Question

TABLE OF CONTENTS I. JURISDICTION AND VENUE II. PARTIES III. RECORD REFERENCES https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=61b83e31-36d1-4fbe-a837-5a3228b4cbc4&coa=cossup&DT=RECORD&MediaID=3f4d5220-d7e8-4cc6-a22e-db4ee7e4e9e0 IV. INTRODUCTION V. FACTUAL TIMELINE A. The Myers-Branthoover Enterprise B. Interstate Travel and Transfer C. Admissions D. Post-submission Collaboration E. Significant and Intentional Misrepresentations F. Evidence to the Contrary G. Inclement Weather and First Appearance H. Reset #1 – January 22, 2024, Setting I. Reset #2 – February 1, 2024, Setting J. Termination of Counsel and the Emergency Motion K. Summary Judgment and Notice of Hearing L. Plaintiff's Notice to the Court and Defendant Myers' Self-Help Remedies M. Predicate Acts: Extortion N. One Sided Appellate Efforts, and Defective IWO O. Fraudulent Intervention and Branthoover's Continued Involvement P. Supreme Court, Rule 12, and Emergency Temporary Orders Q. Predicate Act: Wire Fraud R. Recusal Denial and More Delays, and Federal Removal S. Further Delays, DWOP, and the Original SAPCR T. Counsel Suddenly Becomes Active U. Five Concurrent Mandamus Petitions V. Federal RICO Case and the Push Towards Final Trial VI. THE RICO ENTERPRISE A. Structure and Membership B. Expansion, Purpose and Continuity C. Decision-Making and Functioning as a Unit VII. PREDICATE ACTS A. Wire Fraud B. Travel Act Violation C. Extortion D. Fraudulent Court Filings E. Relatedness and Continuity VIII. RICO CONSPIRACY A. Agreement Among Defendants B. Overt Acts in Furtherance IX. POTENTIAL DEFENSES A. Preclusion B. Rooker-Feldman Doctrine C. Younger Abstention D. Judicial Immunity E. Other Affirmative Defenses X. STATE LAW CLAIMS A. Fraud B. Abuse of Process C. Intentional Infliction of Emotional Distress D. Other State Law Claims XI. CLAIMS FOR RELIEF XII. DAMAGES A. Compensatory Damages B. Treble Damages (RICO) C. Punitive Damages D. Restitution Damages XIII. PRAYER FOR RELIEF A. Damages C. Injunctive and Declaratory Relief D. Any Other Relief Deemed Just and Proper RECORD REFERENCES Plaintiff incorporates by reference public records from the Texas Supreme Court, and requests the court to take judicial notice of these documents. The Fifth Circuit has repeatedly held that it is proper for federal courts to take judicial notice of matters of public record, including documents filed in state court proceedings (Miller v. Dunn, 35 F.4th 1007 (5th Cir. 2022); LUV N' Care, Ltd. v. Jackel Int'l Ltd., 502 F.Supp.3d 1106 (W.D. La. 2020); Wright v. Arlington Indep. Sch. Dist., Civil Action No. 4:19-cv-00278-P (N.D. Tex. Nov 25, 2019)). Plaintiff therefore requests that this Court take judicial knowledge of the consolidated mandamus record, as its' authenticity is not reasonably disputed. Here, all record references point to the public consolidated mandamus record, as submitted to the Texas Supreme Court, a copy of which has been served upon each defendant named in this complaint either individually or through their agent. Link to the record: https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=8e2d45b4-fb4f-40a0-93bc-ed9ed5f3cebd&coa=cossup&DT=RECORD&MediaID=804ac8d3-9b5f-40b0-

bc41-bbc08c814365 All references to the record are marked herein with “REC. [page]” and are hyperlinked to take the reader directly to the reference. The record is filed under affidavit, and remains unopposed at the time of filing this complaint. Therefore, Plaintiff respectfully asks that the Court take judicial notice of the record under Federal Rule of Evidence 201, filed on June 6, 2025, in the Texas Supreme Court under case numbers 25-0361, 25-0367, 25-0378, 25-0426, and 25-0458. II. TIMELINE OF EVENTS BACKGROUND Morgan Michelle Myers, (“Myers”) and Charles Dustin Myers, (“Plaintiff”) were married on June 20, 2015, and have two daughters, C.R.M. and M.E.M, aged seven and nine. The evidence in this case will show that in early December of 2023, the entire family was blindsided by Myers’ sudden announcement that she wanted a divorce from Plaintiff. REC. 717 The evidence will further show that Myers’ reasoning for this divorce changes over time – beginning with how Plaintiff spoke to her, and then switches to abuse and sexual harassment, and allegations of drug abuse, claims that were only brought up in her initial pleadings. On December 12, 2023, Plaintiff discovered a large volume of text messages between Myers and two individuals identified as Debbie Price and Damen Kazlauskas of Fort Worth, Texas spanning between October 2022 and December 2023. REC. 254-714 In response to this discovery, Myers began to communicate with Defendant Daniel Kenneth Branthoover, a resident of Yukon, Oklahoma, who assisted her in the planning, drafting, traveling, and submitting of fraudulent documents to the 322nd District Court of Tarrant County designed to divest Plaintiff of his home and business operations. When these allegations were raised to the State, they failed to adjudicate them and violated the Plaintiff’s constitutional rights when he was deprived of the guarantees of equal protection under the law and when he was not afforded due process before being deprived of his property. REC. 183. The central question is whether Defendants Munford, Kaitcer, Carter, and Baker are victims of the initial scheme – or willing participants in an expanded associate-in-fact enterprise that began in December of 2023 as the Myers-Branthoover enterprise. A. The Myers-Branthoover Enterprise 1. On December 14, 2023, Defendants Morgan Michelle Myers (“Myers)” and Daniel Kenneth Branthoover (“Branthoover”), acting in concert and under deceptive pretenses, (REC. 1704), initiated text-message communications through which they formed and advanced a common plan and agreement. Over the weekend of December 15, 2023, they met in Yukon, Oklahoma, to further that plan (REC. 274-278). The deceptive text message from Defendant Branthoover claiming that he wanted to assist Plaintiff was following an attempt by Myers to receive an ex-parte order of protection from the 322nd District Court of Tarrant county, attempted on December 14, 2023 (REC. 78). B. Interstate Travel and Transfer 2. As part of their agreement, both Defendants planned to draft and submit an original petition for divorce and an affidavit of indigency to the 322nd District Court of Tarrant County, with the intended and foreseeable result of removing Plaintiff from his matrimonial residence at 6641 Anne Court, Watauga, Texas 76148—which also serves as his place of business for clients in the United States, Canada, and the United Kingdom that rely on his market data services (REC. 812 ¶ 16). 3. During Defendant Myers’s interstate travel, she transferred the parties’ marital funds into Defendant Branthoover’s PayPal account in the amount of $1,576 (REC. 723). Those proceeds funded a second mobile phone (817-940-0852), listed on the fraudulent pleadings that

Myers and Branthoover jointly prepared in Oklahoma, which Myers then carried from Yukon to Texas on December 17, 2023 (REC. 86; 99; 102; 107). C. Admissions 4. On December 16, 2023, Plaintiff reached out to Branthoover and requested that the $1,576 be returned as they were needed for Christmas gifts for the children, and for business advertising expenses for his business. REC. 728-729. In response, defendant Branthoover admitted that the purpose of defendant Myers' visit was to help her prepare paperwork for divorce litigation and confirmed that the transfer of $1,576 did in fact occur. REC. 730. Plaintiff's bank statement from December 2023 further confirms this transaction. REC. 723. D. Post-submission Collaboration 5. On December 18, 2023, defendant Myers submitted the fraudulently prepared original petition for divorce, and an affidavit of indigency to the 322nd District Court of Tarrant County. After these documents were submitted, defendant Branthoover sent a text message to Plaintiff on December 19, 2023, at 5:50 P.M. CST, holding himself out to be defendant Myers' attorney, showing his involvement extends past the initial help in preparing the fraudulent documents. REC. 1712-1713 6. Four days later, on December 22, 2023, defendant Myers submitted another knowingly fraudulent application for protective to the 322nd District Court of Tarrant County claiming that family violence had occurred on December 18, 2023, supported by both an affidavit and unsworn declaration. REC. 108-109. E. Significant and Intentional Misrepresentations 7. On December 27 and December 28, 2023, respectively, the documents prepared by Myers with the assistance of Branthoover were served on Plaintiff via the U.S. Constable, and contained the following misrepresentations: i. That defendant Myers could not afford court costs; REC. 72, REC. 85-96 ii. That defendant Myers had an active order of protection against the Plaintiff with a finding of family violence that had occurred during the marriage; REC. 78 at 10 iii. That defendant Myers was financially responsible for the family vehicles, rent payments, utilities, and other household expenses, making herself appear as the primary breadwinner; REC. 92 iv. That defendant Myers would be harassed or abused if Plaintiff were given her newly acquired phone number that was obtained while in Oklahoma; REC. 81 at 15. v. That defendant Myers and Plaintiff ceased living together on December 1, 2023; REC. 74 at 4 vi. That family violence occurred on December 18, 2023, in the presence of the two Children. REC. 108-109. vii. That both family vehicles were defendant Myers' separate property acquired before marriage. REC. 79 at 11B F. Evidence to the Contrary 8. On the same day Defendant Myers claimed to be in an emergency requiring the Plaintiff's prompt removal from the home, she can be seen at the home with Plaintiff and the children in no state of emergency and also still cohabitating in the marital home. REC 1715. 9. Again, on December 29, 2023, Defendant Myers can be seen with Plaintiff at the family home, smiling and laughing with the children in no state of emergency and still collaborating with Plaintiff in the marital home. REC. 1735. 10. The citation for the application for protective order ordered Respondent to show cause as to why it should not issue with a hearing scheduled for January 16, 2024. REC. 118. 11. In response to extensive misrepresentation above, Plaintiff prepared an original answer, filed a motion to consolidate, and provided background information which alleged that defendant Myers was intentionally abusing the legal process. REC. 130-132. Plaintiff was ordered to show cause on January 16, 2024, regarding the protective order application. REC. 118 G. Inclement Weather

and First Appearance 12. On January 15, 2024, the Tarrant County District Courts Facebook page sent out a notice informing the members of the public that the court would be closed on January 16, 2024, due to inclement weather. REC. 1202. 13. Unaware of the closure at the time, the parties appeared at the 322nd District Court of Tarrant County on January 16, 2024, and were met with a dark courtroom, with only one judge in the building at the time of their arrival – Defendant James Munford ("Munford"). 14. Defendant Munford summarily ordered the Plaintiff out of his home, inadvertently assisting the Myers-Branthoover associate-in-fact enterprise of achieving their primary goal in having the Plaintiff removed from his residence, despite the broader goal being to obtain a decree of divorce to permanently divest Plaintiff of his interests. REC. 183. 15. Defendant Munford's initial order was baseless, made in the absence of any emergency, without a hearing, and disregarded the Plaintiff's pleadings, telling Myers "you're going to have to find evidence of family violence!" clearly aware that this order was made without any regard to the Plaintiff's constitutional rights. 16. Defendant Jeffrey Kaitcer, ("Kaitcer") walked into the courtroom late due to the inclement weather and turned the courtroom into a laughing matter as he began to joke with Defendant Munford, and instructed the parties to download the AppClose app for communication, and the matter was reset for January 22, 2024. There exists no record of this proceeding, only marked appearances on the docket. H. Reset #1 – January 22, 2024, Setting 17. At the January 22 reset hearing, the parties appeared only to have the case reset once more because defendant Myers allegedly retained the services of Defendant Cooper Carter, ("Carter") in the lobby of the courthouse just moments before the hearing was scheduled to begin. No appearance can be traced to this setting by either party on the docket (REC. 1551), and once again, no hearing was held, and the case reset for a second time to February 1, 2024. REC. 186. 18. Kaitcer permitted attorney Dan Bacalis, Plaintiff's prior attorney, to fill out the Associate Judge's Report, and the parties never went before him as indicated by the case docket's lack of appearance on this date by either party. I. Reset #2 – February 1, 2024, Setting 19. One day prior to the February 1 setting, both attorneys, Defendant Carter and Dan Bacalis, both amended the petition for divorce and counterpetition for divorce without the parties' knowledge. (REC. 189, REC. 209) These amended documents were similar, submitted on the same day, and raised concerns for Plaintiff regarding his quality of representation. 20. At the February 1 setting, both parties were in the conference rooms outside of Defendant Kaitcer's courtroom, when attorney Bacalis walks in holding a settlement agreement. When Plaintiff refused this option and requested that they go have a hearing before the judge. 21. This is when Bacalis stated, as witness affidavits corroborate, that he "knows this Judge and this is the best we can get." and further stated "[w]e'll be here all day. We can come back and change it later." 22. Outraged by this response, Plaintiff paid very close attention to the settlement offer Bacalis was pressuring him to sign, and noticed the following provisions: A typed written Order conforming to this Report will follow within 20 days from the date this Report is signed. The Temporary Order shall be prepared by DAN BACALIS. Each attorney should approve the Order. The parties do not need to approve the Order. The attorney reviewing the proposed Order shall have five (5) days to do so. There arc no ten (JO) day letters. If an agreement is not reached, a Motion to Sign shall be filed and set within thirty (30) days from

the signing of this Report. IT IS SO ORDERED (REC. 233) J. Termination of Counsel and the Emergency Motion 23. With the above provisions in mind, Plaintiff signed the document and immediately fired his attorney and provided notice to the court. REC. 221. By doing so, Plaintiff gained access back to the residency, invalidated the agreement, and was able to use the time back in the house to run damage control on his business operations while preparing to expose the Myers-Branthoover enterprise to the court via a MOTION TO RECONSIDER EVIDENCE AND VACATE TEMPORARY ORDERS, which was filed on February 9, 2024, within three business days of the February 1 agreed associate judge's report being served by the clerk. REC. 240 24. In this motion, it was specifically stated that: i. "I am seeking immediate court intervention to correct procedural e rrors and address the misuse of the legal system by the Petitioner." REC. 244 ii. "Particularly, Dan Branthoover became involved. He is the boyfriend of the Petitioner's Mother. Shortly thereafter, I received a notice from our joint bank account stating that $1,576 had just been withdrawn. As our bank statement for December 2023 will demonstrate – the transaction record shows the funds being transferred directly to Mr. Branthoover's PayPal account" REC. 245 iii. "The Petitioner's action of filing for divorce under an Affidavit of Inability to pay three days after transferring $1,576 to herself starkly contravenes the mandates set forth in Chapter 10, Section 10.001 of the Civil Practice and Remedies Code". REC 247 at B2 iv. "The Petitioner violated Chapter 10, Section 10.001 a second time within the same document when she intentionally elected to waive the 60-day waiting period claiming to have an active protective order against me that found family violence had occurred during our marriage." REC 247 at B3. v. "This suit was the second attempt by the Petitioner to have me removed from the home, which ultimately succeeded." REC 248 at D1 25. The motion went on to explain the factual pattern described up to this point, putting the court on notice of the key issues with provided exhibits which were duly served on Carter. In response to Plaintiff's motion, he received the first of just two email communications from Carter throughout the case's history, where she claimed she would be filing a counter motion when disclosing her availability for the hearing on Plaintiff's emergency motion. REC. 2794 No such countermotion was filed by Carter. K. Summary Judgment and Notice of Hearing 26. By February 22, no response had been filed by Carter, so Plaintiff filed a Partial Motion for Summary Judgment. REC. 758. Plaintiff also submitted a proposed parenting plan as Exhibit D. REC. 769. No response was ever received from Carter. 27. On February 27, 2024, Defendant Munford signed and issued a notice of hearing to the parties with the hearing set for March 14, 2024. REC. 776. L. Plaintiff's Notice to the Court and Defendant Myers' Self-Help Remedies 28. On March 3, 2024, Plaintiff notified the Court that he would not be leaving the home as it was not in the best interests of his children. REC. 782. 29. The following day, on March 6, 2024, while walking his daughters to school, Myers ran inside the family home, and locked him out of the marital residence, leaving a sign on the door that said "[y]ou should have been out by Saturday you are now locked out!" REC. 1748. 30. Plaintiff called local law enforcement to help him regain entry into the home, where mother produced the agreed associate judge's report signed on February 1, 2024, and used it as a means to block Plaintiff's entrance to the home. 31. To avoid further conflict, Plaintiff was escorted into the home where he was able to grab only his computer and a few clothes and went to Flower Mound to

temporarily stay with his father until the time of the hearing on his emergency motion, scheduled for March 14, 2024, at 9:00 A.M. L. The Hearing On Plaintiff's Emergency Motion 32. On March 14, 2024, the parties arrived at the 322nd District Court, and on the way into the courtroom, defendants Myers and Carter could be seen in the conference room, quickly shuffling papers back and forth. 33. After checking in with the bailiff, Plaintiff turned around to see defendant Carter extending to him a document titled "Temporary Orders" that were the reduced version of the February 1 associate judge's report. REC. 888. 34. These orders, which were not prepared by Dan Bacalis, which were not agreed to by the parties, were reduced well outside of the 20-day requirement as ordered by the judge, and which were never filed with the clerk, stated the following misrepresentations: i. On February 1, 2024, the Court heard Petitioner's motion for temporary orders. ii. The parties have agreed to the terms of this order as evidenced by the signatures below. REC. 888. iii. The Court, after examining the record and the agreement of the parties and hearing the evidence and argument of counsel, finds that all necessary prerequisites of the law have been legally satisfied and that the Court has jurisdiction of this case and of all the parties. REC. 888. iv. The dates that the parties would have access to the family residence was altered, changing the date Plaintiff was supposed to leave from March 1, 2024, to March 20, 2024, and changing Myers' date of re-entry from March 1, 2024, to March 30, 2024, leaving a 10-day window where no one would occupy the residence. v. This modification was made to prevent Myers from being liable for illegally locking Plaintiff out of the home on March 6, 2024. 35. On the last page of the orders, Plaintiff's attorney who was terminated weeks earlier did not sign the document, and Plaintiff refused to sign the document for the forthcoming reasons: i. It claimed a hearing occurred on a motion which was never set for a hearing or served on the Plaintiff and doesn't exist on the docket. ii. It was prepared by defendant Carter, not Dan Bacalis. iii. The associate judge was presiding over a de novo request of his own prior report. iv. The matrimonial address was incorrect, as it stated "6641 Anns Court", rather than 6641 Anne Court. REC. 915, REC. 922 v. The orders were not in the best interests of the children. vi. Notwithstanding the Plaintiff's revocation of consent by filing the emergency motion, the terms were altered right before they were rendered into effect by defendant Kaitcer. vii. Plaintiff did not agree to the terms as he was in court that very day to expose Myers. M. Predicate Acts: Extortion 36. Kaitcer, knowing that no response was filed, knowing that he was presiding over a hearing to which he had no subject matter jurisdiction, and knowing that the temporary orders produced by defendant Carter was served just moments earlier, signed another associate judge's report pre-drafted by defendant Carter, which summarily denied the Plaintiff's emergency motion, ignored the fact that Carter had not provided a response, and within the report itself, Plaintiff was ordered to sign the document that Carter had just presented to him despite raising objections to its' contents, and despite his consent not being present. REC. 795. 37. Finally, defendant Kaitcer refused to consider Plaintiff's exhibits, including six affidavits prepared by his business clients who have been directly affected by his inability to provide the real-time market data services his clients relied on, who were located throughout the United States. REC. 851; REC. 854; REC. 857; REC. 860; REC. 863; REC. 867; REC. 870. 38. Following the setting, the orders were rendered into

effect without Plaintiff's signature (REC. 925) , and Plaintiff filed a request for findings of fact and conclusions of law (REC. 883), and filed and amended a "Preparatory Notice for Judicial Review" which recounted the factual timeline up to that point, and included the affidavits that Kaitcer refused to accept on March 14, 2024. REC. 798, REC. 851, REC. 854, REC. 857, REC. 860, REC. 863, REC. 867, REC. 870. 39. The orders stated they were to remain in effect until the final decree of divorce, and Plaintiff's journey of one-sided appeals began. N. One Sided Appellate Efforts, and Defective IWO 40. Following the rendition of the temporary orders on March 26, 2024, Plaintiff spent between April 8, 2024 and September 15, 2024, appealing via mandamus to the Second Court of Appeals and the Texas Supreme Court. REC. 1010. 41. During the appellate efforts, Carter filed one of two motions in the case, which was a motion for pre-trial conference filed on April 24, 2024, on her behalf by Roderick D. Marx, a party not named in the suit. REC. 1014, REC. 1016. 42. Plaintiff immediately objected to the pre-trial conference, and no response was ever issued by Carter or the court. REC. 1018. 43. On April 30th, Plaintiff filed his notice of completion regarding the parenting course as ordered, despite actively trying to vacate them. REC. 1047. No parenting course was ever completed by Myers. 44. On May 2, 2024, Plaintiff's en banc reconsideration was denied in the Second Court of Appeals, and he began preparing an appeal to the Supreme Court of Texas. REC. 1067. 45. On May 19, 2024, Carter sent the second and last email correspondence that would be received in the case, which falsely claimed he agreed to the orders signed on March 14, 2024, and requested that he fill out an IWO, which Plaintiff found to be defective. REC. 1722, REC. 1728. No further correspondence was received by Carter. O. Fraudulent Intervention and Branthoover's Continued Involvement 46. On June 23rd Plaintiff filed a motion in state court entitled MOTION FOR JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION at 12:14 P.M. REC. 1075. This motion received no response from Carter. 47. On June 23rd at 1:54 P.M., directly following the submission of the motion, Branthoover texted Plaintiff stating "Lol. And here comes another denial. Please sue me individually. Please.", referring to the earlier filed motion and showing his continued oversight of the case's progression since his initial predicate acts. 48. Four days later, on June 28, 2024, the Texas Office of the Attorney General allegedly filed an intervention pleading, claiming that Plaintiff was past due on child support, and requested information from Plaintiff. REC. 1099. 49. Most notably, the certificate of service to this intervention pleading was allegedly signed by Holly Hayes, the designated attorney for the OAG, yet the name underneath the signature line reads CHOYA BURKLEY. REC. 1102. 50. Plaintiff promptly objected to the intervention, and never received any response from the OAG, Carter, or the court. REC. 1106. P. Supreme Court, Rule 12, and Emergency Temporary Orders 51. As Plaintiff continued to appeal to the Supreme Court of Texas, all prosecution came to an end in the trial court. It wasn't until September 15, 2024, that Plaintiff filed a first amended rehearing motion in the Texas Supreme Court, (REC. 1136) and after noticing Carter's lack of participation, he began to question her authority given several ambiguities surrounding her representation, and filed a rule 12 motion to show authority. REC. 1170. No response was ever received to this motion from Carter. 52. At this point, Plaintiff had been staying in Airbnb homes while he sought relief to ensure he could remain close to his daughters during this time. On September 26,

2024, he filed and later amended an EMERGENCY MOTION FOR TEMPORARY ORDERS and requested expedited relief by October 1, 2024, as that was when Plaintiff was forced to move away from the area due to cost of living being unsustainable. REC. 1184. No response was ever received from Carter regarding this motion. 53. By October 1, Plaintiff had no choice but to start pursuing administrative remedies, and thought the court was biased against him given the case's history up to that point. He began to prepare a Joint Motion to Recuse defendants Munford and Kaitcer and filed it with the clerk of the court on October 7, 2024. REC. 1197. Q. Predicate Act: Wire Fraud 54. On October 8, 2024, Defendant Munford signed and forwarded a "Joint Motion to Recuse" attached to his order of referral to regional presiding judge David L. Evans but was notably missing the exhibits and affidavit critical to the motion. REC. 1222 55. A copy of this exchange was sent via defendant Baker on 4:43 P.M. on October 8. REC. 1254 56. Plaintiff immediately pointed out the discrepancies between the motion filed and the motion forwarded to David L. Evans, where she replied and admitted that the full document had been e-filed and remains with the court. REC. 1255 57. Unsatisfied with this response, Plaintiff further pointed out that the filing size of the document filed and the one referring to David L. Evans was significantly different. No further correspondence was received by Baker until the following day. REC. 1256 58. The following day on October 8, 2024, defendant Munford signed and filed an "Amended Order of Referral" which had the full motion attached this time, albeit still modified as the hyperlinks and bookmarks had been removed. REC. 1282 59. This amended referral was sent via email correspondence by Baker at 11:17 A.M. on October 8, 2024, who stated that due to the size of the motion, it was split into three parts. REC. 1258. This excuse directly contradicts the standard filing procedure in Tarrant County, which was raised and subsequently ignored in an objection. REC. 1269. No response was filed in regard to the motion to recuse or objection by Carter. R. Recusal Denial and More Delays, and Federal Removal 60. Justice E. Lee Gabriel was assigned to hear the motion, which had to be rescheduled due to technical difficulties for November 7, 2024. REC. 1306. 61. The morning of the hearing, Plaintiff woke up with a dental emergency, and promptly notified all parties, and requested a reset for the hearing, which everyone agreed to. REC. 1393-1396. 62. Despite this agreement, the recusal was denied for failure to appear, and made no mention of the agreement or the emergency. REC. 1398. 63. With no other remedies left, Plaintiff removed the case to Federal Court on December 2, 2024, which was quickly remanded back on December 4, 2024. REC. 1426. 64. On December 14, 2024, defendant Branthoover texted Plaintiff, sending a threat which stated "[w]hen things all over, you get to deal with me." at 2:15 P.M. REC. 1720 65. On December 16, 2024, Plaintiff initiated suit against Daniel Kenneth Branthoover in the Western District of Oklahoma seeking relief in the form of damages from the ongoing deprivation from his home. REC. 1451. 66. Plaintiff notified the Texas court of this lawsuit on December 31, 2024. REC. 1446. S. Further Delays, Motion to Dismiss for Want of Prosecution, and the Original SAPCR 67. On January 24, 2025, Plaintiff filed a motion to dismiss for want of prosecution due to the total lack of participation in the case by the opposing party. REC. 1527. No response was ever received from Carter on this motion. 68. On January 29, 2025, defendant Myers began disposing of Plaintiff's personal belongings that remained on the family property. REC.

1629-1631. 69. On February 12, 2025, Plaintiff learned that his youngest daughter was suffering from dental pain due to Myers' failure to obtain dental insurance for the children. REC. 3281. 70. By March 14, (REC. 1833-1837) the judges had still not been reinstated from the first recusal, which lad Plaintiff to reach out to Baker to request a hearing on his unopposed summary judgment that had been on the docket since February 22, 2024, where he had to remind her to reinstate the judges back into the case. REC. 1833-1837. 71. Given the delays, and since the case had been brought in bad faith initially, the Plaintiff opened an original SAPCR suit in the 233rd District Court of Tarrant County on March 18, 2025, where he argued for dominant jurisdiction in a cover letter sent to the clerk. REC. 2260. T. Counsel Suddenly Becomes Active 72. The very next day, defendant Carter filed an original answer filed on her behalf by Roderick Marx. REC. 2279. The motion was a boilerplate motion, and was followed by a motion to consolidate, which was filed in the wrong court, and was also filed on Carter's behalf by RODERICK D. MARX. REC. 2284. 73. The Plaintiff immediately responded by filing a motion to strike (REC. 1957) a Rule 12 motion to show authority challenging both Carter and RODERICK D MARX's authority (REC. 2288) and on March 24, 2025, an emergency ex-parte TRO to prevent Myers from barring Plaintiff's access to the home. (REC. 2302) No responses were ever received from Carter on these motions. 74. On March 26, 2025, an objection was filed to Carter's consolidation motion in the 233rd court. REC. 1881. 75. Plaintiff reached out to the coordinator from the 233rd and went through the process to present the motion to the judge. REC. 2338-2341. 76. On March 29, 2025, Plaintiff appeared before Associate Judge Kate Stone, who refused to hear Plaintiff's emergency motion despite no response being filed, and told him to leave the courtroom. The hearing date scheduled for April 10, 2025, as agreed by Carter and Plaintiff (REC. 2358), was actually un-set by Stone. REC. 2361. 77. The grounds for this outright refusal was due to Carter calling in a favor from the judge without even being present in the courtroom, to where Stone left the room, came back, and told the Plaintiff to leave informing him that a motion to consolidate would be filed by Carter the following week. U. Five Concurrent Mandamus Petitions 78. Subsequently, after he was turned away from the courtroom, Carter's consolidation motion wasn't filed until April 4, 2025 (REC. 2367), resulting in two mandamus petitions to try again to have the March 14, 2024, order signed by Kaitcer vacated, and to compel Kate Stone to hear the emergency TRO. See 25-0361, 25-0367. 79. On the same day the mandamus was filed against Stone, District Judge Kenneth Newell sua sponte granted Carter's consolidation motion in both courts without a hearing, and without addressing the emergency situation for the children or the Plaintiff's objections, leading to a third mandamus proceeding. REC. 2393, See also 25-0378. 80. On April 23, 2025, a notice of trial setting was served on the parties by defendant Munford in the midst of all of these issues. REC. 1773. 81. The same day, Plaintiff filed an objection and requested an emergency stay. REC. 2219. No response was received to this objection by either Munford or Carter. 82. Two days later on April 25, 2025, Plaintiff filed his second recusal motion, and amended it on April 28, 2025, this time only against Munford, and requested that the rules of procedure be followed, and objected to the involvement of the court coordinator given the prior recusal's ambiguity and significant delays caused by her involvement. REC. 2488 No response to this motion was ever filed from Carter. 83. Baker

continued to be involved in the recusal process, this time erroneously forwarding an order of referral from defendant Kaitcer, who was not named in the recusal motion. REC. 2615. 84. Plaintiff immediately objected on April 29, 2025, naming two issues: 1) the coordinator was still involved, and 2) the order of referral sent by Kaitcer was erroneous. REC. 2620. 84. Plaintiff objected to the order of assignment of John H. Cayce (REC. 3149) which was issued on May 7, 2025, due to the unresolves issues. REC. 2620. 85. David L. Evans overruled this objection on May 15, 2025, leading to mandamus petition 25-0426, a direct appeal to the Texas Supreme Court. REC. 3507. 86. On May 20, 2025, John H. Cayce summarily denied the recusal, including the denial of a motion to recuse Kaitcer which was never filed, leading to mandamus petition 25-0458, a second direct appeal to the Texas Supreme Court. 87. All five petitions were denied both initially and on rehearing, and all emergency motions to stay proceedings were dismissed. The only insights given from the appellate courts was: “Denied, per curiam.” No response was filed by any implicated judge or opposing counsel. V. Federal RICO Case and the Push Towards Final Trial 88. In June of 2025, Plaintiff amended his complaint against Daniel Kenneth Branthoover and enjoined Myers as a defendant, which they defended pro-se. 89. Plaintiff communicated this action with the trial court, and no further action was taken in the case until August of 2025, when defendant Munford sua sponte set the case for final trial on December 10, 2025. 90. Plaintiff immediately objected to this trial setting, and moved to recuse Munford for a third time. 91. The court coordinator continued to be involved in the process, leading to a subsequent motion to recuse the regional presiding judge, David L. Evans. 92. Plaintiff now prepares this suit to hold defendants accountable for their collective actions, and to prevent their common goal from being achieved, which is to obtain defendant Myers a final decree of divorce. 93. For the forthcoming reasons, the conduct outlined herein constitutes conduct of an enterprise through a pattern of racketeering activity, as several predicate acts were committed, the enterprise shares a common purpose, and Plaintiff has suffered direct and ongoing injury to business and property as a direct result of the defendant’s collective predicate acts. RICO The timeline and evidence provided demonstrate that the Myers-Branthoover group constitutes an association-in-fact enterprise under RICO, with a common goal to deprive the Plaintiff of his home and business through a pattern of racketeering activity—specifically, wire fraud, Travel Act violations, and fraudulent court filings—causing direct injury to the Plaintiff’s business and property. The conduct, structure, and continuity among the participants, as well as the use of interstate communications and travel, satisfy the elements of a RICO claim in the Tenth Circuit, with the liability of other defendants depending on their knowledge and intent. A. Summary The Myers-Branthoover enterprise, as detailed in the factual timeline, meets the Tenth Circuit’s requirements for a RICO claim by establishing an association-in-fact enterprise with a defined structure, purpose, and continuity. The group’s coordinated actions—including interstate transfer of funds, preparation and submission of fraudulent legal documents, and ongoing manipulation of court proceedings—constitute a pattern of racketeering activity, with predicate acts of wire fraud and Travel Act violations that are related and continuous. Plaintiff’s direct and ongoing injury to his business and property, including loss of home, business operations, and client relationships, is proximately caused by the enterprise’s acts. While Myers and Branthoover’s

liability is clear, the involvement of other defendants (Munford, Kaitcer, Carter, and Baker) may be characterized as inadvertent or willing participation, depending on their knowledge and intent, but the core elements of a RICO violation are satisfied by the conduct of Myers and Branthoover as outlined in the enumerated timeline. The additional acts committed by each defendant, as alleged, furthered the scheme of the enterprise despite each additional defendant having actual knowledge of the fraudulent scheme. RICO Statutory Framework The Racketeer Influenced and Corrupt Organizations Act (RICO), codified at 18 U.S.C. §§ 1961–1968, provides a civil cause of action for individuals injured in their business or property by reason of a pattern of racketeering activity conducted through an enterprise affecting interstate or foreign commerce. The most commonly invoked provision, § 1962(c), prohibits any person employed by or associated with an enterprise from conducting or participating in the conduct of such enterprise's affairs through a pattern of racketeering activity. Section 1962(d) further prohibits conspiracies to violate any of the substantive RICO provisions. To establish a civil RICO claim under § 1962(c), a plaintiff must prove: i. The existence of an enterprise; ii. The enterprise's engagement in, or effect on, interstate or foreign commerce; iii. The defendant's employment by or association with the enterprise; iv. The defendant's participation, directly or indirectly, in the conduct of the enterprise's affairs; v. The defendant's participation through a pattern of racketeering activity or collection of unlawful debt. See 100 Mount Holly Bypass v. Axos Bank, Case No. 2:20-CV-856-TS-CMR (D. Utah Jul 27, 2021). B. Predicate Acts and Pattern Requirement RICO defines "racketeering activity" to include a wide range of criminal offenses, including wire fraud (18 U.S.C. § 1343) and violations of the Travel Act (18 U.S.C. § 1952). A "pattern of racketeering activity" requires at least two predicate acts within a ten-year period, but the acts must be related and amount to or pose a threat of continued criminal activity. The Supreme Court has clarified that a RICO violation requires both an "enterprise" and a "pattern of racketeering activity," with the enterprise being a group of persons associated for a common purpose, and the pattern involving a series of criminal acts (United States v. Harris, 695 F.3d 1125 (10th Cir. 2012)). The Tenth Circuit has further explained that, to establish a pattern, it is not enough to simply show that two predicate acts occurred within ten years; the acts must also be related and pose a threat of continued criminal activity (U.S. v. Smith, 413 F.3d 1253 (10th Cir. 2005)). Note, however, that U.S. v. Smith has been stated as overruled by United States v. Nissen, 555 F.Supp.3d 1174 (D. N.M. 2021) on unrelated grounds, but its articulation of the pattern requirement remains consistent with current law. C. Enterprise and Association-in-Fact An "enterprise" under RICO includes any individual, partnership, corporation, association, or group of individuals associated in fact, even if not a legal entity. For an association-in-fact enterprise, the Tenth Circuit requires: i. A purpose; ii. Relationships among those associated with the enterprise; iii. Longevity sufficient to permit the associates to pursue the enterprise's purpose; iv. A decision-making framework or mechanism for controlling the group; v. Functioning as a continuing unit; vi. Existence separate and apart from the pattern of racketeering activity. See 100 Mount Holly Bypass. D. Conspiracy Section 1962(d) makes it unlawful to conspire to violate any of the substantive RICO provisions. A RICO conspiracy does not require the establishment of an enterprise but requires that a defendant adopts the goal

of furthering or facilitating a criminal endeavor that would satisfy the elements of a substantive RICO offense (United States v. Martinez, 543 F.Supp.3d 1209 (D. N.M. 2021); United States v. Randall, 661 F.3d 1291 (10th Cir. 2011)). E. Injury Requirement RICO provides a private right of action for individuals injured in their business or property through fraudulent conduct, and there is no requirement that the conduct be connected to organized crime in a civil setting (Plains Resources, Inc. v. Gable, 782 F.2d 883 (10th Cir. 1986)). ANALYSIS F. Existence of an Association-in-Fact Enterprise The timeline establishes that Myers and Branthoover formed an association-in-fact enterprise beginning in December 2023 (¶¶ 1–7, 93). Their collaboration was structured, with Myers as the petitioner in the divorce and Branthoover as the planner, drafter, and facilitator of fraudulent documents and financial transactions. The group had a clear purpose: to divest the Plaintiff of his home and business through fraudulent legal filings and manipulation of court processes (¶¶ 1–7, 93). The enterprise's structure is evidenced by: i. The initial planning and agreement to meet in Yukon, Oklahoma, to draft fraudulent documents (¶¶ 1–3); ii. The use of interstate communications and travel to further the scheme (¶¶ 2–3); iii. Ongoing coordination and adaptation to changing circumstances, including the preparation and submission of false affidavits and pleadings, and manipulation of court proceedings (¶¶ 5–7, 34, 93). This satisfies the Tenth Circuit's requirements for an association-in-fact enterprise, which does not require a formal legal entity but does require a common purpose, relationships, and sufficient longevity to pursue the enterprise's goals. G. Structure, Purpose, Relationships, and Continuity The Myers-Branthoover group meets the requirements for an association-in-fact enterprise: i. Purpose: The shared goal was to deprive the Plaintiff of his home, business, and property interests through fraudulent means (¶¶ 1–7, 93). ii. Relationships: Myers and Branthoover maintained ongoing communications, coordinated actions, and divided roles in the scheme (¶¶ 1–7, 93). iii. Longevity and Continuity: The enterprise operated over a substantial period, from at least December 2023 through present day 2025, with multiple related acts and ongoing adaptation to changing circumstances (¶¶ 1–93). iv. Decision-Making Framework: The group planned, agreed on steps, and executed those steps in a coordinated manner (¶¶ 1–7, 93). v. Existence Separate from Predicate Acts: The enterprise was formed for the purpose of achieving a specific goal and engaged in multiple acts over time to accomplish that goal. H. Predicate Acts: Wire Fraud, Travel Act Violations, and Fraudulent Filings The timeline identifies multiple predicate acts that qualify as racketeering activity under RICO: i. Wire Fraud: Myers transferred $1,576 in marital funds to Branthoover's PayPal account during interstate travel, and these funds were used to purchase a phone for use in the fraudulent scheme (¶¶ 3, 4, 5, 6, 7, 34). The use of electronic communications (text messages, emails) to plan and execute the scheme further supports the wire fraud allegation (¶¶ 1–7, 34). ii. Travel Act Violations: Myers traveled from Texas to Oklahoma to meet with Branthoover, where they planned and prepared fraudulent legal documents, which were then transported back to Texas and submitted to the court (¶¶ 2, 3, 4, 5, 6, 7). iii. Fraudulent Filings: The preparation and submission of false affidavits and pleadings to the court, containing material misrepresentations about financial status, family violence, and property ownership, constitute further predicate acts (¶¶ 5, 6, 7, 34). At least two related predicate acts

within ten years are required (U.S. v. Smith, 413 F.3d 1253 (10th Cir. 2005)), and the timeline shows multiple, related predicate acts over a substantial period (¶¶ 1–93). I. Pattern of Racketeering Activity: Relatedness and Continuity The predicate acts were not isolated incidents but part of an ongoing scheme. The acts were related in that they all aimed to deprive the Plaintiff of his property and business, and they posed a threat of continued criminal activity, as the enterprise continued to operate and adapt its tactics over time (¶¶ 1–93). The timeline shows that the enterprise's activities extended over a substantial period, with multiple acts occurring over months and involving ongoing coordination and adaptation to changing circumstances. J. Injury to Business or Property Plaintiff suffered direct and ongoing injury to his business and property as a result of the enterprise's actions. He was deprived of his home and business operations, lost access to marital funds, and was unable to provide services to clients, resulting in financial harm (¶¶ 2, 3, 4, 5, 6, 7, 37). These injuries are precisely the type of harm RICO is designed to redress. Plains Resources, Inc. v. Gable, 782 F. 2d 883 (10th Cir. 1986)). K. Participation of Other Defendants: Inadvertent or Willing The timeline raises the question of whether Munford, Kaitcer, Carter, and Baker were victims of the initial scheme or willing participants in the expanded enterprise. The evidence suggests that, at a minimum, Myers and Branthoover were the core members of the enterprise, with others potentially becoming involved through their actions in the legal proceedings (¶¶ 14–93). i. Inadvertent Participation: Some defendants may have participated inadvertently, such as by issuing orders or facilitating court processes without knowledge of the underlying scheme (¶¶ 14–93). ii. Willing Participation: Others may have become willing participants if they knowingly furthered the enterprise's objectives or ignored clear evidence of fraud and misrepresentation (¶¶ 14–93). RICO does not impose liability for inadvertent or unwitting participation; there must be knowing and willful involvement in the conduct of the enterprise's affairs. For the forthcoming reasons, Plaintiff alleges that the Defendants are willing participants in the scheme. VICTIM OR PARTICIPANT RICO liability extends to those who knowingly participate in the conduct of the enterprise's affairs, even if they were not original members (RICO: A Primer (2022-01-31)). The timeline raises the question of whether Munford, Kaitcer, Carter, and Baker were victims of the initial scheme or willing participants in the expanded enterprise. The evidence suggests that, at a minimum, Myers and Branthoover were the core members of the enterprise, with others becoming involved through their actions in the legal proceedings (¶¶ 14–93). The timeline demonstrates that Carter, Kaitcer, and Myers engaged in extortion by leveraging the threat of adverse legal action, fraudulent court orders, and the manipulation of judicial process to coerce Plaintiff into relinquishing property and business interests, satisfying the elements of extortion as a predicate act under RICO and the Travel Act. Munford and Baker, for their part, committed wire fraud by intentionally sending altered or incomplete court documents via interstate email, with the intent to mislead, obstruct relief, and further the enterprise's objective of finalizing the divorce and depriving Plaintiff of his property, thus meeting the requirements for wire fraud as a RICO predicate act. These acts, as detailed in the timeline, are not isolated but part of a coordinated pattern of racketeering activity within an association-in-fact enterprise, as required by RICO in the Tenth Circuit. The conduct of each defendant is tied to specific predicate acts—extortion

for Carter, Kaitcer, and Myers (notably at timeline events 33–37), and wire fraud for Munford and Baker (notably at events 54–59, 83)—demonstrating knowing and willful participation in the enterprise's broader scheme to deprive Plaintiff of his home and business through fraudulent and coercive means. A. Extortion and Wire Fraud The Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961–1968, provides a civil cause of action for injury to business or property caused by a pattern of racketeering activity conducted through an enterprise affecting interstate commerce. Predicate acts under RICO include extortion (as defined by the Hobbs Act and the Travel Act) and wire fraud (18 U.S.C. § 1343), among others. Extortion is defined as obtaining property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right. The Travel Act, 18 U.S.C. § 1952, includes extortion as an "unlawful activity" and does not require it to be part of a business enterprise (U.S. v. Welch, 327 F.3d 1081 (10th Cir. 2003)). The Tenth Circuit recognizes that extortion under the Travel Act can be established by showing threats or coercion to obtain something of value, including property or legal rights, in violation of state or federal law. Wire fraud under 18 U.S.C. § 1343 requires (1) a scheme to defraud or obtain property by false or fraudulent pretenses, (2) intent to defraud, and (3) use of interstate wire communications to execute the scheme (Clinton v. Sec. Benefit Life Ins. Co., 63 F.4th 1264 (10th Cir. 2023); United States v. Holloway, 826 F.3d 1237 (10th Cir. 2016)). The Tenth Circuit requires that the deprivation of property be a central object of the scheme, and that the use of wires (including email) be knowing and in furtherance of the fraudulent scheme (United States v. Tao, 629 F.Supp.3d 1083). B. Extortion by Carter, Kaitcer, and Myers Extortion, as a RICO predicate act, is defined broadly under federal law and the Travel Act. It includes obtaining property or rights through threats, coercion, or misuse of official process (U.S. v. Welch, 327 F.3d 1081 (10th Cir. 2003)). The Tenth Circuit does not require extortion to be part of a business enterprise for Travel Act purposes; a single act suffices if it has the requisite interstate nexus. The timeline shows the following: i. Event 33–34: Carter, with Myers, prepared and presented "Temporary Orders" that misrepresented facts (e.g., that Plaintiff agreed to terms he did not, that a hearing occurred when it did not, and that the orders were in the best interests of the children). These orders altered the dates of access to the home to shield Myers from liability for locking Plaintiff out, and were presented to Plaintiff in a context where he was under threat of losing his home and business. iii. Event 36: Kaitcer, knowing the orders were disputed and that no response had been filed, signed an associate judge's report pre-drafted by Carter, summarily denying Plaintiff's emergency motion and ordering Plaintiff to sign the disputed document, despite his objections and lack of consent. iv. Event 35: Plaintiff refused to sign the orders for multiple reasons, including their fraudulent content and the lack of due process, but the orders were rendered into effect without his signature. These acts collectively demonstrate the use of legal process and the threat of adverse judicial action to coerce Plaintiff into surrendering his property and business interests. The manipulation of court orders, the misrepresentation of facts, and the pressure to sign under threat of losing his home constitute extortion under the Travel Act and RICO (U.S. v. Welch, 327 F.3d 1081 (10th Cir. 2003). Myers's role is clear: she was the beneficiary and instigator of the fraudulent filings and the manipulation of court

process, using the threat of legal action and the actual deprivation of Plaintiff's property to achieve her goal. Carter and Kaitcer acted in concert with Myers, knowingly facilitating the extortion by preparing, presenting, and enforcing fraudulent orders, and by using the authority of the court to coerce Plaintiff. The fact that Plaintiff was ordered to sign a document he objected to, under threat of continued deprivation of his home and business, is classic extortion by color of official right. All three defendants knew that Plaintiff did not agree to the order, as he had just fired his attorney to challenge any basis for an agreement. This implies that despite the motion being served on all defendants, they chose to ignore the allegations of a fraudulent scheme and further the affairs of the enterprise. These actions meet the requirements for extortion as a RICO predicate act: they involved the wrongful use of threats and official process to obtain property (the home and business) from Plaintiff, with his consent induced by fear of further loss or legal harm. The acts were not isolated but part of a coordinated scheme to achieve the enterprise's goal of finalizing the divorce and divesting Plaintiff of his property B. Wire Fraud by Munford and Baker Wire fraud under 18 U.S.C. § 1343 requires a scheme to defraud, intent to defraud, and use of interstate wire communications to execute the scheme (Clinton v. Sec. Benefit Life Ins. Co., 63 F.4th 1264 (10th Cir. 2023); United States v. Holloway, 826 F.3d 1237 (10th Cir. 2016)). The Tenth Circuit recognizes that sending altered or incomplete court documents via email, with the intent to mislead or deprive someone of property or rights, can constitute wire fraud if the deprivation of property is a central object of the scheme (United States v. Tao, 629 F.Supp.3d 1083). The timeline shows the following: i. Event 54: Munford signed and forwarded a "Joint Motion to Recuse" attached to his order of referral, but the document was missing critical exhibits and affidavits necessary for Plaintiff's relief. ii. Event 55: Baker sent a copy of this incomplete filing via email, representing it as the full document. iii. Event 56–57: When Plaintiff pointed out the discrepancies, Baker provided inconsistent explanations, first claiming the full document was e-filed, then later stating it was split into three parts due to size. iv. Event 58: Munford signed and filed an "Amended Order of Referral" with the full motion attached, but with hyperlinks and bookmarks removed, further impairing the document's integrity. v. Event 59, 83: Baker continued to forward altered or incomplete orders and referrals, even when procedural irregularities were raised. These acts involved the knowing use of interstate email to transmit altered or incomplete court documents, with the intent to prevent Plaintiff from obtaining relief and to further the enterprise's goal of finalizing the divorce and depriving Plaintiff of his property. The use of email to transmit these documents satisfies the interstate wire requirement, and the intent to defraud is evidenced by the deliberate alteration and misrepresentation of the filings. The conduct of Munford and Baker meets the elements of wire fraud: (1) a scheme to defraud Plaintiff of property and rights, (2) intent to defraud by preventing relief and misleading the court and Plaintiff, and (3) use of interstate wire communications (email) to execute the scheme (Clinton v. Sec. Benefit Life Ins. Co., 63 F.4th 1264 (10th Cir. 2023)). The deprivation of property (Plaintiff's home and business) was a central object of the scheme, not a minor part. RELATIONSHIP AND CONTINUITY All these acts—extortion by Carter, Kaitcer, and Myers, and wire fraud by Munford and Baker—were committed in furtherance of the Myers-Branthoover enterprise's overarching objective: to finalize the

divorce and divest Plaintiff of his home and business. The acts were coordinated, continuous, and related, satisfying the RICO pattern requirement. The timeline shows that each defendant's conduct was not an isolated error or routine administrative act, but part of a deliberate scheme to use the legal process, threats, and fraudulent communications to achieve the enterprise's unlawful goals. DAMAGES The harm inflicted upon Plaintiff is staggering. He has lost the home in which he lived for nearly a third of his life, the companionship of his spouse, and the society of his children. His income has collapsed. For two years he has been consigned to a futile appellate gauntlet, even as Defendants Munford, Kaitcer, Baker, and Carter have repeatedly exceeded the bounds of their lawful authority in furtherance of a broader scheme. What began as a concerted effort by Myers and Branthoover to dispossess Plaintiff of his residence and property metastasized into a calculated plan to procure a final decree of divorce once the initial objective had been achieved. The objective was plain: by engineering a final decree, Defendants would not only hobble Plaintiff's ability to bring this suit but also invite invocation of the Rooker–Feldman doctrine and related abstention principles to preclude federal jurisdiction. Now, after two years of unremitting effort, Plaintiff seeks the only meaningful remedy remaining: federal redress to halt the ongoing abuses of authority, to unwind tainted actions, and to compensate him fully for the catastrophic losses Defendants have wrought. Take each piece in the TABLE OF CONTENTS, research the topic, and tie it to the factual timeline, filling out each element of the RICO complaint and tie each element to the factual allegations by enumerated paragraph number. What are the standards for incorporating and referencing public records and judicial notice in federal civil litigation, particularly in the Fifth Circuit, and how should these be pleaded in a RICO complaint?

Answer (Fifth Circuit)

Short response

In the Fifth Circuit, federal courts may incorporate and reference public records and take judicial notice of them under Federal Rule of Evidence 201, provided the records are not subject to reasonable dispute and are either generally known or can be accurately determined from reliable sources; this includes court filings and records from other proceedings. In a RICO complaint, such records should be specifically identified, incorporated by reference if central to the claims, and judicial notice should be expressly requested in the pleadings, clarifying that the notice is sought for the existence and authenticity of the records, not for the truth of their contents.

Summary

Federal courts in the Fifth Circuit routinely allow parties to incorporate public records into pleadings and request judicial notice of such records, especially in the context of motions to dismiss under Rule 12(b)(6). The standards require that the records be referenced in the complaint, central to the claims, and not subject to reasonable dispute, with judicial notice limited

to the existence and authenticity of the records rather than the truth of any factual findings within them.

When pleading a RICO complaint, plaintiffs should clearly identify and hyperlink or attach the relevant public records, state their centrality to the RICO elements (such as predicate acts or enterprise structure), and formally request judicial notice under Rule 201, specifying that the records are being used to establish the fact of litigation or related filings. Courts will not take judicial notice of disputed facts or factual findings from other courts, but will recognize the existence and filing of public documents, which can be critical in establishing the timeline, pattern, and continuity required for RICO claims.

Background and Relevant Law

Legislative and Regulatory Framework

The primary authority governing judicial notice in federal civil litigation is Federal Rule of Evidence 201. This rule permits courts to take judicial notice of facts that are not subject to reasonable dispute, either because they are generally known within the court's territorial jurisdiction or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Judicial notice may be taken at any stage of the proceeding, and the nonmoving party must be given an opportunity to be heard regarding the propriety of judicial notice (United States v. Psychosomatic Fitness LLC, 14 OCAHO no. 1387).

Federal Rule of Evidence 1005 further allows the use of certified copies of official records, provided the record is otherwise admissible and the copy is properly certified or authenticated (Other Evidence Rules (2019-05-05)).

Case Law

The Fifth Circuit has consistently held that courts may consider the complaint, documents attached to the complaint, documents incorporated by reference, and matters of public record when ruling on a Rule 12(b)(6) motion to dismiss (Mitchell v. Prestige Default Servs., 3:23-cv-2534-X-BN (N.D. Tex. Jun 06, 2024); Walker v. U.S. Bank (N.D. Tex. 2022); Wright v. Arlington Indep. Sch. Dist., Civil Action No. 4:19-cv-00278-P (N.D. Tex. Nov 25, 2019)). Public records, including court filings from other cases, are proper subjects of judicial notice, but the notice is limited to the existence and authenticity of the documents, not the truth of their contents or the factual findings of another court (Taylor v. Charter Medical Corp., 162 F.3d 827 (5th Cir. 1998); Gray ex rel. Rudd v. Beverly Enterprises-Miss., 390 F.3d 400 (5th Cir. 2004)).

Courts may also consider documents attached to a defendant's motion to dismiss if they are referenced in the complaint and central to the plaintiff's claims (Kaye v. (us), 453 B.R. 645 (N.D. Tex. 2011); Payne v. City of Houston (2025-04-03)). The Fifth Circuit has clarified that taking judicial notice of public records does not convert a motion to dismiss into a motion for

summary judgment (Cinel v. Connick, 15 F.3d 1338 (5th Cir. 1994); Munoz v. HSBC Bank USA, N.A. (2013-01-22)).

The presumption of public access to judicial records is strong, and courts should be reluctant to seal such records (Binh Hoa Le v. Exeter Fin. Corp., 990 F.3d 410 (5th Cir. 2021)).

Administrative Decisions

Administrative decisions reinforce that judicial notice under Rule 201 is limited to facts not subject to reasonable dispute and that parties must be given an opportunity to contest judicial notice if they wish (United States v. Psychosomatic Fitness LLC, 14 OCAHO no. 1387).

Analysis

Incorporating and Referencing Public Records

1. Incorporation by Reference

A plaintiff may incorporate public records into a complaint by specifically referencing them and, where possible, attaching them or providing hyperlinks. The records must be central to the claims asserted. For example, in a RICO complaint, public records such as court filings, affidavits, and orders that document the alleged predicate acts, the existence of an enterprise, or the continuity of conduct are typically central to the claim (Payne v. City of Houston (2025-04-03); Bustos v. Invierte En Tex. (2024-06-03)).

Documents attached to the complaint or to a motion to dismiss may be considered by the court if they are referenced in the complaint and central to the claims (Kaye v. (us), 453 B.R. 645 (N.D. Tex. 2011)). This is particularly relevant in complex RICO litigation, where the factual timeline and the existence of predicate acts may be established through a series of public records.

2. Judicial Notice

Federal courts in the Fifth Circuit may take judicial notice of public records, including court filings from other cases, to establish the fact that certain litigation or filings occurred (LUV N' Care, Ltd. v. Jackel Int'l Ltd., 502 F.Supp.3d 1106 (W.D. La. 2020); Starrett v. City of Richardson, Civil Action No. 3:18-CV-0191-L (N.D. Tex. Jul 27, 2018)). However, courts will not take judicial notice of the truth of the matters asserted in those records or the factual findings of another court (Taylor v. Charter Medical Corp., 162 F.3d 827 (5th Cir. 1998); Ambler v. Williamson Cnty., Case No. 1-20-CV-1068-LY (W.D. Tex. Feb 25, 2021)).

Judicial notice is appropriate only for facts that are not subject to reasonable dispute, such as the existence of a court order, the filing of a pleading, or the occurrence of a judicial act (Basic Capital Mgmt. v. Dynex Capital, Inc., Civil

Action No. 3:17-CV-01147-X (N.D. Tex. Oct 28, 2019); Scanlan v. Texas a&M University, 343 F.3d 533 (5th Cir. 2003)). The court may take judicial notice on its own or upon request by a party, provided the party supplies the necessary information (Roe v. E. Baton Rouge Par. Sch. Bd. (2024-10-03)).

3. Pleading Standards in a RICO Complaint

In a RICO complaint, the plaintiff should:

- Clearly identify each public record being referenced, including docket numbers, filing dates, and, where possible, hyperlinks to the records.
- State that the records are incorporated by reference and are central to the RICO claims, such as establishing the timeline of predicate acts, the structure of the enterprise, or the continuity of conduct.
- Formally request that the court take judicial notice of the records under Federal Rule of Evidence 201, specifying that the request is for the existence and authenticity of the records, not for the truth of any factual findings within them.
- If the records are from other court proceedings, clarify that judicial notice is sought only for the fact of the filings or orders, not for the underlying factual determinations (Murphy v. HSBC Bank USA, CIVIL ACTION NO. H-12-3278 (S.D. Tex. Apr 23, 2014)).

For example, in the provided scenario, the plaintiff references the consolidated mandamus record filed in the Texas Supreme Court, provides hyperlinks, and requests judicial notice of the record's existence and authenticity, not the truth of the allegations within those filings.

4. Application to the Factual Timeline and RICO Elements

Each element of the RICO claim—such as the existence of an enterprise, the commission of predicate acts, the pattern and continuity of racketeering activity, and the injury to business or property—can be supported by public records, provided they are properly referenced and incorporated. For instance:

- The timeline of events (e.g., filings, orders, communications) can be established by referencing the public court records and attaching or linking to them.
- Predicate acts such as wire fraud or extortion may be documented through affidavits, court orders, or filings that are part of the public record.
- The structure and continuity of the enterprise may be shown through a series of related filings and orders over time.

By incorporating these records and requesting judicial notice, the plaintiff ensures that the court may consider them at the motion to dismiss stage without converting the motion into one for summary judgment (Munoz v. HSBC Bank USA, N.A. (2013-01-22); Petri v. Properties, CIVIL ACTION H-09-3994 (S.D. Tex. Jun 02, 2011)).

5. Limitations and Cautions

Courts will not take judicial notice of the truth of disputed facts or the factual findings of another court, as these are not considered indisputable under Rule 201 (Taylor v. Charter Medical Corp., 162 F.3d 827 (5th Cir. 1998)). If a party seeks judicial notice of facts that are subject to reasonable dispute, the court will deny the request (Aubrey v. D Magazine Partners, L.P., CIVIL ACTION NO. 3:19-CV-0056-B (N.D. Tex. Jan 23, 2020)).

When referencing public records, the plaintiff should avoid relying on the records to prove the truth of the matters asserted within them, unless those facts are independently admissible and not subject to reasonable dispute.

Exceptions and Caveats

- Judicial notice is limited to facts not subject to reasonable dispute. If the authenticity or accuracy of a public record is challenged, the court may decline to take judicial notice.
- The court will not take judicial notice of the factual findings of another court, only the existence of the filings or orders.
- If a public record is not central to the claim or is not referenced in the complaint, it may not be considered at the motion to dismiss stage.
- The party opposing judicial notice must be given an opportunity to contest the propriety of judicial notice (United States v. Psychosomatic Fitness LLC, 14 OCAHO no. 1387).

Conclusion

In the Fifth Circuit, federal courts may incorporate and reference public records and take judicial notice of them under Federal Rule of Evidence 201, provided the records are not subject to reasonable dispute and are either generally known or can be accurately determined from reliable sources. In a RICO complaint, plaintiffs should specifically identify and incorporate by reference any public records central to their claims, formally request judicial notice for the existence and authenticity of those records, and clarify that the request does not extend to the truth of any factual findings within the records. This approach ensures that the court may consider the records at the motion to dismiss stage, supports the factual basis for the RICO elements, and aligns with established Fifth Circuit precedent.

Legal Authorities

Petri v. Properties, CIVIL ACTION H-09-3994, Consolidated with H-10-CV-122 and H-10-CV-497 (S.D. Tex. Jun 02, 2011)

U.S. District Court — Southern District of Texas

Extract

As noted, on a Rule 12(b)(6) review, although generally the court may not look beyond the pleadings, the Court may examine the complaint, documents attached to the complaint, and documents attached to the motion to dismiss to which the complaint refers and which are central to the plaintiff's claim(s), as well as matters of public record. Lone Star Fund V. (U.S.), L.P. v. Barclays Bank PLC, 594 F.3d 383 (5th Cir. 2010), citing Collins, 224 F.3d at 49899; Cinel v. Connick, 15 F.3d 1338, 1341, 1343 n.6 (5th Cir. 1994).

Summary

In the Fifth Circuit, during a Rule 12(b)(6) motion to dismiss, the court can consider the complaint, documents attached to the complaint, documents attached to the motion to dismiss that are referred to in the complaint and central to the plaintiff's claims, and matters of public record. This indicates that public records can be incorporated into pleadings if they are central to the claims and referenced in the complaint.

Kaye v. (us), 453 B.R. 645 (N.D. Tex. 2011)

U.S. District Court — Northern District of Texas

Extract

Scanlan v. Tex. A & M Univ., 343 F.3d 533, 536 (5th Cir.2003). Under that exception, " 'documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to her claim.' " Collins, 224 F.3d at 498–99 (quoting Venture Assocs. Corp. v. Zenith Data Sys. Corp., 987 F.2d 429, 431 (7th Cir.1993)). Thus, for a document to be incorporated into the pleadings under this exception, it must (1) be attached to a defendant's motion to dismiss, (2) be referred to in the plaintiff's complaint, and (3) be central to the plaintiff's claims.

Summary

Criteria for incorporating documents into pleadings in the Fifth Circuit. It specifies that documents can be considered part of the pleadings if they are attached to a motion to dismiss, referred to in the plaintiff's complaint, and central to the plaintiff's claims. This is relevant for pleading in a RICO complaint as it provides guidance on how to properly incorporate and reference public records and judicial notice.

LUV N' Care, Ltd. v. Jackel Int'l Ltd., 502 F.Supp.3d 1106 (W.D. La. 2020)

U.S. District Court — Western District of Louisiana

Extract

"[I]t is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record." Norris v. Hearst Trust, 500 F.3d 454, 461 n. 9 (5th Cir. 2007); see also Funk v. Stryker Corp., 631 F. 3d 777, 783 (5th Cir. 2011) (holding that the court could take judicial notice of a relevant FDA publication). For example, a court may "take judicial notice of the public records in ... prior state court proceedings." Stiel v. Heritage Numismatic Auctions, Inc., 816 F. App'x 888, 892 (5th Cir. 2020) (citation omitted). The Court may also properly take judicial notice of "the fact that a judicial action was taken[.]" Gray v. Beverly Enters.-Mississippi, Inc., 390 F.3d 400, 407 n.7 (5th Cir. 2004) (citing Taylor v. Charter Med. Corp., 162 F.3d 827, 831 (5th Cir. 1998)). The Court may also judicially notice prior court documents to establish the fact of the previous litigation and the related filings. Ferguson v. Extraco Mortg. Co., 264 Fed. Appx. 351, 352 (5th Cir. 2007) (citing Taylor, 162 F.3d at 830) ("A court may take judicial notice of a document filed in another court ... to establish the fact of such litigation and related filings") (internal quotations omitted).

Summary

In the Fifth Circuit, it is proper for courts to take judicial notice of matters of public record, including documents from prior state court proceedings, to establish the fact of such litigation and related filings. This is applicable in federal civil litigation, including RICO complaints, where public records can be referenced to support claims.

Kelley v. City of Cedar Park, 1:20-CV-481-RP (W.D. Tex. Feb 03, 2022)

U.S. District Court — Western District of Texas

Extract

The Court takes judicial notice of the docket and state court records filed in Kelley's state criminal and habeas proceedings. See Davis v. Bayless, 70 F.3d 367, 372 n.3 (5th Cir. 1995) (“Federal courts are permitted to refer to matters of public record when deciding a 12(b)(6) motion to dismiss.”); Landry v. Lynaugh, 844 F.2d 1122, 1124 n.8 (5th Cir. 1988) (taking judicial notice of state court trial records).

Summary

Federal courts in the Fifth Circuit can take judicial notice of matters of public record, including state court records, when deciding motions to dismiss under Rule 12(b)(6). This is supported by precedents such as Davis v. Bayless and Landry v. Lynaugh, which affirm the permissibility of referring to public records in federal court proceedings.

Lovelace v. Software Spectrum Inc., 78 F.3d 1015 (5th Cir. 1996)

U.S. Court of Appeals — Fifth Circuit

Extract

We note our agreement with the following rationale given by the Second Circuit for allowing district courts to take judicial notice of relevant public disclosure documents: ... Foreclosing resort to such documents might lead to complaints filed solely to extract nuisance settlements. Finally, we believe that under such circumstances, a district court may take judicial notice of the contents of relevant public disclosure documents required to be filed with the SEC as facts 'capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.' FED.R.EVID. 201(b)(2). This of course includes related documents that bear on the adequacy of the disclosure as well as documents actually alleged to contain inadequate or misleading statements. We stress that our holding relates to public disclosure documents required by law to be filed, and actually filed, with the SEC, and not to other forms of disclosure such as press releases or announcements at shareholder meetings.

Summary

The Fifth Circuit allows district courts to take judicial notice of public disclosure documents required by law to be filed with the SEC. These documents are considered facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned" under FED.R.EVID. 201(b)(2). This standard is applicable to documents that are legally required to be filed and actually filed, ensuring their reliability and accuracy.

Norris v. Hearst Trust, 500 F.3d 454 (5th Cir. 2007)

U.S. Court of Appeals — Fifth Circuit

Extract

And, it is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record. See Cinel v. Connick, 15 F.3d 1338, 1343 n. 6 (5th Cir.1994).

Summary

In the Fifth Circuit, it is appropriate for courts to take judicial notice of matters of public record when deciding a motion to dismiss under Rule 12(b)(6). This suggests that public records can be incorporated into pleadings and considered by the court without converting the motion to dismiss into a motion for summary judgment. This is relevant for a RICO complaint, as it implies that public records, such as court documents, can be referenced and

judicially noticed to support the allegations without needing to present additional evidence at the motion to dismiss stage.

Miller v. Stroman, CIVIL NO. 1-19-CV-00475-ADA (W.D. Tex. May 14, 2020)

U.S. District Court — Western District of Texas

Extract

In ruling on a Rule 12(b)(6) motion, the court generally limits its review to the face of the pleadings. See Spivey v. Robertson, 197 F.3d 772, 774 (5th Cir. 1999). However, the court may also consider documents outside of the pleadings if they fall within certain limited categories. Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 323 (2007). Specifically, the court can 'rely on documents incorporated into the complaint by reference and matters of which a court may take judicial notice.' Id. 'A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.'

Summary

Standards for incorporating and referencing public records and judicial notice in federal civil litigation. It specifies that courts can consider documents outside the pleadings if they are incorporated by reference or are matters of judicial notice. Judicial notice is reserved for facts that are not subject to reasonable dispute, either because they are generally known within the jurisdiction or can be accurately determined from reliable sources. This is applicable in the context of a RICO complaint as it guides how public records should be pleaded and referenced.

Wright v. Arlington Indep. Sch. Dist., Civil Action No. 4:19-cv-00278-P (N.D. Tex. Nov 25, 2019)

U.S. District Court — Northern District of Texas

Extract

In evaluating the sufficiency of a complaint, courts consider the complaint in its entirety, as well as documents incorporated by reference and matters of which a court may take judicial notice. Funk v. Stryker Corp., 631 F.3d 777, 783 (5th Cir. 2011); U.S. ex rel. Willard v. Humana Health Plan of Texas, Inc., 336 F.3d 375, 379 (5th Cir. 2003). The Fifth Circuit has affirmed that 'it is clearly proper' for a court deciding a 12(b)(6) motion to take judicial notice of matters of public record. Funk, 631 F.3d at 783 (citation omitted); see Terrebonne v. Blackburn, 646 F.2d 997, 1000 n.4 (5th Cir. 1981) ('Absent some reason for mistrust, courts have not hesitated to take judicial notice of

agency records and reports.'); see also Hooker, 2010 WL 4025776, at *10 (taking judicial notice of an agency administrative decision that was public record when evaluating limitations in an employment discrimination case, without converting a motion for judgment on pleadings to a motion for summary judgment); Wilson v. Lockheed Martin Corp., No. 03-2276, 2003 WL 22384933, at *2 (E.D. La. Oct. 15, 2003) ('Any reference to EEOC documents... does not convert the 12(b)(6) motion to a motion for summary judgment.').

Summary

In the Fifth Circuit, it is proper for courts to take judicial notice of matters of public record when evaluating the sufficiency of a complaint. This includes documents incorporated by reference and agency records and reports, provided there is no reason for mistrust. This standard applies to motions to dismiss under Rule 12(b)(6) and does not convert such motions into motions for summary judgment.

Viking Constr. Grp., LLC v. Satterfield & Pontikes Constr. Grp. Inc., CIVIL ACTION No. 17-12838 SECTION I (E.D. La. Jan 12, 2018)

U.S. District Court — Eastern District of Louisiana

Extract

As the Fifth Circuit has recognized, 'a court may [generally] only look to the complaint, any documents attached to the complaint, and any documents attached to the motion... that are central to the claim and referenced by the complaint' when conducting a 12(b)(6) analysis. Joseph, 487 Fed. App'x at 178 n.3. 'However, the court may take judicial notice of matters of public record. Here, the document referenced is a pleading filed with a Louisiana state district court, and it is a matter of public record.'

Summary

In the Fifth Circuit, when conducting a 12(b)(6) analysis, courts generally consider the complaint, documents attached to the complaint, and documents attached to the motion that are central to the claim and referenced by the complaint. Additionally, courts may take judicial notice of matters of public record, such as pleadings filed with a state district court. This is relevant for pleading in a RICO complaint, as it suggests that public records can be incorporated by reference and judicial notice can be requested for such records.

Shargian v. Shargian

U.S. District Court — Eastern District of Louisiana

Extract

"The public's right of access to judicial proceedings is fundamental." Binh Hoa Le, 990 F.3d at 418. After all, "[j]udicial records belong to the American people; they are public, not private, documents." Id. at 417. "'The public has an interest in transparent court proceedings that is independent of the parties' interests.'" June Med. Servs., L.L.C. v. Phillips, 22 F.4th 512, 519 (5th Cir. 2022) (quoting In re Gee, No. 19-30953, 2019 WL 13067384, at *4 (5th Cir. Nov. 27, 2019) (Elrod, J., concurring)). Courts are therefore "duty-bound to protect public access to judicial proceedings and records." Binh Hoa Le, 990 F.3d at 417.

Summary

The Fifth Circuit emphasizes the public's right to access judicial proceedings and records. This principle is fundamental and independent of the parties' interests. Courts are obligated to protect this access, and any sealing of records must be justified with a detailed explanation that allows for appellate review. This underscores the importance of transparency in judicial proceedings.

Labranche v. Nestor I, LLC, CIVIL DOCKET NO. 18-8399 SECTION: "E" (E.D. La. May 10, 2019)

U.S. District Court — Eastern District of Louisiana

Extract

The Supreme Court has explained that, in considering Rule 12(b)(6) motions, 'courts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.' Under Rule 201 of the Federal Rules of Evidence, '[t]he court may judicially notice a fact that is not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.' Moreover, '[t]he court may take judicial notice on its own.' ... The court may also take notice of matters of public record. Here, the documents referenced are pleadings filed with and judgments rendered in a Louisiana state district court, which are a matter of public record.

Summary

The passage explains that in federal civil litigation, particularly when considering Rule 12(b)(6) motions, courts can consider the complaint, documents incorporated by reference, and matters of which a court may take judicial notice. Rule 201 of the Federal Rules of Evidence allows courts to take judicial notice of facts that are not subject to reasonable dispute and can be accurately determined from reliable sources. The Fifth Circuit has

affirmed the use of judicial notice for public records, such as court documents, without converting a motion to dismiss into a summary judgment motion. This is relevant for pleading in a RICO complaint as it allows the incorporation of public records and judicial notice to support the claims.

Ambler v. Williamson Cnty., Case No. 1-20-CV-1068-LY (W.D. Tex. Feb 25, 2021)

U.S. District Court — Western District of Texas

Extract

In determining whether a plaintiff has alleged sufficient facts to survive a motion to dismiss, 'the factual information to which the court addresses its inquiry is limited to the (1) [ ] facts set forth in the complaint, (2) documents attached to the complaint, and (3) matters of which judicial notice may be taken under Federal Rule of Evidence 201.' Walker v. Beaumont Indep. Sch. Dist., 938 F.3d 724, 735 (5th Cir. 2019); accord Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007). In addition, the court also may consider documents attached to a defendant's motion to dismiss 'that are referred to in the complaint and are central to the plaintiff's claims.' Walker, 938 F.3d at 735. Federal Rule of Evidence 201(b) provides that courts 'may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.' Rule 201 'authorizes the court to take notice only of 'adjudicative facts,' not legal determinations.' Taylor v. Charter Med. Corp., 162 F.3d 827, 831 (5th Cir. 1998). Judicial notice may be taken of 'matters of public record' that are not subject to reasonable dispute. Walker, 938 F.3d at 735; FED. R. EVID. 201(b). The court's notice, however, is limited to the existence of the document, 'not to prove the truth of the documents' contents.'

Summary

Standards for incorporating and referencing public records and judicial notice in federal civil litigation, particularly in the Fifth Circuit. It specifies that judicial notice can be taken of facts that are not subject to reasonable dispute, such as those generally known within the court's jurisdiction or those that can be accurately determined from reliable sources. The passage also clarifies that judicial notice is limited to the existence of the document and not to prove the truth of its contents. This is relevant for pleading in a RICO complaint as it guides how public records can be incorporated and referenced.

Basic Capital Mgmt. v. Dynex Capital, Inc., Civil Action No. 3:17-CV-01147-X (N.D. Tex. Oct 28, 2019)

U.S. District Court — Northern District of Texas

Extract

Federal Rule of Evidence 201(b) states a court may judicially notice a fact that is not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. If the contents of documents are subject to dispute, courts may judicially notice documents for their existence and the statements they contain and not to prove the truth of the contents in the documents. In Meyers v. Textron, Inc., the Fifth Circuit stated that district courts, when ruling on a Rule 12(b)(6) motion, must primarily look at the allegations in the complaint but may also take into account 'documents incorporated into the complaint by reference or integral to the claim, items subject to judicial notice, [including] matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint whose authenticity is unquestioned.' Fifth Circuit precedent makes clear that 'public records' includes publicly available documents and transcripts and pleadings filed in state court.

Summary

Public records include documents and pleadings filed in state court, and these can be incorporated into a complaint by reference or if they are integral to the claim.

Roe v. Lowery, 3:23-CV-01279 (W.D. La. Dec 17, 2024)

U.S. District Court — Western District of Louisiana

Extract

In assessing whether a plaintiff's claims survive a Rule 12(b)(6) motion to dismiss, 'the factual information to which the court addresses its inquiry is limited to (1) the facts set forth in the complaint, (2) documents attached to the complaint, and (3) matters of which judicial notice may be taken under Federal Rule of Evidence 201.' Walker v. Beaumont Indep. Sch. Dist., 938 F. 3d 724, 735 (5th Cir. 2019) (citations omitted). The Court also may consider documents that a defendant attaches to its motion, so long as the documents are referred to in the complaint and are central to the plaintiff's claims. ... The Federal Rules of Evidence provide that the court 'may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.' FED. R. EVID. 201(b). A court may take judicial notice on its own or if a party requests it and the court is supplied with the necessary information. FED. R. EVID. 201(c). 'Judicial notice may be taken of matters of public record.' Walker, 938 F.3d at 735 (citing Firefighters' Retirement Sys., v. EisnerAmper, L.L.P., 898 F.3d 553, 558 n.2 (5th Cir. 2018)). A court

may take judicial notice of court pleadings in other cases because they constitute public records.

Summary

In the Fifth Circuit, when assessing a motion to dismiss under Rule 12(b)(6), the court can consider facts in the complaint, attached documents, and matters subject to judicial notice under Federal Rule of Evidence 201. Judicial notice can be taken for facts not subject to reasonable dispute, either because they are generally known or can be accurately determined from reliable sources. Public records, including court pleadings from other cases, can be judicially noticed. This is relevant for pleading in a RICO complaint as it allows the incorporation of public records and judicial notice to support claims.

Binh Hoa Le v. Exeter Fin. Corp., 990 F.3d 410 (5th Cir. 2021)

U.S. Court of Appeals — Fifth Circuit

Extract

Judicial records are public records. And public records, by definition, presume public access. ... In our view, courts should be ungenerous with their discretion to seal judicial records, which plays out in two legal standards relevant here. The first standard, requiring only 'good cause,' applies to protective orders sealing documents produced in discovery. The second standard, a stricter balancing test, applies '[o]nce a document is filed on the public record'—when a document 'becomes a ‘judicial record.’' Under both standards, the working presumption is that judicial records should not be sealed. That must be the default because the opposite would be unworkable: 'With automatic sealing, the public may never know a document has been filed that might be of interest.'

Summary

In the Fifth Circuit, there is a strong presumption in favor of public access to judicial records. This presumption applies to documents filed on the public record, which become judicial records. The court should be cautious in sealing such records, applying a stricter balancing test once a document is filed publicly. This principle is crucial for ensuring transparency and public awareness of judicial proceedings.

Walker v. U.S. Bank

U.S. District Court — Northern District of Texas

Extract

In addition, Ait is clearly proper in deciding a 12(b) motion to take judicial notice of matters of public record.@ Norris v. Hearst Trust, 500 F.3d 454, 461 n.9 (5th Cir. 2007); accord Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308,322 (directing courts to Aconsider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice@).

Summary

In the Fifth Circuit, it is proper for courts to take judicial notice of matters of public record when deciding a Rule 12(b) motion. This includes considering the complaint in its entirety and other sources typically examined in such motions, such as documents incorporated by reference and matters of which a court may take judicial notice. This standard is applicable to federal civil litigation and provides guidance on how public records and judicial notice should be incorporated and referenced in pleadings, including RICO complaints.

Aubrey v. D Magazine Partners, L.P., CIVIL ACTION NO. 3:19-CV-0056-B (N.D. Tex. Jan 23, 2020)

U.S. District Court — Northern District of Texas

Extract

Subsequently, Plaintiffs filed the motion at hand, asking the Court to take judicial notice of the contents of six search-warrant affidavits, because Plaintiffs included allegations of only three search-warrant affidavits in their second amended complaint. See Doc. 98, Pls.' Mot. for Leave, 1-2. Defendant Dallas County, as well as the City Defendants, filed responses in opposition to the motion, contending that Plaintiffs urge the Court to take judicial notice of facts that do not fall within the purview of Federal Rule of Evidence 201. See Doc. 99, Def. Dallas Cty.'s Resp., 3; Doc. 100, CityDefs.' Resp., 1-2. Plaintiffs, in reply, assert that they seek judicial notice of the fact that certain facts appear in the affidavits—not the truth of those facts. See Doc. 101, Pls.' Reply, 2. ... Here, Plaintiffs urge the Court to take judicial notice of the existence of facts in certain search-warrant affidavits. Doc. 98, Pls.' Mot. for Leave, 1-2. Because the existence of the statements in these search-warrant affidavits cannot be 'accurately and readily determined from sources whose accuracy cannot reasonably be questioned,' see FED. R. EVID. 201(b)(2), the Court DENIES Plaintiffs' motion (Doc. 98). A. The Court Will Not Take Judicial Notice of the Existence of Facts in the Search-Warrant Affidavits. ... Here, the Court is not convinced that Plaintiffs' exhibits derive from sources 'whose accuracy cannot reasonably be questioned.' See FED. R. EVID. 201(b)(2). Plaintiffs' motion for judicial notice explains that Plaintiffs received the affidavits at issue through an Open Records Request

to the City of Dallas. See Doc. 98, Pls.' Mot. for Leave, 1. But Plaintiffs' attached exhibits—the search-warrant affidavits and related documents—do not include the Request itself. See generally, Doc. 98-1, Pls.' Mot., Exs. A-C. Accordingly, the Court 'is unable to determine, from the documents provided, what exact information Plaintiff[s] requested from' the City of Dallas.

Summary

For a court to take judicial notice of facts, the facts must be from sources "whose accuracy cannot reasonably be questioned" as per Federal Rule of Evidence 201(b)(2). The court denied the motion for judicial notice because the plaintiffs did not provide sufficient evidence that the affidavits were from such sources. This indicates that when pleading in a RICO complaint, or any federal civil litigation, it is crucial to ensure that any public records or documents for which judicial notice is sought must be clearly sourced and their accuracy unquestionable.

Mitchell v. Prestige Default Servs., 3:23-cv-2534-X-BN (N.D. Tex. Jun 06, 2024)

U.S. District Court — Northern District of Texas

Extract

In addition, 'it is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.' Norris v. Hearst Trust, 500 F.3d 454, 461 n.9 (5th Cir. 2007); accord Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2008) (directing courts to 'consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice').

Summary

In the Fifth Circuit, it is appropriate for courts to take judicial notice of public records when deciding a Rule 12(b)(6) motion to dismiss. This includes considering the complaint in its entirety, documents incorporated by reference, and matters of public record. This standard is applicable in federal civil litigation, including RICO complaints, where public records can be referenced and judicially noticed to support the claims.

Dent v. Methodist Health Sys., CIVIL ACTION NO. 3:20-CV-00124-S (N.D. Tex. Jan 08, 2021)

U.S. District Court — Northern District of Texas

Extract

Federal Rule of Evidence 201 allows a district court to take judicial notice of a 'fact that is not subject to reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.' Fed. R. Evid. 201(b). A district court may take judicial notice of a fact at the motion-to-dismiss stage of proceedings. Basic Cap. Mgmt., Inc. v. Dynex Cap., Inc., 976 F.3d 585, 589 (5th Cir. 2020). Specifically, the Fifth Circuit has stated that it is 'clearly proper' for a district court to take judicial notice of matters of public record in deciding a 12(b)(6) motion.

Summary

The passage explains that under Federal Rule of Evidence 201, a district court can take judicial notice of facts that are not subject to reasonable dispute, either because they are generally known within the court's jurisdiction or can be accurately determined from reliable sources. This is applicable at the motion-to-dismiss stage, and the Fifth Circuit has affirmed that it is proper to take judicial notice of public records in such contexts.

Reece v. U.S. Bank Nat'l Ass'n, Civil Action No. 4:13-cv-982-O (N.D. Tex. Jan 28, 2014)

U.S. District Court — Northern District of Texas

Extract

"Generally, a court ruling on a 12(b)(6) motion may rely on the complaint, its proper attachments, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." Randall D. Wolcott, M.D., P.A. v. Sebelius, 635 F.3d 757, 763 (5th Cir. 2011) (citations and internal quotation marks omitted). A court may take judicial notice of matters of public record.

Summary

In the Fifth Circuit, when ruling on a motion to dismiss, a court can consider the complaint, its attachments, documents incorporated by reference, and matters of public record that the court may take judicial notice of. This is relevant to pleading in a RICO complaint because it outlines what materials can be referenced and relied upon in the complaint, particularly when incorporating public records and requesting judicial notice.

Murphy v. HSBC Bank USA, CIVIL ACTION NO. H-12-3278 (S.D. Tex. Apr 23, 2014)

U.S. District Court — Southern District of Texas

Extract

The Court further notes that Federal Rule of Evidence 201(b) allows the Court to take judicial notice only of an adjudicative fact 'not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.' Furthermore, Rule 201(g) states, 'In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed.' 'A fact that has been judicially noticed is not subject to dispute by the opposing party.' ... In Taylor Charter Medical Corp., 162 F.3d 827, 829-30 (5th Cir. 1998)(citations omitted), the Fifth Circuit joined the Second and Eleventh Circuit Courts of Appeals in ruling that a court may take judicial notice of a 'document filed in another court. .. to establish the fact of such litigation and related filings,' but not of the factual findings of another court because those do not constitute facts 'not subject to reasonable dispute within the meaning of Rule 201 and because to do so merely because a fact had been found to be true in some other action would make the doctrine of collateral estoppel superfluous. A court may take judicial notice of an order of another court only for the limited purpose of recognizing the judicial act that the order represents.

Summary

In federal civil litigation, particularly in the Fifth Circuit, courts can take judicial notice of adjudicative facts that are not subject to reasonable dispute. This includes facts that are generally known within the court's jurisdiction or can be accurately determined from reliable sources. Courts can take judicial notice of documents filed in other courts to establish the fact of litigation and related filings, but not the factual findings of those courts. This is to prevent the doctrine of collateral estoppel from becoming redundant. In a RICO complaint, these standards should be pleaded by clearly identifying the public records and specifying that they are being used to establish the fact of litigation or related filings, not to assert the truth of the facts within those records.

Lone Star Fund V (U.S.), L.P. v. Barclays Bank Plc, 594 F.3d 383 (5th Cir. 2010)

U.S. Court of Appeals — Fifth Circuit

Extract

Appellate review of a district court's dismissal for failure to state a claim under Rule 12(b)(6) is de novo. Jones v. Greninger, 188 F.3d 322, 324 (5th Cir. 1999). The ultimate question in a Rule 12(b)(6) motion is whether the complaint states a valid claim when all well-pleaded facts are assumed true and are viewed in the light most favorable to the plaintiff. In re Katrina Canal Breaches Litig., 495 F.3d 191, 205 (5th Cir.2007). The court's review is limited to the complaint, any documents attached to the complaint, and

any documents attached to the motion to dismiss that are central to the claim and referenced by the complaint. Collins v. Morgan Stanley Dean Witter, 224 F.3d 496, 498-99 (5th Cir.2000).

Summary

Standards for reviewing a motion to dismiss under Rule 12(b)(6) in the Fifth Circuit. It emphasizes that the court's review is limited to the complaint and any documents attached to it or to the motion to dismiss, provided they are central to the claim and referenced by the complaint. This is relevant to incorporating public records and judicial notice in federal civil litigation, as it highlights the importance of attaching and referencing documents central to the claim.

Taylor v. Charter Medical Corp., 162 F.3d 827 (5th Cir. 1998)

U.S. Court of Appeals — Fifth Circuit

Extract

We have not previously addressed this precise issue, but the Second, Eighth, and Eleventh Circuits have, holding that, even though a court may take judicial notice of a 'document filed in another court ... to establish the fact of such litigation and related filings,' a court cannot take judicial notice of the factual findings of another court. This is so because (1) such findings do not constitute facts 'not subject to reasonable dispute' within the meaning of Rule 201; and (2) 'were [it] permissible for a court to take judicial notice of a fact merely because it had been found to be true in some other action, the doctrine of collateral estoppel would be superfluous.'

Summary

While courts can take judicial notice of the existence of documents filed in other courts to establish the fact of litigation and related filings, they cannot take judicial notice of the factual findings from those documents. This is because such findings are not considered indisputable facts under Rule 201 of the Federal Rules of Evidence. The passage also highlights that allowing judicial notice of factual findings would undermine the doctrine of collateral estoppel.

Scanlan v. Texas a&M University, 343 F.3d 533 (5th Cir. 2003)

U.S. Court of Appeals — Fifth Circuit

Extract

Even if the district court had taken judicial notice of the report, that action would have been improper because '[a] judicially noticed fact must be one

not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.' FED. R. EVID. 201(b).

Summary

For a fact to be judicially noticed in federal civil litigation, it must be either generally known within the territorial jurisdiction of the trial court or capable of accurate and ready determination by sources whose accuracy cannot reasonably be questioned. This standard is crucial for incorporating public records into a RICO complaint, as it ensures that the facts being noticed are not subject to reasonable dispute.

Cinel v. Connick, 15 F.3d 1338 (5th Cir. 1994)

U.S. Court of Appeals — Fifth Circuit

Extract

In deciding a 12(b)(6) motion to dismiss, a court may permissibly refer to matters of public record. See Louisiana ex rel. Guste v. United States, 656 F.Supp. 1310, 1314 n. 6 (W.D.La.1986), aff'd, 832 F.2d 935 (5th Cir.1987), cert. denied, 485 U.S. 1033, 108 S.Ct. 1592, 99 L.Ed.2d 907 (1988). Accordingly, the consideration of the consent judgment does not convert this motion into one for summary judgment.

Summary

In the Fifth Circuit, courts can refer to matters of public record when deciding a motion to dismiss under Rule 12(b)(6) without converting the motion into one for summary judgment. This indicates that public records can be incorporated into pleadings and considered by the court without altering the nature of the motion. This is relevant for pleading in a RICO complaint, as it suggests that public records can be referenced to support the allegations without necessitating a summary judgment motion.

June Med. Servs., L.L.C. v. Phillips, 22 F.4th 512 (5th Cir. 2022)

U.S. Court of Appeals — Fifth Circuit

Extract

The district court identified twenty different categories of disputed sealed documents. It then separated the categories into two groups. The first group contained these categories: court filings in this case, a transcript of proceedings in this case, correspondence between counsel, publicly available articles, documents from the Louisiana Secretary of State's

website, information regarding published books, orders from the district court for the Eastern District of Louisiana, court documents from other cases, online information regarding abortion clinics, a publication from the Knights of Columbus, a public records request, and a Declaration of a Records Custodian. Even though, as the district court acknowledged, '[m]uch of this information is already publicly available,' the district court ordered substantial redaction of the documents in this group.

Summary

The district court recognized the public availability of certain documents but still ordered redactions, highlighting the tension between public access and privacy concerns. This suggests that in the Fifth Circuit, even publicly available documents may be subject to redaction if privacy or other concerns are present. This is relevant to how public records might be incorporated into a RICO complaint, as it underscores the need to balance transparency with privacy.

Gray ex rel. Rudd v. Beverly Enterprises-Miss., 390 F.3d 400 (5th Cir. 2004)

U.S. Court of Appeals — Fifth Circuit

Extract

We may take judicial notice of another court's judicial action. See Karaha Bodas Co. v. Perusahaan Perambangan Minyak Dan Gas Bumi Negara, 2003 WL 21027134, at *4 (5th Cir.2003). Although we cannot take judicial notice of findings of fact of other courts, the fact that a judicial action was taken is indisputable and is therefore amenable to judicial notice. See Taylor v. Charter Med. Corp., 162 F.3d 827, 831 (5th Cir.1998). The defendants point out that the motion effectively seeks to avoid this circuit's rule against giving precedential value to unpublished opinions. That would be true if the purpose for which plaintiffs seek to have the cases noticed were to establish them as precedent. It is perfectly permissible, however, for us to take judicial notice of the very fact of the judicial act that these decisions represent. We therefore grant the motion.

Summary

In the Fifth Circuit, courts can take judicial notice of the fact that a judicial action was taken by another court, but not the findings of fact from those actions. This means that while the existence of a court decision can be acknowledged, the specific factual determinations within that decision cannot be used as evidence. This is important for pleading in a RICO complaint, as it allows the plaintiff to reference the existence of prior judicial actions without relying on the factual findings of those actions as evidence.

Starrett v. City of Richardson, Civil Action No. 3:18-CV-0191-L (N.D. Tex. Jul 27, 2018)

U.S. District Court — Northern District of Texas

Extract

The judgment in Plaintiff prior lawsuit can be judicially noticed because it is a matter of public record and its contents cannot reasonably be disputed. See Norris v. Hearst Trust, 500 F.3d 454, 461 n.9 (5th Cir. 2007) (stating that it is proper for a court 'to take judicial notice of matters of public record'); Taylor v. Charter Medical Corp., 162 F.3d 827, 831 (5th Cir. 1998) (noting that the district court could take judicial notice of a judgment entered in a different case for the limited purpose of taking as true the action of the court in entering the judgment); see also Fed. R. Evid. 201(b)(2) (a court may take judicial notice of a fact when 'it can be accurately and readily determined from sources whose accuracy cannot reasonably be disputed').

Summary

In the Fifth Circuit, courts can take judicial notice of matters of public record, such as judgments from prior lawsuits, as long as their contents cannot reasonably be disputed. This is supported by case law and the Federal Rules of Evidence, specifically Rule 201(b)(2), which allows for judicial notice of facts that can be accurately and readily determined from reliable sources.

Payne v. City of Houston

Extract

Typically, in evaluating a Rule 12(b)(6) motion to dismiss, a court must accept the well-pleaded facts in the complaint as true and not consider facts outside the complaint. However, there are exceptions to this general rule, two of which are relevant here: (1) the district court may consider documents attached to the motion to dismiss if they are referred to in the plaintiff's complaint and central to their claims (incorporation by reference); and (2) the district court may take judicial notice of public records, though it may not take judicial notice of 'adjudicative facts' subject to reasonable dispute, which generally include the factual findings of another court.

Summary

The passage provides insight into the standards for incorporating and referencing public records and judicial notice in federal civil litigation within the Fifth Circuit. It explains that while courts typically do not consider facts outside the complaint in a Rule 12(b)(6) motion, they may consider documents attached to the motion if they are referred to in the complaint

and central to the claims. Additionally, courts may take judicial notice of public records but not of adjudicative facts subject to reasonable dispute.

Munoz v. HSBC Bank USA, N.A.

Extract

As noted, on a Rule 12(b)(6) review, although generally the court may not look beyond the pleadings, the Court may examine the complaint, documents attached to the complaint, and documents attached to the motion to dismiss to which the complaint refers and which are central to the plaintiff's claim(s), as well as matters of public record. Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC, 594 F.3d 383, 387 (5th Cir. 2010), citing Collins, 224 F.3d at 498-99; Cinel v. Connick, 15 F.3d 1338, 1341, 1343 n.6 (5th Cir. 1994). See also United States ex rel. Willard v. Humana Health Plan of Tex., Inc., 336 F.3d 375, 379 (5th Cir. 2003)('the court may consider... matters of which judicial notice may be taken'). Taking judicial notice of public records directly relevant to the issue in dispute is proper on a Rule 12(b)(6) review and does not transform the motion into one for summary judgment. Funk v. Stryker Corp., 631 F.3d 777, 780 (5th Cir. Jan. 25, 2011). 'A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.' Fed. R. Evid. 201(b).

Summary

Standards for incorporating public records and taking judicial notice in federal civil litigation within the Fifth Circuit. It specifies that courts may consider documents attached to the complaint, documents central to the plaintiff's claims, and matters of public record without converting a motion to dismiss into a motion for summary judgment. Judicial notice is appropriate for facts not subject to reasonable dispute, either because they are generally known within the court's jurisdiction or can be accurately determined from reliable sources. This is relevant for pleading in a RICO complaint, as it guides how to incorporate public records and request judicial notice effectively.

884 F.Supp.2d 561 Kiper v. BAC Home Loans Servicing, LP

Extract

On a Rule 12(b)(6) review, although generally the court may not look beyond the pleadings, the Court may examine the complaint, documents attached to the complaint, and documents attached to the motion to dismiss to which the complaint refers and which are central to the plaintiff's claim(s), as well as matters of public record. Lone Star Fund V (U.S.), L.P. v. Barclays Bank

PLC, 594 F.3d 383, 387 (5th Cir.2010), citing Collins, 224 F.3d at 498–99; Cinel v. Connick, 15 F.3d 1338, 1341, 1343 n. 6 (5th Cir.1994). See also United States ex rel. Willard v. Humana Health Plan of Tex., Inc., 336 F.3d 375, 379 (5th Cir.2003) ('the court may consider ... matters of which judicial notice may be taken'). Taking judicial notice of public records directly relevant to the issue in dispute is proper on a Rule 12(b)(6) review and does not transform the motion into one for summary judgment. Funk v. Stryker Corp., 631 F.3d 777, 780 (5th Cir.2011). 'A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.' Fed.R.Evid. 201(b).

Summary

The passage outlines that in the Fifth Circuit, courts may consider public records and take judicial notice of facts that are not subject to reasonable dispute during a Rule 12(b)(6) review. This means that public records can be referenced in pleadings if they are central to the plaintiff's claims and are not reasonably disputable. This is relevant for a RICO complaint, where public records might be used to establish elements of the claim, such as predicate acts or the existence of an enterprise.

Bustos v. Invierte En Tex.

Extract

A court may consider the contents of the pleadings, including attachments thereto, as well as documents attached to the motion, if they are referenced in the plaintiff's complaint and are central to the claims. See Sparks v. Tex. Dep't of Transp., 144 F.Supp.3d 902, 903 (S.D. Tex. 2015). '[I]t is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.' Hamilton v. Promise Healthcare, No. 23-30190, 2023 WL 6635076, at *3 (5th Cir. Oct. 12, 2023) (quotation omitted).

Summary

The passage provides guidance on the standards for incorporating and referencing public records and judicial notice in federal civil litigation within the Fifth Circuit. It clarifies that courts may consider documents attached to pleadings or motions if they are referenced in the complaint and central to the claims. Additionally, it is proper for courts to take judicial notice of matters of public record when deciding a motion to dismiss under Rule 12(b)(6). This is relevant to pleading a RICO complaint as it informs how public records can be incorporated and referenced to support the claims.

Roe v. E. Baton Rouge Par. Sch. Bd.

Extract

According to Federal Rule of Evidence 201, 'the [C]ourt may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.' Further, '[t]he [C]ourt may take judicial notice at any stage of the proceeding.' Although the decision of whether to take judicial notice of a fact is generally within the discretion of the trial court, a court 'must take judicial notice if a party requests it and the court is supplied with the necessary information.' As the School Board Defendants argue, courts have recognized that 'Public records and government documents are generally considered not to be subject to reasonable dispute,' and '[t]his includes public records and government documents available from reliable sources on the Internet.' Moreover, the Fifth Circuit in at least one case has taken judicial notice of 'the subject matter and contents of' school board policies cited by a party who moved to dismiss under Rule 12(b)(6).

Summary

Clear explanation of the standards for judicial notice under Federal Rule of Evidence 201, emphasizing that courts may take judicial notice of facts not subject to reasonable dispute, including public records and government documents. It also highlights that the Fifth Circuit has recognized the reliability of public records from the Internet for judicial notice purposes.

Balch v. JP Morgan Chase Bank

Extract

In addition, 'it is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.' Norris v. Hearst Trust, 500 F.3d 454, 461 n.9 (5th Cir. 2007); accord Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2008) (directing courts to 'consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice').

Summary

In the Fifth Circuit, it is proper for courts to take judicial notice of matters of public record when deciding a Rule 12(b)(6) motion to dismiss. This includes considering the complaint in its entirety and other sources such as documents incorporated into the complaint by reference. This standard is applicable to federal civil litigation and is relevant when pleading a RICO complaint, as it allows the incorporation of public records to support the claims.

Forster v. Bexar Cnty.

Extract

In general, a court addressing a motion under Rule 12(b)(6) 'must limit itself to the contents of the pleadings, including attachments thereto.' Brand Coupon Network, LLC v. Catalina Mktg. Corp., 748 F.3d 631, 635 (5th Cir. 2014) (citation omitted). And when a pleading refers to documents that are central to a claim, the Court may consider such documents if attached to the motion to dismiss. Lone Star Fund V (U.S.), LP v. Barclays Bank PLC, 594 F. 3d 383, 387 (5th Cir. 2010); Collins v. Morgan Stanley Dean Witter, 224 F.3d 496, 498-99 (5th Cir. 2000). Additionally, the Court may consider judicially noticed facts through Fed.R.Evid. 201, Basic Cap. Mgmt., Inc. v. Dynex Cap., Inc., 976 F.3d 585, 588 (5th Cir. 2020), and take judicial notice of matters of public record, Norris v. Hearst Trust, 500 F.3d 454, 461 n.9 (5th Cir. 2007).

Summary

In the Fifth Circuit, when addressing a motion to dismiss under Rule 12(b)(6), courts are generally limited to the contents of the pleadings and any attachments. However, if a pleading refers to documents central to a claim, those documents can be considered if attached to the motion to dismiss. Additionally, courts can take judicial notice of facts under Federal Rule of Evidence 201 and consider matters of public record. This is relevant for pleading in a RICO complaint, as it suggests that public records and judicially noticed facts can be incorporated into the complaint if they are central to the claims being made.

Judicial Notice: An Underappreciated and Misapplied Tool of Efficiency.

Defense Counsel Journal - International Association of Defense Counsels - Zogby, Michael C. - 2017-04-01

Extract

A judge may notice facts in upholding a complaint or in striking it as insufficient. This could have a profound on the parties' ability to bring a case to trial, or to bring a case in the first instance. Accordingly, unless a fact is undisputable, judicial notice at the pre-trial stage is used much less frequently than at trial. Application of judicial notice at the pre-trial phase is simple. For example, in a motion to dismiss, a defendant can state they are the holder of a new drug application filed with the Food and Drug Administration ('FDA'). The defendant may then provide the court with legal precedent that it can and should take judicial notice of such a fact. For example, the defendant could cite legal precedent supporting the proposition that a court may take judicial notice of FDA documents found online because the website is a 'source whose accuracy cannot reasonably be questioned.'

Summary

N example of how judicial notice can be applied at the pre-trial stage, such as in a motion to dismiss, by referencing documents from a reliable source like the FDA. This suggests that in a RICO complaint, a party could plead for judicial notice by citing reliable public records or documents from sources whose accuracy cannot reasonably be questioned.

Vol. 50 No. 1 Pg. 0038 A Tangled Web the Developing Law of Judicial Notice of Website Information

New Hampshire Bar Journal - New Hampshire Bar Association - 2009-00-00

Extract

Judicial notice of private (non-governmental) website information is more frequently subject to dispute. Here, the inquiry may depend on who maintains the website and what evidentiary use is intended for the information obtained. In O'Toole v. Northrop Grumman Corp., 499 F.3d 1218 (10th Cir. 2007), the facts at issue concerned lost earnings after the plaintiff employee withdrew money from a company retirement account. Despite the defendant company's objection, the appellate court had little difficulty affirming the taking of judicial notice by the trial court of the actual earnings history published on the company's own website. The company had no explanation 'why its own website's posting of historical retirement fund earnings is unreliable.' The appellate court also noted the company could have asked the trial court for a Rule 201(e) hearing on the issue, but did not do so.

Summary

The passage highlights that judicial notice of website information, especially from non-governmental sources, can be contentious. The court's decision to take judicial notice may depend on the reliability of the source and the intended use of the information. The example from the Tenth Circuit shows that courts may take judicial notice of information from a company's own website if the company cannot demonstrate its unreliability. This principle can be applied in the Fifth Circuit as well, where courts may take judicial notice of public records and reliable website information, provided the opposing party does not successfully challenge its reliability.

Authenticity of archived websites: the need to lower the evidentiary hurdle is imminent.

Rutgers Computer & Technology Law Journal - Rutgers University School of Law - Newark - Gazaryan, Karen - 2013-09-22

Extract

The Federal Rules of Evidence also permit authenticating evidence by ways of 'describing a process or system and showing that it produces an accurate result.' This does not mean, however, that it is always necessary for the computer programmer to testify in order to authenticate computer-generated documents. Anyone who has knowledge of the particular record system in question may authenticate a computer printout. At least one court has applied this rule to admit screenshots of archived web pages into evidence.

Summary

The passage provides insight into the standards for authenticating electronic evidence, such as archived web pages, in federal civil litigation. It highlights that the Federal Rules of Evidence allow for authentication by describing a process or system that produces an accurate result, and that testimony from someone knowledgeable about the record system can suffice for authentication. This is relevant to incorporating public records and judicial notice in a RICO complaint, as it outlines how electronic evidence can be authenticated and admitted in court.

Other Evidence Rules

Trial Evidence Foundations - James Publishing - Gordon P. Cleary - 2019-05-05

Extract

Federal Rule of Evidence 1005 provides that: The proponent may use a copy to prove the content of an official record — or of a document that was recorded or filed in a public office as authorized by law — if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained, the proponent may use other evidence to prove the content. Judicial notice may only be taken of a fact that is 'not subject to reasonable dispute because it is (1) generally known within the trial court’s territorial jurisdiction, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.'

Summary

Conditions under which public records can be used in federal court, emphasizing the need for certification or testimony to establish authenticity. It also explains the criteria for judicial notice, which requires facts to be indisputable or easily verifiable. These standards are relevant to pleading in a RICO complaint, where public records and judicial notice may be used to establish elements of the case.

Zajradhara v. Costa World Corp.

DOJ Office of the Chief Administrative Hearing Officer Decisions

Extract

A Court may take 'judicial notice of an adjudicative fact' if it is 'not subject to reasonable dispute because it: generally known within the trial court's territorial jurisdiction; or can be accurately and readily determined from sources whose accuracy cannot be questions.' Fed. R. Evid. § 201(a)-(b).

Summary

Judicial notice in federal civil litigation can be taken for facts that are not subject to reasonable dispute. This includes facts that are generally known within the court's jurisdiction or can be accurately determined from reliable sources. This standard is applicable in the Fifth Circuit as it is part of the Federal Rules of Evidence.

United States v. Psychosomatic Fitness LLC

DOJ Office of the Chief Administrative Hearing Officer Decisions

Extract

The Federal Rules of Evidence at Rule 201 provide the mechanism by which courts may take judicial notice of 'adjudicative facts.' Fed. R. Evid. 201. Specifically, the rule states that courts may take notice of facts 'not subject to reasonable dispute because [the fact] is generally known within the trial court's territorial jurisdiction; or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.' Fed. R. Evid. 201(b). From a procedural standpoint, the Court may take judicial notice at any stage in the proceeding, and the nonmoving party must be provided an opportunity to be heard. Fed. R. Evid. 201(d) and Fed. R. Evid. 201(e).

Summary

Federal Rule of Evidence 201 allows courts to take judicial notice of facts that are not subject to reasonable dispute. This includes facts that are generally known within the court's jurisdiction or can be accurately determined from reliable sources. The rule also requires that the nonmoving party be given an opportunity to be heard regarding the judicial notice. This is applicable in federal civil litigation, including RICO cases, and provides a framework for incorporating public records into the proceedings.

United States v. Psychosomatic Fitness LLC

DOJ Office of the Chief Administrative Hearing Officer Decisions

Extract

The Federal Rules of Evidence at Rule 201 provide the mechanism by which courts may take judicial notice of 'adjudicative facts.' Fed. R. Evid. 201. Specifically, the rule states that courts may take notice of facts 'not subject to reasonable dispute because [the fact] is generally known within the trial court's territorial jurisdiction; or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.' Fed. R. Evid. 201(b). From a procedural standpoint, the Court may take judicial notice at any stage in the proceeding, and the nonmoving party must be provided an opportunity to be heard. Fed. R. Evid. 201(d) and Fed. R. Evid. 201(e).

Summary

Rule 201 of the Federal Rules of Evidence allows courts to take judicial notice of facts that are not subject to reasonable dispute. This includes facts that are generally known within the court's jurisdiction or can be accurately determined from reliable sources. The rule also requires that the nonmoving party be given an opportunity to be heard regarding the judicial notice. This is applicable in federal civil litigation, including RICO cases, and provides a framework for incorporating public records into the proceedings.

United States v. Psychosomatic Fitness LLC

DOJ Office of the Chief Administrative Hearing Officer Decisions

Extract

The Federal Rules of Evidence at Rule 201 provide the mechanism by which courts may take judicial notice of 'adjudicative facts.' Fed. R. Evid. 201. Specifically, the rule states that courts may take notice of facts 'not subject to reasonable dispute because [the fact] is generally known within the trial court's territorial jurisdiction; or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.' Fed. R. Evid. 201(b). From a procedural standpoint, the Court may take judicial notice at any stage in the proceeding, and the nonmoving party must be provided an opportunity to be heard. Fed. R. Evid. 201(d) and Fed. R. Evid. 201(e).

Summary

Rule 201 of the Federal Rules of Evidence allows courts to take judicial notice of facts that are not subject to reasonable dispute. This can be because the fact is generally known within the court's jurisdiction or can be

accurately determined from reliable sources. The rule also requires that the nonmoving party be given an opportunity to be heard regarding the judicial notice. This is applicable in federal civil litigation, including RICO cases, and provides a framework for incorporating public records into the proceedings.

In re Snisky, 122216 SEC, 3-17645

Securities and Exchange Commission Decisions

Extract

Official notice is the counterpart of judicial notice, and according to Federal Rule of Evidence 201(b), a judge can take judicial notice of facts that 'can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.' Fed.R.Evid. 201(b); see 17 C.F

Summary

The passage explains that judicial notice, as per Federal Rule of Evidence 201(b), allows a judge to recognize facts that are not subject to reasonable dispute because they can be accurately and readily determined from reliable sources. This is relevant to federal civil litigation, including RICO complaints, as it provides a mechanism for incorporating public records into the court's consideration without requiring formal proof. The passage does not specifically address the Fifth Circuit, but the rule is applicable in all federal courts, including those in the Fifth Circuit.

In re Snisky, 122216 SEC, 3-17645

Securities and Exchange Commission Decisions

Extract

Official notice is the counterpart of judicial notice, and according to Federal Rule of Evidence 201(b), a judge can take judicial notice of facts that 'can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.' Fed.R.Evid. 201(b); see 17 C.F

Summary

The passage provides insight into the standards for judicial notice in federal civil litigation, emphasizing that a judge can take judicial notice of facts that are not subject to reasonable dispute because they can be accurately and readily determined from reliable sources. This is relevant to the Fifth Circuit as it follows the Federal Rules of Evidence.