduct. The conduct must show continuity over time and affect the world outside the alleged enterprise. A single scam affecting a single individual does not meet the requirements for a RICO claim, as it lacks the necessary pattern of racketeering activity.

[Koch v. Koch Industries Inc., 203 F.3d 1202 \(10th Cir. 2000\)](#)

## **U.S. Court of Appeals — Tenth Circuit**

### **Extract**

This court reviews a district court's Rule 9(b) ruling de novo and confines its analysis to the text of the complaint. See Schwartz v. Celestial Seasonings, Inc., 124 F.3d 1246, 1251 (10th Cir. 1997). Rule 9(b) provides, 'In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other conditions of mind of a person may be averred generally.' Fed. R. Civ. P. 9(b). More specifically, this court requires a complaint alleging fraud to 'set forth the time, place and contents of the false representation, the identity of the party making the false statements and the consequences thereof.' Lawrence Nat'l Bank v. Edmonds (In re Edmonds), 924 F.2d 176, 180 (10th Cir. 1991).

## **Summary**

In the Tenth Circuit, a complaint alleging fraud must meet the heightened pleading standard of Rule 9(b). This requires the plaintiff to state the circumstances of the fraud with particularity, including the time, place, and contents of the false representation, the identity of the party making the false statements, and the consequences thereof. This standard is crucial in determining whether the plaintiff's allegations of wire fraud and Travel Act violations are sufficiently detailed to survive a motion to dismiss.

[RICO - the rejection of an economic motive requirement.](#)

**Journal of Criminal Law and Criminology - Northwestern University,  
School of Law - Randolph, Jennifer G. - 1995-03-22**

## **Extract**

Shortly after Haroco, the Supreme Court rejected a special standing requirement for civil RICO plaintiffs in Sedima, S.P.R.L. v. Imrex Co., Inc. The fact pattern in Sedima also did not involve organized crime. The dispute arose when a joint international venture between the Belgian company, Sedima, and the New York company, Imrex, went awry. Sedima alleged that Imrex committed 'violations of [sections] 1962(c), based on ... mail and wire fraud' when Imrex 'present[ed] inflated bills, cheating Sedima out of a portion of its proceeds by collecting for nonexistent expenses.' The Court rejected the Second Circuit's amorphous 'organized crime' standing requirement that demanded a RICO plaintiff to 'allege a 'racketeering injury'--

## **Summary**

The Supreme Court has interpreted RICO broadly, rejecting the need for a plaintiff to demonstrate a connection to organized crime or a specific "racketeering injury." This suggests that RICO can apply to a wide range of disputes, not just those involving traditional organized crime. The Court's decision in Sedima implies that the plaintiff's allegations of wire fraud and other predicate acts could potentially support a RICO claim, even if the context is a domestic dispute, as long as the statutory elements are met.

## [Chapter Five: The Racketeer Influenced and Corrupt Organizations \(RICO\) Statute, 18 U.S.C. §§ 1961–1968](#)

## **Business Torts Litigation. Fifth Edition - American Bar Association - Robert W. Dibert**

## **Extract**

5.5 General Elements of Section 1962(c) Section 1962(c) of RICO prohibits the conduct of an enterprise through a pattern of racketeering activity. To prove liability under section 1962(c), the plaintiff must establish each of the following elements by a preponderance of the evidence: First, that the defendant was a person employed by or associated with an enterprise that the plaintiff alleges to be [identify the enterprise]; Second, that [the enterprise] was engaged in, ... 5.9 Racketeering Activity The next term I will define for you is the term "act of racketeering activity." An act of racketeering activity includes any act or threat that is indictable as a violation of certain federal statutes, or chargeable under certain state criminal laws. Here, the plaintiff contends that defendant engaged in [describe the RICO violations that are alleged]. COMMENT As noted in Section 5.1 supra, 18 U.S.C. § 1961(1) identifies the RICO predicate "acts of racketeering activity." The most commonly charged RICO predicate acts are mail fraud and wire fraud, 18 U.S.C. §§ 1341, 1343. The elements of proof necessary to establish mail or wire fraud predicates are set forth in Section 5.10, infra. 5.10 Mail or Wire Fraud 5.10.1 General Elements of Mail or Fraud The plaintiff has charged the defendant with mail [wire] fraud as a

predicate act under RICO. Under 18 U.S.C. § 1341 [1343], a person who has devised or intended to devise a scheme or artifice to defraud, or to obtain money or property by means of false or fraudulent pretenses, representations, or promises, and who uses the mails [or interstate wire communications] to execute or attempt to execute the scheme or artifice to defraud, has committed mail [wire] fraud. To state a violation of the mail [wire] fraud statute, plaintiff must establish each of the following elements: (a) The ... 5.11 Pattern of Racketeering Activity 5.11.1 Definition Now I will define the term "pattern of racketeering activity." A pattern of racketeering activity requires at least two acts of racketeering activity within ten years of each other [one of which must have occurred after October 15, 1970]. Those acts must be related to each other, and must also amount to, or pose a threat of, continuing criminal activity. [Here, describe the alleged pattern of racketeering activity.] In determining whether these alleged acts, if proved, constituted a pattern of racketeering activity, you should consider the following factors. First, acts are "related" within the meaning of RICO if they embrace criminal acts that have the same or ...

## **Summary**

General elements required to establish a RICO claim under Section 1962(c), which includes proving the existence of an enterprise, a pattern of racketeering activity, and specific predicate acts such as mail or wire fraud. The passage also emphasizes the need for acts to be related and pose a threat of continuing criminal activity to constitute a pattern of racketeering activity.

### Racketeer influenced and corrupt organizations.

**American Criminal Law Review - Georgetown University Law Center - Bourgeois, Richard L., Jr. - 2000-03-22**

## **Extract**

Courts agree that to establish standing under [sections] 1962(c),(393) a plaintiff must have suffered a harm caused by one of the predicate acts covered by [sections] 1962(c).(394) This rule significantly limits standing. For example, a person wrongfully discharged for refusing to participate in a pattern of racketeering activity lacks standing to sue under [sections] 1962(c) because the harm suffered is caused by the termination, not the predicate acts of racketeering.(395)

## **Summary**

For a plaintiff to have standing under section 1962(c) of RICO, they must demonstrate that the harm they suffered was directly caused by one of the predicate acts of racketeering. This requirement significantly limits who can bring a RICO claim, as the harm must be directly linked to the racketeering activity itself, not merely related to it or caused by other factors.

## [Racketeer influenced and corrupt organizations.](#)

**American Criminal Law Review - Georgetown University Law Center - Douglass, Sean M. - 2011-03-22**

### **Extract**

To prosecute a defendant under RICO, the government must prove that the defendant: (i) through the commission of two or more acts constituting a pattern of racketeering activity; (ii) directly or indirectly invested in, maintained an interest in, or participated in, an enterprise; (iii) the activities of which affected interstate or foreign commerce.

### **Summary**

For a RICO claim to be valid, the plaintiff must demonstrate that the defendant engaged in a pattern of racketeering activity, participated in an enterprise, and that the enterprise's activities affected interstate or foreign commerce. This aligns with the requirements under 18 U.S.C. § 1962(c) and (d), which are central to the plaintiff's claims in the case. The defendant's argument that the plaintiff's complaint fails to establish a RICO claim hinges on whether these elements are sufficiently alleged.

## ['Plausible' Deniability](#)

**Litigation - American Bar Association - Michael J. Miarmi - 2021-01-01**

### **Extract**

With plausibility, context matters. As the Tenth Circuit has explained (echoing the Third Circuit), 'the degree of specificity necessary to establish plausibility and fair notice, and therefore the need to include sufficient factual allegations, depends on context.'

### **Summary**

In the Tenth Circuit, the determination of whether a complaint states a plausible claim for relief involves a context-specific inquiry. This means that the degree of specificity required in the allegations depends on the context of the case. The court must draw on its judicial experience and common sense to assess whether the allegations are sufficient to state a plausible claim.

## [RICO: A Primer](#)

## **Extract**

The heart of a RICO case is the existence of a pattern of racketeering activity. Under the statute, 'racketeering activity' includes a host of offenses. Section 1961 defines the phrase to include any crime listed in subdivisions A, B, C, D, E, F, or G of section 1961... A RICO enterprise includes 'any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.' Courts have interpreted 'enterprise' broadly, and the definition captures both legitimate and illegitimate enterprises. The statutory list is not exhaustive but merely illustrative... A 'pattern' may exist where any combination of two or more offenses occurred within a period of time. In *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, the Supreme Court held that the RICO pattern element requires more than merely proving two predicate acts of racketeering. Rather, proof of 'continuity plus relationship' is necessary. Nonetheless, the Supreme Court has repeatedly recognized that Congress had a fairly flexible concept of a pattern in mind.

## **Summary**

Requirements for establishing a RICO claim, emphasizing the need for a "pattern of racketeering activity" and the existence of an "enterprise." The definition of "enterprise" is broad and includes both legitimate and illegitimate entities. The "pattern" requires more than just two predicate acts; it requires "continuity plus relationship." This information is crucial in evaluating whether the Plaintiff's allegations meet the RICO requirements.

## [RICO: A Primer](#)

## **Extract**

A plaintiff is required to demonstrate that the defendant conducted the affairs of an enterprise through a pattern of racketeering activity. The person and the enterprise generally must be distinct; but, of course, a Rico person can be a part of an enterprise. A RICO enterprise includes 'any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.' Courts have interpreted 'enterprise' broadly, and the definition captures both legitimate and illegitimate enterprises. The statutory list is not exhaustive but merely illustrative. A 'pattern' may exist where any combination of two or more offenses occurred within a period of time. In *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, the Supreme Court held that the RICO pattern element requires more than merely proving two predicate acts of racketeering. Rather, proof of 'continuity plus relationship' is necessary. Nonetheless, the Supreme Court has repeatedly recognized that Congress had a fairly flexible concept of a pattern in mind.

## **Summary**

The passage provides insight into the requirements for establishing a RICO claim, specifically the need for a distinct enterprise and a pattern of racketeering activity. The definition of an enterprise is broad and can include both legitimate and illegitimate entities. The pattern of racketeering activity requires more than just two predicate acts; it requires continuity and a relationship between the acts. This information is relevant to determining whether the plaintiff's allegations in the case meet the requirements for a RICO claim.

### [Defending Civil RICO Claims: A Defense Plan Should Be In Every Business's Arsenal](#)

## **Extract**

Civil RICO actions are now ubiquitous, so much so that plaintiffs often attempt to apply the statute to situations that bear little resemblance to the criminal racketeering activity animating the enactment of the statute in the first place... RICO is not a simple statute. It pertains to conduct associated with an 'enterprise' and 'a pattern racketeering activity.' An enterprise is an individual or legal entity, or a union or group of individuals associated in fact although not a legal entity, while a pattern of racketeering activity requires long-term, organized conduct to violate state and federal laws... First, to bring a civil RICO claim, a plaintiff must demonstrate that their business or property was injured as a result of a RICO violation. In other words, there must be some sort of concrete financial loss directly flowing from the purported violation to support a RICO claim. Thus, if a plaintiff does not have a concrete financial loss, then the RICO claim must be dismissed. Asserting personal injuries, such as emotion distress, is insufficient. Second, to prove most types of RICO claims, the plaintiff must plead that the defendant committed some qualifying criminal action, the most common of which is mail, wire or securities fraud. Business deals gone sour do not count. Rather, the plaintiff must be able to prove the elements of the asserted crime, and often an intent to defraud. If there is nothing criminal in nature about the complained-of conduct, RICO should not apply. It is an abuse of the RICO statute to attempt to shoehorn ordinary business or contractual disputes into a civil RICO claim.

## **Summary**

General overview of the requirements for a civil RICO claim, emphasizing that the statute is often misapplied to situations that do not involve the type of criminal racketeering activity it was designed to address. It highlights the necessity for a plaintiff to demonstrate concrete financial loss, the need for the defendant to have committed a qualifying criminal action, and the requirement for a pattern of racketeering activity. The passage suggests that if these elements are not met, the RICO claim should be dismissed.

This memo was compiled by Vincent AI based on vLex materials available as of July 31, 2025. [View full answer on vLex](#)