

Question

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA CHARLES DUSTIN MYERS, Plaintiff, vs. DANIEL KENNETH BRANTHOOVER & MORGAN MICHELLE MYERS Defendant.))) Case No. CIV-24-1311-R))) DEFENDANT'S MOTION TO DISMISS FIRST AMENDED COMPLAINT COMES NOW Defendant, Daniel Kenneth Branthoover and Morgan Michelle Myers, pursuant to Rule 12(b)(6) and Rule 12(b)(3) of the Federal Rules of Civil Procedure, and respectfully moves this Court to dismiss Plaintiffs First Amended Complaint for failure to state a claim upon which relief can be granted and for improper venue. In support thereof, Defendant submits the following Memorandum of Law.

MEMORANDUM OF LAW

1. Plaintiffs First Amended Complaint fails to allege facts sufficient to support a claim under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968.

2. The Complaint lacks the necessary elements of a RICO claim, including a valid enterprise, a pattern of racketeering activity, and specific predicate acts.

3. Plaintiff's allegations are conclusory and speculative, and do not meet the pleading standards required under Federal Rule of Civil Procedure 8(a) and the Supreme Court's decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

4. Venue is improper in the Western District of Oklahoma under 28 U.S.C. § 1391(b), as the events giving rise to the claims occurred primarily outside this district.

5. Failure to Plead Fraud with Particularity (Rule 9(b)) Plaintiff's allegations of wire fraud, which form the basis of the alleged RICO predicate acts, fail to meet the heightened pleading standard of Federal Rule of Civil Procedure 9(b). The Complaint does not specify the time, place, or content of the alleged fraudulent communications, nor does it identify the specific roles of each Defendant in the purported scheme. See *Tal v. Hogan*, 453 F.3d 1244, 1263 (10th Cir. 2006).

6. Improper Use of Domestic Dispute as Basis for RICO Plaintiff's allegations arise primarily from a domestic dispute and related family court proceedings. Courts have consistently held that such disputes do not constitute the type of organized criminal activity contemplated by RICO. See *Annulli v. Panikkar*, 200 F.3d 189, 200 (3d Cir. 1999) (holding that 'garden-variety state law fraud' and domestic disputes are not actionable under RICO).

7. No Standing Under RICO Plaintiff lacks standing to bring a RICO claim because he has not alleged a concrete injury to business or property as required under 18 U.S.C. § 1964(c). Allegations of emotional distress, reputational harm, or speculative business losses are insufficient. See *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 268 (1992).

8. Plaintiff fails to allege continuity of racketeering activity as required under 18 U.S.C. § 1961(5). The alleged conduct spans a short period and does not demonstrate a threat of ongoing criminal activity. See *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 241-42 (1989).

9. Accordingly, the Complaint should be dismissed in its entirety. WHEREFORE, Defendant respectfully requests that the Court grant this Motion and dismiss Plaintiffs First Amended Complaint with prejudice, and for such other relief as the Court deems just and proper.

Respectfully submitted -- Daniel Kenneth Branthoover

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1 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF

OKLAHOMA CHARLES DUSTIN MYERS, Plaintiff, v. DANIEL KENNETH BRANTHOOVER & MORGAN MICHELLE MYERS Defendants § § § § § Case No. CIV-24-1311-R§ § § FIRST AMENDED COMPLAINT Plaintiff Charles Dustin Myers, representing himself pro-se and proceeding in forma pauperis respectfully files this First Amended Complaint against Daniel Kenneth Branthoover and Morgan Michelle Myers. The original complaint filed on December 16, 2024, is respectfully amended to incorporate Morgan Michelle Myers as an additional defendant and Plaintiff has provided this Court with the necessary materials to effectuate service prior to the July 11 deadline, as extended by this court pursuant to its recent order issued on June 11, 2025.¹ 1 See Doc 15. 2 I. JURISDICTION AND VENUE 1. This Honorable Court possesses subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as Plaintiff's claims arise under the laws of the United States, specifically the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964(c) and § 1964(d), which explicitly grants federal courts jurisdiction over civil RICO actions. Further, jurisdiction is established under 18 U.S.C. § 1965, which provides for nationwide service of process and jurisdiction in RICO actions, thereby ensuring that all Defendants, regardless of their physical location within the United States, are subject to the jurisdiction of this Court. 2. Venue is proper in the United States District Court for the Western District of Oklahoma pursuant to 18 U.S.C. § 1965(a) and 28 U.S.C. § 1391(b). A substantial part of the events or omissions giving rise to the claims asserted herein occurred within this District. 3. Additionally, "any person injured in his business or property by reason of a violation of section 1962...may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee..." 18 U.S.C § 1964. Plaintiff alleges to have a direct and ongoing injury to his business and property as a result from the alleged predicate acts herein. 3 II. PARTIES A. Identification 4. Plaintiff Charles Dustin Myers, referred to herein as "Plaintiff", is a natural person and a resident of the State of Texas and is legally domiciled in Tarrant County. 5. Defendant Daniel Kenneth Branthoover, referred to herein as "Branthoover", is a natural person and a resident of the state of Oklahoma and is domiciled in Canadian County. 6. Defendant Morgan Michelle Myers, referred to herein as "Myers", is a natural person, and a resident of the State of Texas and is legally domiciled in Tarrant County. 7. Collectively, Branthoover and Myers are referred to herein as "the Defendants". B. Representation 8. Plaintiff is representing himself in this matter. 9. Myers is believed to be self-represented at this time. 10. Branthoover is believed to be self-represented at this time. 4 III. PRELIMINARY STATEMENT 11. At the heart of this litigation lies a deliberate and orchestrated scheme by Defendants Morgan Michelle Myers and Daniel Kenneth Branthoover, who strategically chose to displace Plaintiff from his home and destabilize his financial and familial security. Branthoover administered and Myers meticulously executed a calculated plan involving interstate travel, fraudulent affidavits, deliberate perjury, asset diversion, and systematic manipulation of multiple Texas state courts to escape accountability for her actions. 12. To carry out this scheme, Myers enlisted the assistance of Daniel Kenneth Branthoover, a resident of Yukon Oklahoma, who has a prior history regarding violations of protective orders and tampering with government documents. For no other reason than to escape accountability for her affair, Myers spun an elaborate web of lies

and weaponized her family and court procedures designed to help victims of abuse. 13. What emerges from the evidence is not a domestic dispute gone awry, but a textbook criminal enterprise created within this Court's Jurisdiction. This is the story of how a person corruptly influenced the very courts designed to protect families—transforming them into instruments of fraud, extortion, and systematic theft. It is a tale of how two individuals, connected by a common goal, orchestrated a seventeen-month reign of terror that began in Oklahoma and was carried out in the Texas courts. 14. The Defendants did not merely lie to courts—they constructed an elaborate criminal enterprise with defined roles, coordinated operations, and a singular mission: to strip Plaintiff of everything he held dear through the systematic corruption of judicial proceedings. They engaged in laundering funds across state lines while concurrently submitting fraudulent indigency claims. They did not just fabricate allegations—they manufactured an entire false narrative of domestic violence, complete with non-existent protective orders and imaginary threats, all while the supposed "victim" continued to share a bed with her alleged "abuser." 15. This case shows how the family court system can be perverted by those willing to commit federal crimes to achieve their goals. It reveals how easily the sacred trust placed in sworn affidavits can be shattered by defendants who view perjury not as a crime, but as a tool. Most importantly, it demonstrates that when domestic relations become the vehicle for interstate racketeering, federal intervention is not just appropriate—it is essential. 16. This is not a story about a marriage that failed. This is simply the product of a litigant who values her extramarital relationships over morality, and who chose to weaponize her family against Plaintiff for the sole purpose of escaping accountability. 17. After extensive research and vigorous advocacy, Plaintiff asserts that Defendants engaged in racketeering activity through an organized enterprise, seeking relief to prevent its finalization. Against all odds, and in support of this preliminary statement, Plaintiff alleges the following: 6 IV. FACTUAL ALLEGATIONS A. Enterprise Formation and Initial Criminal Coordination (December 14-15, 2023) 18. Defendant Branthoover possesses extensive knowledge of protective order procedures and requirements due to his prior criminal convictions involving violations of such orders. This knowledge would prove instrumental in the enterprise's systematic manipulation of protective order proceedings. 19. On December 14, 2023, immediately following Plaintiff's discovery of Defendant Myers' extramarital affair, she initiated the criminal enterprise by taking two coordinated actions: first, she opened a private bank account in her sole name to facilitate asset concealment; and second, she commenced intensive interstate communications with Defendant Branthoover via text messaging. The scope and intensity of these communications—totaling 92 text messages exchanged between Branthoover's registered number 940-312-3434 and Myers' registered number 817-235-5189 on this single day—demonstrates the deliberate and coordinated nature of their criminal planning. 20. While coordinating with Branthoover, Defendant Myers tried to secure an ex-parte protective order against Plaintiff, without legitimate cause. This action marks the enterprise's first attempt to manipulate judicial proceedings through false allegations. 21. Despite having just sought emergency protection from Plaintiff hours earlier, Myers casually reminded him of their child's school field trip scheduled for the following day, thereby creating a facade of normalcy designed to conceal her fraudulent intentions and

prevent suspicion of the enterprise's activities. 7 B. Interstate Criminal Coordination and Financial Crimes (December 15-16, 2023) 22. On December 15, 2023, at precisely 9:51 A.M. CST, Defendant Branthoover contacted Plaintiff directly, employing calculated deception by stating, "I've been where you are before. I want to help both of you." This communication, referencing Myers' December 1, 2023 divorce announcement, was designed to establish false pretenses for Myers' planned interstate travel to Oklahoma for criminal coordination purposes. 23. During this deceptive phone conversation, Branthoover established the operational framework for the next phase of the criminal scheme by arranging for Myers to visit his Oklahoma residence over the weekend of December 15, 2023. The stated purpose—"providing space" to Myers—was a deliberate misrepresentation designed to conceal the true criminal purpose of coordinating fraudulent document preparation and enterprise operations. 24. Having no reason to suspect Branthoover's dishonest intentions, Plaintiff unwittingly facilitated the enterprise's criminal coordination by agreeing to Myers' travel to Oklahoma. 25. Immediately following Branthoover's deceptive phone call, the enterprise executed its first major financial crime. Plaintiff received notification that Myers had transferred \$1,576 from the parties' joint marital PNC account to Branthoover's PayPal account (username "dmb575"), completely depleting the account balance. This interstate wire transfer represents a critical predicate act, utilizing interstate commerce to further the criminal scheme while simultaneously depriving Plaintiff of operating funds necessary for his legitimate business operations, household bills, and Christmas gifts. 8 26. The immediate and devastating impact of this financial crime became apparent on December 16, 2023, when Plaintiff received notification that the joint marital PNC account was overdrawn by \$800.00. Concurrently, Plaintiff discovered that advertisements for his legitimate home-based business had ceased running due to payment failure directly caused by the enterprise's theft of operating funds. This demonstrates the enterprise's deliberate intent to cause maximum financial harm to Plaintiff. 27. The criminal nature of this financial transaction is conclusively established by documentary evidence. The PNC bank statement for December 2023 provides irrefutable proof of the unauthorized withdrawal, documenting the precise date, amount, and destination of the fraudulent transfer. 28. The direct connection between Defendant Branthoover and this financial crime is established through multiple forms of evidence. The PayPal identifier "dmb575" appearing on Plaintiff's bank statement directly corresponds to Branthoover's PayPal account, creating an unbreakable evidentiary chain linking him to the illicit financial transaction, corroborated by his own admissions in subsequent text communications. 29. On December 16, 2023, at precisely 3:54 P.M. CST, Plaintiff made a good-faith attempt to resolve the situation amicably by sending a detailed text message to Defendant Branthoover. This communication explicitly requested the return of the fraudulently transferred \$1,576, detailed the intended legitimate use of these funds, described the financial hardship caused by the theft (including late bills and business disruption), explained Plaintiff's inability to work due to the severe emotional distress 9 caused by Defendants' criminal actions, and expressed his sincere desire for an amicable resolution during the holiday season. 30. Defendant Branthoover's response to this reasonable request revealed the true criminal nature of the enterprise. In a callous and dismissive reply, Branthoover stated, "You Are Getting Divorced..." followed

by, "I hope I can help with the paperwork and make things go as smoothly as possible." Far from the helpful assistance initially promised, this communication constituted a direct threat and overt act in furtherance of the criminal conspiracy, demonstrating Branthoover's intent to exploit Plaintiff's financial distress for the enterprise's benefit while utilizing interstate communications to further the scheme. 31. This communication also establishes Branthoover's unauthorized practice of law across state lines. At no time relevant to this litigation has Defendant Branthoover possessed a license to practice law in any jurisdiction within the United States. His statements regarding "paperwork" and making legal proceedings "go as smoothly as possible" constitute clear evidence of unauthorized legal practice and demonstrate his administrative role in directing the enterprise's criminal activities. C. Coordinated Eviction Attempt Fraud and Interstate Document Transportation (December 17, 2023) 32. On December 17, 2023, at approximately 11:00 A.M., Plaintiff was served with an eviction notice by the grandmother of Myers, who is also the landlord of the matrimonial residence, which contained the following false information: i. A purported "lease violation," which was entirely fabricated as no 10 valid lease agreement existed between Plaintiff and Wilson; ii. The assertion that "Granddaughter getting divorced," referring to Defendant Myers, as a basis for eviction; iii. The false claim that a "Protective order has been filed." iv. The directive that "He must leave. She and the girls may stay," demonstrating the clear intent to dispossess Plaintiff for the benefit of Myers. 33. The coordinated and premeditated nature of this eviction fraud is established by the timing of its execution. At the precise moment this fraudulent notice was being served in Texas, Defendant Myers was physically present in Oklahoma with Defendant Branthoover, actively collaborating in the preparation of the very fraudulent court documents referenced in the eviction notice. 34. Myers' knowledge of the fraudulent nature of the eviction attempt is conclusively established. She possessed actual knowledge that no valid lease agreement existed, and she had actual knowledge that neither divorce proceedings nor protective orders had been filed at the time of service, making her participation in the eviction fraud a knowing and willful criminal act. 35. On December 17, 2023, Defendant Myers completed the interstate transportation phase of the criminal scheme by transporting the fraudulent court documents prepared in Oklahoma back across state lines to Texas. These documents, including the Original Petition for Divorce and Affidavit of Indigency, were specifically 11 prepared with the intent of submitting them to Texas state courts to further the enterprise's fraudulent manipulation of judicial proceedings. 36. Upon her return to Texas, Myers demonstrated her control over the eviction fraud by personally destroying the fraudulent eviction notice. She physically tore the notice in half and wrote "VOID" on it in black marker, providing clear evidence of her influence over and coordination of the fraudulent eviction attempt orchestrated during her absence in Oklahoma. D. Operational Security and Document Preparation (December 17-18, 2023) 37. As part of the enterprise's operational security measures, Defendant Myers returned from Oklahoma equipped with a canister of pepper spray, designed to support the false narrative of domestic violence that would be central to the fraudulent court documents prepared during her Oklahoma visit. 38. During her Oklahoma visit, Defendant Myers acquired a secondary phone number (817-940-0852) as a deliberate operational security measure. This

acquisition, which she explicitly disclosed to Plaintiff, constituted an overt act in furtherance of the criminal enterprise, designed to facilitate clandestine communications related to the fraudulent scheme while concealing the enterprise's ongoing criminal coordination from detection.

39. This newly acquired secondary phone number became an integral component of the fraudulent court documents prepared under Defendant Branthoover's direct administrative oversight. The systematic use of this number across multiple fraudulent legal documents demonstrates the coordinated nature of the enterprise's document preparation activities. These documents, prepared in Oklahoma with the specific intent of unlawfully influencing Texas legal proceedings, included: i. An "Original Petition for Divorce" dated December 18, 2023, containing numerous material false statements designed to deceive the Texas courts; ii. An "Affidavit of Indigency" dated December 18, 2023, containing deliberate misrepresentations regarding Myers' financial status to defraud the court of legitimate filing fees; iii. A "Request for Uncontested Cases" dated December 18, 2023, fraudulently filed despite the complete absence of any communication between the parties regarding divorce proceedings; iv. An "Application for Protective Order" dated December 22, 2023, containing entirely fabricated allegations of family violence.

E. Unauthorized Practice of Law and Intimidation (December 18, 2023) 42. 40. Following the filing of the initial fraudulent divorce documents on December 18, 2023, Defendant Branthoover escalated his unauthorized practice of law by sending Plaintiff a text message asserting legal representation and attempting to control all future communications. The message stated: "Charlie, it's come to my understanding you have retained an attorney. I'm sure he has told you that all further communication should take place between attorneys. I must formally ask you refrain from discussing details of this case with my client moving forward and only communicate with me or your attorney." 13 This communication was a deliberate attempt to isolate Plaintiff from direct communication with Myers and to control the flow of information, thereby hindering Plaintiff's ability to uncover the full extent of the fraudulent scheme. This communication also evidences that Branthoover's role went beyond helping Myers prepare the documents by seeing them through to their submission and asserting an administrative role over the proceedings to intimidate Plaintiff.

F. Service Through Official Channels and Continued Deception (December 22-28, 2023) 41. In furtherance of the criminal scheme, and despite continuing to cohabitate with Plaintiff in the marital residence, Defendant Myers deliberately utilized official constable service to effectuate service of the fraudulent divorce petition and protective order application, which occurred on December 27, 2023. This calculated use of official legal processes to serve fraudulent documents while maintaining the deceptive facade of normalcy at home demonstrates the sophisticated and deliberate nature of the enterprise's operations. 42. The enterprise's manipulation of official legal processes continued when Myers, despite residing next door to Plaintiff, deliberately influenced and coordinated the constable service of the fraudulent eviction documents, which occurred on December 28, 2023. This systematic abuse of official legal processes while maintaining physical proximity and continued cohabitation reveals the calculated and deceptive nature of the enterprise's operations. 14 G. Systematic False Statements in Sworn Court Documents (December 18, 2023) 43. When reviewing the documents prepared in part by Branthoover

and filed with the court by Myers, there existed several false statements and were intended to deceive the court and prejudice Plaintiff in furtherance of the scheme to dispose him of his property interests. Specifically, these false statements included, but were not limited to: i. The assertion that the spouses had ceased living together on December 1, 2023, when in fact they were still residing together at the marital home on that date and for several weeks thereafter. ii. The claim that Defendant Myers owned both family vehicles as her separate property prior to the marriage, which was demonstrably false as these vehicles were acquired during the marriage and constituted community property, paid for by Plaintiff. iii. The representation that Defendant Myers had an active order of protection against Plaintiff with a judicial finding that family violence had occurred during the marriage, which was fabricated and without any basis in fact or law. iv. The assertion that the children or Defendant Myers would be subjected to harassment or abuse if Plaintiff were provided with her second phone number (817-940-0852) acquired in Oklahoma, which was a baseless and manipulative claim designed to conceal her communications related to the fraudulent scheme. 15 44. Concurrently with the fraudulent divorce petition, Defendant Myers, again with the administrative oversight and full knowledge of Defendant Branthoover, filed a fraudulent "Affidavit of Indigency" with the court. This affidavit contained material misrepresentations regarding Defendant Myers' financial status, all of which were known to be false at the time of filing and were intended to defraud the court and avoid legitimate court costs. Specifically, these false statements included: i. The claim that Defendant Myers was financially indigent and unable to pay court costs, despite her access to and control over substantial marital assets. ii. The representation that Defendant Myers was solely responsible for all family living expenses, including rent, utilities, food, and other living expenses, when in fact, Plaintiff was the primary breadwinner of the household at that time. iii. The assertion that Defendant Myers was solely responsible for both car payments, which she has no payment history to support such a claim. H. Escalation Through Fabricated Violence Allegations (December 22, 2023) 45. On December 22, 2023, despite having claimed in her divorce petition to already possess an active protective order, Myers filed an "Application for Protective Order," revealing the contradictory and fabricated nature of her previous representations while escalating the enterprise's fraudulent manipulation of judicial proceedings. 16 46. Upon review, defendant Myers made additional false statements within the sworn document, all intended to further deceive the court and secure an unwarranted protective order against Plaintiff to effectuate the enterprises' goal of divesting him of his property interests. These false statements included, but were not limited to: i. The claim that family violence occurred on December 18, 2023, in the presence of the children, which was entirely false and fabricated. ii. The assertion that family violence occurred prior to December 18, 2023, which was also false and without any factual basis. iii. The request that Plaintiff take a battering intervention program. I. Achievement of Primary Criminal Objective (January 16, 2024) 47. On January 16, 2024, the enterprise's criminal scheme achieved its primary objective when Plaintiff appeared before the 322nd District Court of Tarrant County and was ordered to vacate the family residence. Significantly, this order was entered without any evidentiary hearing and without judicial findings regarding the allegations contained in the

fraudulent documents, demonstrating that the court's decision was based entirely on the false information systematically presented by the Defendants. 48. The causal relationship between the Defendant's fraudulent representations and this judicial outcome is conclusively established. The misinformation presented to the court through the coordinated fraudulent documents was the sole basis for the court's decision, providing Myers with the exact advantage that she and Branthoover had anticipated and planned through significant and intentional misrepresentations. 17 J. Ongoing Pattern of Racketeering Activity and Continuity (January 2024 - Present) 49. Between January 16, 2024, and the present day, Defendants Myers and Branthoover have continued to further their racketeering activity through a series of ongoing illicit acts, demonstrating a clear pattern of continuity and relatedness. These acts include, but are not limited to: i. Myers and Branthoover continuing to engage in interstate communications regarding case details between one another across state lines, specifically between Texas and Oklahoma, in direct furtherance of their fraudulent scheme to see the divorce through to its finalization. ii. Branthoover delivering ongoing threats and intimidation to Plaintiff regarding his legitimate attempts to seek legal relief from the orders that were a product of the Defendants' actions, which occurred in December of 2023, June of 2024, December of 2024, and May of 2025. iii. Making direct statements such as "I've been enjoying watching every filing get denied" by Branthoover, showing the malicious intent behind his involvement as Plaintiff sought relief for their coordinated actions. 50. On June 23, 2024, Defendant Branthoover continued his pattern of harassment and intimidation by sending Plaintiff a text message stating, "Lol. And here comes 18 another denial," in direct reference to Plaintiff's court filing seeking to enjoin Branthoover as a party to the divorce proceedings. This communication provides conclusive evidence of Branthoover's continued awareness of and active involvement in the Texas legal proceedings, his ongoing monitoring of court filings, and his malicious intent to mock and intimidate Plaintiff's efforts to seek justice through legitimate legal channels. 51. On December 12, 2024, Branthoover escalated his threatening communications by sending Plaintiff a message stating, "When things all over you get to deal with me. Just a heads up," demonstrating the enterprise's ongoing criminal intent and explicit threats of future retaliation against Plaintiff for his efforts to expose and seek relief from their criminal activities. 52. Most recently, on May 24, 2025, Branthoover sent Plaintiff a message stating, "Where's my lawsuit? Heard your vm about me. File it. Let's do this :)" This communication demonstrates the enterprise's continued operation, Branthoover's ongoing monitoring of Plaintiff's activities, and his explicit challenge and threat regarding potential legal action, providing clear evidence of the enterprise's ongoing criminal intent and the continuing threat posed to Plaintiff. 53. As a direct result of the actions outlined above, Plaintiff has sustained substantial injury to his business and property. 54. Plaintiff now turns to discuss the elements of RICO and the alleged predicate acts committed by the Defendants in this matter. 19 V. INTRODUCTION TO RICO 55. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 54 above, as if fully set forth herein. 56. The Racketeer Influenced and Corrupt Organizations Act (RICO) requires proof of a "pattern of racketeering activity," which the Supreme Court has consistently held consists of two essential elements: relatedness and continuity of predicate

acts. Based on the provided facts and the applicable law, the Defendants' series of related acts spanning from December 2023 through May 2025 (approximately 18 months) satisfies both the relatedness requirement (as the acts share similar purposes, participants, and methods) and the continuity requirement (as they extend over a substantial period of time) necessary to establish a pattern of racketeering activity under RICO as explained in more detail below. 57. For there to be a pattern of racketeering activity, there must be conduct committed by an enterprise that is prohibited under 18 U.S.C. § 1961. In the instant matter, Defendants are alleged to have committed several predicate acts, including wire fraud, violations of the Travel Act, and perjury/subordination of perjury to support a pattern of racketeering activity, as explained in more detail below. VI. PREDICATE ACT – WIRE FRAUD (18 U.S.C. § 1343) 58. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 57 above, as if fully set forth herein. 59. The relevant federal statutes in this analysis are 18 U.S.C. § 1343 (Wire Fraud) and 18 U.S.C. § 1961 (RICO Definitions). 20 60. Title 18 U.S.C. § 1343 states: "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both." 61. The facts above establish all three elements of wire fraud under 18 U.S.C. § 1343—a scheme to defraud, use of interstate wire communications, and intent to deprive another of money or property—qualifying it as a RICO predicate act under 18 U.S.C. § 1961. A. Scheme to Defraud 62. The first element of wire fraud under 18 U.S.C. § 1343 is the existence of "a scheme to defraud." As noted in *United States v. Greenberg*, 835 F.3d 295 (2nd Cir. 2016), this constitutes an "essential element" of the crime. In the present case, Myers transferred \$1,576 from a joint marital PNC account to Branthoover's PayPal account, depleting the account entirely. This transfer was not an isolated action but was accompanied by "a series of coordinated text messages and phone calls" between Myers and Branthoover regarding the scheme, and followed after a deceptive message was sent from Branthoover to Plaintiff. 63. The coordination between the parties through multiple communications channels demonstrates a deliberate plan rather than a spontaneous or inadvertent action. As articulated in *Mail and Wire Fraud*, a "scheme to defraud requires a material falsehood, material misrepresentation, or the concealment of a material fact." By 21 transferring funds from a joint marital account without apparent authorization from the joint account holder, Myers engaged in conduct that reflects the concealment of material facts regarding the disposition of marital assets. 64. The scheme in this case specifically targeted marital funds, and community property, which are legally considered shared property between spouses. By depleting the account, Myers intentionally deprived the Plaintiff of access to funds to which he was legally entitled. This satisfies the requirement that the scheme have "money or property as the object of the scheme" as stated in *Smulley v. Fed. Hous. Fin. Agency*, 17-2666 (2nd Cir. Oct 05, 2018). B. Use of Interstate Wire Communications 65. The second element of wire fraud requires the "use of the mails or wires to further the scheme." *United States v. Greenberg*, 835 F.3d 295 (2nd Cir.

2016). The facts demonstrate that Myers used interstate wire communications in two distinct ways: i. The transfer of \$1,576 was "executed via interstate wire (bank to PayPal)," which constitutes an electronic transmission across state lines. ii. The transfer "was accompanied by a series of coordinated text messages and phone calls between Myers (in Texas) and Branthoover (in Oklahoma) regarding the scheme." 66. Wire transmissions include interstate telephone calls or electronic transmissions. Furthermore, internet communications satisfy the interstate nexus 22 requirement, even in the absence of proof that a fraudulent communication traveled through out-of-state servers. 67. The interstate nature of these communications is established by the fact that Myers was in Texas while Branthoover was in Oklahoma during their communications about the scheme. This satisfies the jurisdictional requirement that the wire communication cross state lines. C. Intend to Defraud 68. The third element requires that the defendant acted "with the intent to defraud." As stated in U.S. v. Blackmon, 839 F.2d 900 (2nd Cir. 1988), the wire fraud statute requires that the defendant "be a party to some kind of scheme to defraud, a requirement that includes a high degree of scienter and moral culpability." 69. Here, Branthoover specifically stated that he wanted to help Plaintiff, which he knew was not a true statement at the time. The fact that text and phone communications were used to deceive Plaintiff into believing that Myers' interstate travel would be beneficial for him further supports a scheme to defraud, because the transfer of funds occurred after this false extension of help from Branthoover. 70. In summary, the facts presented establish all required elements of wire fraud under 18 U.S.C. § 1343, qualifying it as a predicate act for RICO purposes under 18 U.S.C. § 1961, committed by both Defendants. D. Potential Defenses 71. One potential defense might be that Myers, as a joint account holder, had legal authority to transfer funds from the account. However, this authority does not extend to 23 depleting the account for personal gain in coordination with a third party with the intent to deprive the other account holder of their rightful access to the funds. The joint nature of the account creates a fiduciary duty to act in good faith regarding the shared asset. That fiduciary duty was willingly violated when Myers chose to transfer the funds to Branthoover's PayPal, and then later to herself. The appropriate method would have been for Myers to transfer the funds directly to herself, but she avoided this to conceal her bank account information in furtherance of a broader scheme. 72. This argument fails because the proceeds from the transfer were used to acquire a second phone in furtherance of the broader scheme. VII. PREDICATE ACT - VIOLATION OF THE TRAVEL ACT (18 U.S.C. § 1952) 73. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 72 above, as if fully set forth herein. 74. The Travel Act, codified at 18 U.S.C. § 1952, criminalizes interstate travel or the use of interstate facilities with the intent to promote, manage, establish, carry on, or facilitate unlawful activity, followed by the performance or attempted performance of such acts. According to 18 U.S.C. § 1952: "Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to- ... otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform- ... an act described in paragraph or shall be fined under this title, imprisoned not more than 5 years, or both..." 75.

The statute has three essential elements: i. Interstate travel or use of interstate facilities 24 ii. Intent to promote, manage, establish, carry on, or facilitate unlawful activity iii. Subsequent performance or attempted performance of acts in furtherance of the unlawful activity 76. For a Travel Act violation to serve as a RICO predicate act, it must be "indictable" under 18 U.S.C. § 1952. Myers' conduct, as analyzed above, satisfies all elements of a Travel Act violation: i. Myers engaged in interstate travel between Texas and Oklahoma. ii. Myers traveled with the specific intent to coordinate the preparation of fraudulent court documents and execute a criminal scheme. Under *United States v. Compton*, 355 F.2d 872 (6th Cir. 1966), this intent can be inferred from "evidence of a substantial course of illegal conduct, occurring a reasonable time before and after an act of interstate travel." The preparation of fraudulent court documents falls within the definition of "unlawful activity" under the Travel Act, as it involves fraud, which is indictable under state law. iii. After the interstate travel, Myers engaged in overt acts to further the unlawful activity by preparing fraudulent legal documents and coordinating the fraudulent scheme. As *U.S. v. Admon*, 940 F.2d 1121 (8th Cir. 1991) clarified, the conduct after travel need not itself be unlawful but must further the unlawful activity. The preparation and use of fraudulent documents clearly meet this requirement. 25 77. Given that Myers' conduct satisfies all elements of a Travel Act violation, this violation qualifies as an "indictable" offense under 18 U.S.C. § 1952. As such, it constitutes a valid predicate act for RICO purposes under 18 U.S.C. § 1961(1). 78. The Supreme Court's explanation in *Perrin v. United States*, 444 U.S. 37 (1979) that the Travel Act was intended to provide "a second layer of enforcement" for interstate criminal activity underscores the significance of federalizing crimes that cross state lines. Myers' conduct, involving interstate travel for the purpose of engaging in fraudulent activities, is precisely the type of behavior that the Travel Act was designed to address.

VIII. PATTERN OF RACKETEERING ACTIVITY 79. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 78 above, as if fully set forth herein. 80. A "pattern of racketeering activity" requires at least two acts of "racketeering activity" occurring within a ten-year period. 18 U.S.C. § 1961 (2025) ("pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity"). 81. However, the mere existence of two predicate acts is not automatically sufficient to establish a pattern. As explained in *Bonton v. Archer Chrysler Plymouth, Inc.*, 889 F.Supp. 995 (S.D. Tex. 1995): 26 "Although at least two acts of racketeering are necessary to constitute a pattern, two acts may not be sufficient. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 n. 14, 105 S.Ct. 3275, 3285 n. 14, 87 L.Ed.2d 346 (1985). RICO's legislative history leaves no doubt that 'there is something to a RICO pattern beyond simply the number of predicate acts involved.'" 82. Instead, courts have established that to prove a pattern, the predicate acts must be both related and continuous. *Bustos v. Invierte En Tex.*, 4:22-CV-02690 (S.D. Tex. Jun 03, 2024) ("To rise to the level of 'racketeering activity' there must be two or more predicate acts that are: (1) related; and (2) amount to or pose a threat of continued criminal activity."). A.

Establishing a Pattern of Racketeering Activity 83. The factual allegations identify several instances that constitute wire fraud under 18 U.S.C. § 1343

and violations of the Travel Act under 18 U.S.C. § 1952: i. The extensive text message communications (92 exchanges) on December 14, 2023, between Myers and Branthoover using interstate wire facilities to coordinate their scheme. ii. Branthoover's deceptive phone call to Plaintiff on December 15, 2023, where he falsely stated, "I've been where you are before. I want to help both of you," to facilitate Myers' interstate travel to Oklahoma. iii. The interstate wire transfer of \$1,576 from the joint marital account to Branthoover's PayPal account, which was executed to deprive Plaintiff of funds. 27 iv. Branthoover's text messages to Plaintiff on December 16, 2023, refusing to return the transferred funds and offering to "help with the paperwork." v. Branthoover's text message on December 18, 2023, falsely claiming to be a legal representative. vi. The ongoing interstate communications between Myers and Branthoover to further their fraudulent scheme, continuing through May 2025. 84. The factual allegations also demonstrate potential Travel Act violations: i. Myers' interstate travel from Texas to Oklahoma on December 15, 2023, with the intent to prepare fraudulent court documents. ii. The interstate transportation of fraudulent documents from Oklahoma back to Texas on December 17, 2023, intended for filing in Texas courts. iii. The use of interstate facilities (phone calls, text messages) to coordinate and further the fraudulent scheme. B. Relatedness of Predicate Acts 85. The predicate acts of wire fraud and Travel Act violations are clearly related, meeting the standard outlined in *Bonton v. Archer Chrysler Plymouth, Inc.*, 889 F.Supp. 995 (S.D. Tex. 1995). They share: 28 i. Common Purpose: All acts were directed toward depriving Plaintiff of his property rights and manipulating judicial proceedings to benefit Myers in divorce proceedings. ii. Same Participants: Myers and Branthoover were the consistent actors in all predicate acts. iii. Same Victim: All acts targeted Plaintiff, causing him financial harm and depriving him of legal rights. iv. Similar Methods: The acts consistently involved deception, misrepresentation, and the manipulation of legal processes. v. Temporal Connection: The acts occurred in a logical sequence, beginning on December 14, 2023, and continuing through May 2025. C. Continuity of Racketeering Activity 86. The pattern of racketeering activity demonstrates both closed-ended and open-ended continuity: i. Closed-ended Continuity: The scheme extends over a substantial period—from December 2023 through May 2025, over eighteen months. This satisfies the requirement for "a series of related predicate acts extending over a substantial period of time" as described in *RICO: A Primer* (2022).² <https://freemanlaw.com/rico-a-primer/> 29 ii. Open-ended Continuity: The scheme also poses a threat of continued criminal activity. Branthoover's message on May 24, 2025, demonstrating continued monitoring of Plaintiff's activities and threatening future retaliation, indicates that the racketeering activity could continue indefinitely given that they are unable to finalize the divorce. This satisfies the alternative requirement for "a threat of continuing criminal activity extending indefinitely into the future" noted in *RICO: A Primer* (2022). D. Role of Perjury and Subornation of Perjury 87. While perjury and subornation of perjury in state court proceedings are not themselves listed as predicate acts under RICO, they form an integral part of the overall criminal scheme and help establish the pattern of racketeering activity when considered alongside the actual predicate acts of wire fraud and Travel Act violations. 88. As explained in *RICO: A Primer* (2022), racketeering acts need not be similar or directly related to each other; they must simply be

"related in some way to the affairs of the charged enterprise." The perjury and subornation of perjury evident in the fraudulent court filings—including the false statements in the divorce petition, the Affidavit of Indigency, and the Application for Protective Order—are directly related to the predicate acts of wire fraud and Travel Act violations. They share the same purpose, involve the same participants, target the same victim, and form part of the same overall scheme. For example: 30 i. The fraudulent court documents were prepared during Myers' interstate travel to Oklahoma, connecting the perjury to the Travel Act violation. ii. The false statements in these documents were discussed and planned via interstate wire communications, connecting the perjury to the wire fraud. iii. The deceptive interstate wire transfer of funds was executed to support Myers during the divorce proceedings initiated through fraudulent filings. iv. The perjurious statements were influenced by Branthoover, connecting subordination of perjury to the predicate acts. 89. These connections demonstrate how the non-predicate acts of perjury committed by Myers and subornation of perjury alleged against Branthoover, while not sufficient alone to establish a RICO violation, contribute to the overall pattern of racketeering activity when combined with the predicate acts of wire fraud and Travel Act violations alleged by the Defendants. IX. ESTABLISHING AN ASSOCIATE-IN-FACT ENTERPRISE 90. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 89 above, as if fully set forth herein. 31 A. Formation of the Enterprise 91. The factual allegations demonstrate the formation of an associate-in-fact enterprise between Myers and Branthoover that satisfies the definition in 18 U.S.C. § 1961 (2025). i. Myers and Branthoover associated for the common purpose of depriving Plaintiff of his property rights through the manipulation of legal proceedings. This shared objective is evident from their coordinated actions beginning on December 14, 2023, immediately following Plaintiff's discovery of Myers' affair. ii. Though informal, the enterprise had a clear organizational structure as 1) Myers acted as the "inside" operative, with direct access to marital assets and the ability to file fraudulent court documents in Texas. 2) Branthoover served as the "outside" operative, providing administrative oversight, expertise on protective orders due to his prior criminal history (Paragraph 18), and a base of operations in Oklahoma. 3) Their respective roles complemented each other and demonstrated an organized approach to their criminal scheme. iii. The enterprise functioned as a continuing unit from December 2023 through May 2025, with consistent roles and coordinated actions throughout this period. 32 B. Maintenance of the Enterprise 92. The enterprise was maintained through several key mechanisms: i. Continuous Communication: Myers and Branthoover maintained regular interstate communications throughout the scheme, beginning with the 92 text messages on December 14, 2023, and continuing through May 2025. ii. Financial Support: The interstate wire transfer of \$1,576 from the joint marital account to Branthoover's PayPal account provided financial resources to support the enterprise's activities. iii. Operational Security Measures: The enterprise implemented specific measures to protect its operations: 1) Myers acquired a secondary phone number during her Oklahoma visit (Paragraph 38). iv. Myers returned with pepper spray to support the false domestic violence narrative (Paragraph 37). v. Branthoover attempted to control communications by falsely claiming legal representation (Paragraph 40). vi. Geographic Distribution: The

enterprise maintained operations across state lines, with activities in both Texas and Oklahoma, enhancing its ability to avoid detection and complicate legal responses. 33 C. Enterprise Distinct from Racketeering Activity 93. As *Allstate Ins. Co. v. Donovan*, CIVIL ACTION NO. H-12-0432 (S.D. Tex. Jul 03, 2012) reiterates, a RICO enterprise must be an entity 'separate and apart from the alleged pattern of racketeering'—not merely a conduit for the predicate acts themselves. The nature and duration of the Myers–Branthoover operation exhibits all three required elements: a separate organizational purpose, defined roles within an enduring structure, and coordinated decision-making extending beyond the January 16, 2024 initial outcome, with the finalization of the scheme still pending. X. CLAIMS FOR RELIEF COUNT 1: VIOLATION OF 18 U.S.C. § 1962(c) Against All Defendants 94. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 93 above, as if fully set forth herein. 95. At all relevant times, Plaintiff was a person within the meaning of 18 U.S.C. §§ 1961(3) and 1964(c). 96. At all relevant times, each Defendant was a person within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c). 97. As set forth above, Defendants Myers and Branthoover formed an association-in-fact enterprise within the meaning of 18 U.S.C. § 1961(4) (the "Enterprise"). The Enterprise was engaged in, and its activities affected, interstate commerce. 98. The Enterprise had an ascertainable structure separate and apart from the pattern of racketeering activity in which the Defendants engaged. The Enterprise 34 maintained an existence beyond that which was necessary to commit the predicate acts constituting the pattern of racketeering activity. 99. In furtherance of the fraudulent scheme, each Defendant conducted or participated, directly or indirectly, in the conduct of the Enterprise's affairs through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5), and 1962(c). 100. As detailed above, the Defendants committed multiple related acts of wire fraud in violation of 18 U.S.C. § 1343 and Travel Act violations under 18 U.S.C. § 1952, and further committed acts of perjury and subordinated perjury in furtherance of the scheme, constituting a pattern of racketeering activity as defined in 18 U.S.C. § 1961(5). 101. The predicate acts committed by the Defendants were related to each other in that they had the same or similar purposes (to defraud Plaintiff of his property interests and manipulate judicial proceedings), involved the same participants (Defendants Myers and Branthoover), targeted the same victim (Plaintiff), employed similar methods (deception, misrepresentation, and manipulation of legal processes), and were not isolated events. 102. The predicate acts committed by the Defendants demonstrate both closed-ended continuity, spanning over eighteen months from December 2023 through May 2025, and open-ended continuity, as evidenced by the ongoing threats and monitoring activities continuing through May 2025, with the potential for continued criminal activity in the future. 35 103. The Defendants participated in the operation and management of the Enterprise by making decisions on behalf of the Enterprise and by directing its affairs. Specifically: i. Defendant Myers directed the Enterprise by initiating the criminal scheme, communicating the scheme's objectives to Branthoover, opening a private bank account, transferring marital funds, traveling interstate to coordinate fraudulent document preparation, and filing fraudulent legal documents in Texas courts. ii. Defendant Branthoover directed the Enterprise by providing administrative oversight of the scheme, offering his

expertise on protective order procedures, coordinating Myers' interstate travel, receiving and retaining fraudulently transferred funds, preparing fraudulent legal documents, and attempting to exert control over communications related to the legal proceedings. 104. As a direct and proximate result of the Defendants' violations of 18 U.S.C. § 1962(c), Plaintiff has been injured in his business and property in an amount to be determined at trial. Specifically, Plaintiff has suffered: i. Loss of \$1,576 fraudulently transferred from the joint marital account; ii. Business losses resulting from the disruption of his home-based business operations; iii. Additional financial damages resulting from the overdrawn account 36 and associated fees; iv. Loss of real and personal property rights through the fraudulent manipulation of judicial proceedings; vi. Ongoing damages resulting from the continued operation of the Enterprise. 105. Pursuant to 18 U.S.C. § 1964(c), Plaintiff is entitled to recover from the Defendants threefold the damages sustained, explained in more detail below. COUNT 2: VIOLATION OF 18 U.S.C. § 1962(d) Against All Defendants 106. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 105 above, as if fully set forth herein. 107. Beginning on December 14, 2023, and continuing through at least May 24, 2025, the Defendants knowingly, willfully, and unlawfully conspired to violate 18 U.S.C. § 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of the Enterprise, through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(d), as explained above. 108. The conspiracy between Myers and Branthoover was formed on or about December 14, 2023, evidenced by the intensive communications (92 text messages) exchanged between them immediately following Plaintiff's discovery of Myers' extramarital affair. These communications—documented in Plaintiff's possession and available for production at the appropriate stage—demonstrate the deliberate and coordinated formation of the conspiracy. 37 109. Each Defendant agreed that they would commit at least two acts of racketeering activity in the conduct of the affairs of the Enterprise. The agreement can be inferred from the Defendants' coordinated actions, including: i. The systematic coordination of their activities through interstate communications; ii. The division of responsibilities within the Enterprise; iii. The implementation of operational security measures; iv. The consistent pattern of actions furthering the fraudulent scheme; v. The ongoing coordination over an eighteen-month period. 110. In furtherance of the conspiracy, the Defendants committed numerous overt acts, including but not limited to: i. Myers opening a private bank account to facilitate asset concealment on December 14, 2023 and sharing these details with Branthoover; ii. Myers and Branthoover exchanging 92 text messages on December 14, 2023, to coordinate their criminal plans; iii. Branthoover placing a deceptive phone call to Plaintiff on December 15, 2023; iv. Myers executing an interstate wire transfer of \$1,576 to Branthoover's PayPal account on December 15, 2023; v. Myers traveling interstate to Oklahoma on December 15, 2023, to coordinate with Branthoover; vi. Myers and Branthoover preparing fraudulent court documents in 38 Oklahoma on December 16-17, 2023 to be later submitted in Texas courts on December 18,22; vii. Myers transporting the fraudulent documents back to Texas on December 17, 2023; viii. Branthoover sending threatening text messages to Plaintiff on December 18, 2023; ix. Myers filing fraudulent documents with Texas courts on December 18, 2023; x. Myers filing a fraudulent Application

for Protective Order on December 22, 2023; xi. Branthoover continuing to send threatening communications to Plaintiff through May 24, 2025. 111. As a direct and proximate result of the Defendants' conspiracy in violation of 18 U.S.C. § 1962(d), Plaintiff has been injured in his business and property. The injuries suffered by Plaintiff include but are not limited to: i. Loss of \$1,576 fraudulently transferred from the joint marital account; ii. Business losses resulting from the disruption of his home-based business operations; iii. Additional financial damages resulting from the overdrawn account and associated fees; iv. Loss of real and personal property rights through the fraudulent manipulation of judicial proceedings; v. Ongoing economic harm resulting from the continued operation of the Enterprise. 112. Pursuant to 18 U.S.C. § 1964(c), Plaintiff is entitled to recover from the Defendants threefold the damages sustained, explained in more detail below.

XI. Damages 113. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 112 above, as if fully set forth herein. 114. As a direct result of the racketeering activity alleged herein, the Plaintiff has sustained substantial injury to his business operations, suffered significant credit decrease, has lost business opportunities, had his personal belongings destroyed, has had one vehicle repossessed, and has been subject to transient and unstable housing.

A. Damage to Business Operations 115. In January of 2021, Plaintiff founded a digital financial analytics business from his home, focused on delivering real-time stock market data, automated technical indicators, and live market commentary to retail traders and boutique investment groups across the United States and Canada. His monetization model included tiered subscription plans, custom data feed licensing, and API endpoints that offered real-time market data. 116. By 2022, client demand and revenue growth began outpacing Plaintiff's initial architecture. In response, Plaintiff made the strategic decision to pause direct monetization in early 2023 to reinvest in infrastructure and ensure the platform could handle commercial-scale traffic. This included: 40 i. Designing and deploying asynchronous financial signal algorithms, ii. Mastering asynchronous programming, PostgreSQL and NoSQL systems for storage and efficiency purposes, iii. Building websocket-based dashboards for live data streaming, iv. Drafting licensing terms for premium indicator access and reseller API use. v. Building partnerships and affiliations with similar businesses in the market-data space. This period of reinvestment came at significant cost: Plaintiff temporarily sacrificed a revenue stream that had reached \$12,000 per month at its peak in exchange for long-term scalability. Plaintiff anticipated a short-term revenue dip, which he strategically absorbed in reliance on his imminent reentry to market. 117. By September of 2023, Plaintiff had completed core backend optimization and UI integrations and obtained an affiliate marketing partnership with polygon.io and was prepared to scale user acquisition and marketing. This readiness marked a significant inflection point in Plaintiff's commercial trajectory. 118. Plaintiff reasonably projected a return to \$9,000-\$10,000/month by mid-2024, with a 24-month growth model targeting \$170,124.59 in revenue through subscriptions and data services alone. This forecast was based not on speculation, but on verified revenue history, platform readiness, and documented user engagement trends. 119. As part of Defendants' coordinated scheme to deprive Plaintiff of his home and operational capacity, Plaintiff was wrongfully and suddenly removed from the family 41 residence in January 2024, despite Defendants' full knowledge

that he operated an active and income-generating business from that location. This action caused a direct and immediate injury to Plaintiff's business, cutting off his ability to scale as planned. Instead of growing, Plaintiff's revenue collapsed. 120. The removal was executed without warning or legal justification and had an immediate effect on Plaintiff's operations. Although the core data systems were technically portable, the business depended on commercial-grade internet, low-latency upload speeds, and a consistent, uninterrupted digital environment to support real-time financial analytics, streaming, and API-based services. Following the removal, Plaintiff was unable to find alternate housing with sufficient bandwidth. Attempts to work from temporary family residences failed, as Plaintiff's usage either exceeded available internet capacity or interfered with household connectivity, making it impossible to maintain stable service. Without the ability to stream, deliver data products, or support his clients, Plaintiff's revenue quickly declined and client engagement deteriorated.

121. Between September and December 2023, Plaintiff earned \$10,529.72, averaging \$2,632.43 per month – his baseline earnings during the period of restructuring. Based on past performance, technical stability, and confirmed subscriber growth through marketing strategies, Plaintiff reasonably projected returning to \$5,000/month by mid-2024, with stable, scalable performance continuing through 2025. 122. Under a conservative model, had the business not been disrupted by Defendants' interference, Plaintiff would have earned: 42 i. Approximately \$15,794.58 during the first half of 2024 (maintaining his pre-removal baseline), ii. Approximately \$24,000.00 during the second half of 2024 (with moderate growth to \$4,000/month), iii. And approximately \$60,000.00 across 2025 (at \$5,000/month). This yields a total projected income of \$99,794.58 for the 18-month period following the wrongful removal. 123. Accordingly, Plaintiff seeks recovery of \$99,794.58 in lost business income directly caused by Defendants' pattern of racketeering activity described above. B. Damages – Fraudulent Transfer and Cessation of Business Advertisements 124. As noted above, Defendants coordinated in emptying the joint marital PNC bank account, transferring \$1,576.00 from Plaintiff to a PayPal account controlled by Daniel Kenneth Branthoover, which was subsequently routed to Morgan Michelle Myers. These funds were used to purchase a second phone for Myers, enabling concealed communication and coordination between Defendants in furtherance of their scheme to defraud Plaintiff and obstruct his business operations. Accordingly, Plaintiff therefore seeks recovery of the full amount of \$1,576.00. D. Damages – Total 126. As a direct result of the Defendants' coordinated and fraudulent conduct detailed above, Plaintiff has sustained total economic losses in the amount of one hundred and one thousand three hundred seventy dollars and fifty-eight cents. (\$101,370.58). This 43 includes: i. \$99,794.58 in lost business income caused by Defendant's actions leading to Plaintiff's wrongful removal from his residence and the destruction of his operational infrastructure over the last 18 months; ii. \$1,576.00 in marital funds fraudulently transferred from Plaintiff's joint bank account in furtherance of a scheme to defraud. 127. Pursuant to 18 U.S.C. § 1964(c), Plaintiff is entitled to treble damages for injuries sustained to his business and property because of Defendants' racketeering activity. Accordingly, Plaintiff seeks an award of treble damages in the total estimated amount of three hundred and four thousand, one hundred and eleven dollars and seventy-four cents (\$304,111.74) to be further clarified at

trial. 128. All damages referenced herein are based on verifiable records and financial documentation. Plaintiff will produce supporting evidence and exhibits at the appropriate stage of these proceedings or at trial. XII. PRAYER FOR RELIEF 129. WHEREFORE, Plaintiff Charles Dustin Myers respectfully requests that this Court enter judgment against Defendants Daniel Kenneth Branthoover and Morgan Michelle Myers as follows: i. For a specific finding that Defendants committed predicate acts of wire fraud in violation of 18 U.S.C. § 1343 and Travel Act violations under 18 U.S.C. § 1952; 44 ii. For a specific finding that Defendants violated 18 U.S.C. § 1962(c) by conducting and participating in the affairs of an enterprise through a pattern of racketeering activity; iii. For a specific finding that Defendants violated 18 U.S.C. § 1962(d) by knowingly and willfully conspiring to violate 18 U.S.C. § 1962(c); iv. For compensatory damages in the amount of \$101,370.58, representing actual damages suffered by Plaintiff as a direct and proximate result of Defendants' violations; v. For treble damages pursuant to 18 U.S.C. § 1964(c) in the amount of \$304,111.74; vi. For preliminary and permanent injunctive relief pursuant to 18 U.S.C. § 1964(a), restraining Defendants from: a. Engaging in further racketeering activity directed at Plaintiff; b. Communicating with each other regarding the fraudulent proceedings they initiated; c. Making any threats or taking any actions intended to intimidate Plaintiff; d. Filing or causing to be filed any further fraudulent documents in any court proceeding; 45 vii. For pre-judgment and post-judgment interest at the highest rates allowed by law; viii. For an order directing the U.S. Marshals Service to serve the Defendants with the summons and complaint in this action, pursuant to 28 U.S.C. § 1915(d); ix. For such other relief as the Court deems just and proper. Respectfully submitted, X _____ CHARLES DUSTIN MYERS CHUCKDUSTIN12@GMAIL.COM 817-546-3693 PRO-SE PLAINTIFF TARRANT COUNTY, TEXAS research and explain why plaintiff's complaint beats the motion to dismiss

Answer (U.S. Federal)

Short response

The plaintiff's RICO complaint is likely to survive the motion to dismiss because it adequately pleads all required elements—including a valid enterprise, sufficient predicate acts, a pattern of racketeering activity, and concrete injury to business and property—with the specificity required under federal pleading standards, while also establishing proper venue in the Western District of Oklahoma.

Summary

Plaintiff Charles Dustin Myers has filed a civil RICO action against defendants Daniel Kenneth Branthoover and Morgan Michelle Myers, alleging they engaged in a pattern of racketeering activity that included wire fraud and violations of the Travel Act to deprive him of property and business interests. The defendants have moved to dismiss under Rule 12(b)(6) for failure to state a claim and Rule 12(b)(3) for improper venue. Upon

analysis of the applicable law and the plaintiff's detailed factual allegations, the complaint appears to sufficiently plead all required elements of a RICO claim to survive the motion to dismiss.

The plaintiff's complaint sets forth specific factual allegations detailing an enterprise formed between the defendants, multiple predicate acts including interstate wire transfers and travel, a pattern of racketeering activity showing both relatedness and continuity over an 18-month period, and concrete injuries to his business and property directly resulting from the defendants' actions. Additionally, the plaintiff has adequately established venue in the Western District of Oklahoma by alleging that substantial parts of the events giving rise to the claim occurred within that district, particularly related to the coordination and planning that took place at defendant Branthoover's Oklahoma residence.

Background and Relevant Law

RICO Statutory Framework

The Racketeer Influenced and Corrupt Organizations Act (RICO) provides a civil remedy for persons injured by racketeering activity. Under [18 U.S.C. § 1964\(c\)](#) (2025), "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee..."

To establish a civil RICO claim under § 1962(c), a plaintiff must prove: "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." [Taylor v. Chesapeake Operating, Inc., Case No. CIV-18-565-D \(W.D. Okla. Nov 20, 2019\)](#). This is echoed in [Hershowe v. Givens, CIVIL ACTION NO. 1:14cv655-MHT \(WO\) \(M.D. Ala. Sep 29, 2015\)](#), which confirms these four elements as essential for a viable RICO claim.

"Racketeering activity" is defined by [18 U.S.C. § 1961](#) (2025) to include various predicate acts, including wire fraud ([18 U.S.C. § 1343](#)) and violations of the Travel Act ([18 U.S.C. § 1952](#)). To establish a "pattern" of racketeering activity, RICO requires at least two predicate acts occurring within a ten-year period, but as noted in [Bonton v. Archer Chrysler Plymouth, Inc., 889 F.Supp. 995 \(S.D. Tex. 1995\)](#), "Although at least two acts of racketeering are necessary to constitute a pattern, two acts may not be sufficient." Courts have established that the predicate acts must be both related and continuous to form a pattern.

Pleading Standards for RICO Claims

For a complaint to survive a motion to dismiss under Rule 12(b)(6), it "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" [Pajany v. Capgemini, Inc. \(2019-07-03\)](#). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the

misconduct alleged." This standard demands "more than a sheer possibility that a defendant has acted unlawfully."

In [Remsnyder v. MBA Mortg. Servs., Civil Action CCB-19-0492 \(D. Md. Sep 09, 2021\)](#), the court explained that a plaintiff need not "forecast" evidence sufficient to prove the elements of the claim, but the complaint must allege sufficient facts to establish those elements. The complaint must "advance the plaintiff's claim 'across the line from conceivable to plausible.'"

Additionally, when a plaintiff appears pro se, as in this case, courts apply a more lenient standard to the pleadings. As stated in [Mendlow v. Seven Locks Facility, 86 F.Supp.2d 55 \(D. Conn. 2000\)](#), "Where a plaintiff is appearing pro se, the complaint must be liberally construed in the plaintiff's favor and must be held to the less stringent standards than formal pleadings drafted by lawyers." However, "the court's focus remains on whether the complaint states any valid ground for relief."

Venue Requirements

Venue for civil RICO actions is governed by both general venue provisions and specific RICO venue provisions. Under [28 U.S.C. § 1391](#) (2025), venue is proper in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." Additionally, [18 U.S.C. § 1965](#) (2025) provides that a civil RICO action "may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs."

Analysis of the Plaintiff's RICO Claim

Subject Matter Jurisdiction

The federal court clearly has subject matter jurisdiction over this case under [28 U.S.C. § 1331](#) (2025), which provides that "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." The plaintiff's claims arise under the federal RICO statute, giving the district court original jurisdiction.

Sufficiency of the Enterprise Allegation

The defendants argue that the complaint fails to allege a valid enterprise. However, the plaintiff has alleged specific facts that establish the existence of an enterprise between defendants Myers and Branthoover. As explained in [Raineri Constr., LLC v. Taylor, Case No. 4:12-CV-2297 \(CEJ\) \(E.D. Mo. Jan 31, 2014\)](#), "In order to avoid dismissal for failure to state a claim, a plaintiff must plead specific facts, not mere conclusory allegations, which establish the existence of an enterprise."

The plaintiff has pleaded that Myers and Branthoover formed an association-in-fact with a defined structure: Myers acting as the "inside" operative with direct access to marital assets and ability to file court documents in Texas, and Branthoover serving as the "outside" operative, providing administrative

oversight, expertise on protective orders, and a base of operations in Oklahoma. The enterprise persisted from December 2023 through May 2025, with consistent roles and coordinated actions.

According to [Allstate Ins. Co. v. Benhamou, 190 F.Supp.3d 631 \(S.D. Tex. 2016\)](#), "Regardless of whether an enterprise is alleged to be a legal entity or an association-in-fact, the enterprise must be an entity separate and apart from the pattern of activity in which it engages." The plaintiff has alleged that the enterprise existed beyond just committing the predicate acts, as it maintained an organizational structure with defined roles, geographic distribution, and operational security measures.

Sufficient Predicate Acts

The defendants contend that the complaint lacks specific predicate acts. However, the plaintiff has alleged several acts that qualify as predicates under RICO:

1. **Wire Fraud (18 U.S.C. § 1343):** [18 U.S.C. § 1343](#) (2025) establishes that wire fraud occurs when someone "having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice."

The plaintiff alleges that Myers transferred \$1,576 from a joint marital account to Branthoover's PayPal account via interstate wire, with the intent to defraud the plaintiff of his share of those funds. This transaction was accompanied by extensive text messages (92 exchanges) between Myers and Branthoover on December 14, 2023, using interstate wire facilities to coordinate their scheme. Branthoover also made a deceptive phone call to the plaintiff on December 15, 2023, falsely claiming he wanted to help both parties while actually facilitating the fraudulent scheme.

As outlined in [City of New York v. Cyco.Net, Inc., 383 F.Supp.2d 526 \(S.D. N.Y. 2005\)](#), to establish wire fraud as a RICO predicate act, a plaintiff must show: "(1) scheme to defraud, including proof of intent; (2) money or property as object of scheme; (3) use of mails or wires to further the scheme." The plaintiff's allegations satisfy all three elements.

2. **Travel Act Violations (18 U.S.C. § 1952):** [18 U.S.C. § 1952](#) (2025) criminalizes interstate travel or the use of interstate facilities with the intent to "promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity."

The plaintiff alleges that Myers traveled interstate from Texas to Oklahoma on December 15, 2023, with the intent to prepare fraudulent

court documents. She then transported these documents back to Texas on December 17, 2023, for filing in Texas courts. These allegations describe interstate travel for the purpose of facilitating unlawful activity, followed by the performance of acts in furtherance of that activity, satisfying the elements of a Travel Act violation.

Pattern of Racketeering Activity

The defendants argue that the plaintiff fails to allege continuity of racketeering activity. However, the complaint alleges facts that demonstrate both relatedness and continuity of the predicate acts:

1. **Relatedness:** As explained in *RICO: A Primer* (2022), predicate acts are related when they "have the same or similar purposes, results, participants, victims or methods of commission." The plaintiff alleges that all predicate acts shared a common purpose (depriving the plaintiff of property rights), involved the same participants (Myers and Branthoover), targeted the same victim (the plaintiff), used similar methods (deception and manipulation of legal processes), and occurred in a logical sequence from December 2023 through May 2025.
2. **Continuity:** *RICO: A Primer* (2022) notes that continuity can be demonstrated by showing either:
 - "Closed-ended continuity. Proving 'a series of related predicate acts extending over a substantial period of time.'"
 - "Open-ended continuity. A threat of 'continuing criminal activity extending indefinitely into the future.'"

The plaintiff demonstrates closed-ended continuity by alleging a scheme spanning over 18 months (December 2023 through May 2025). He also shows open-ended continuity through Branthoover's message on May 24, 2025, which indicates ongoing monitoring of the plaintiff's activities and threats of future retaliation.

This pattern of activity goes well beyond the minimum requirement of two predicate acts, addressing the concern raised in [Smith v. Fed. Title & Escrow Co., Civil Case No. 17-cv-01580 \(RCL\) \(D. D.C. Jun 20, 2018\)](#) that "to show that a pattern of racketeering activity exists, RICO requires at least two predicate criminal racketeering acts over a ten-year period" and that "these predicate acts show elements of 'relatedness' and 'continuity.'"

Standing: Injury to Business or Property

The defendants contend that the plaintiff lacks standing because he has not alleged a concrete injury to business or property. However, the plaintiff has alleged specific injuries, including:

1. Loss of \$1,576 fraudulently transferred from the joint marital account
2. Business losses resulting from the disruption of his home-based business operations
3. Financial damages from the overdrawn account and associated fees

4. Loss of real and personal property through manipulated judicial proceedings

[Kovalev v. Stepansky, CIVIL ACTION NO. 19-5579 \(E.D. Pa. Feb 04, 2020\)](#)

explains that "to have standing to litigate a civil RICO claim, a plaintiff must show that [he] suffered an injury to [his] business or property and that the injury was proximately caused by the defendant's racketeering activities." The plaintiff's alleged injuries are concrete financial losses, not speculative damages or personal injuries, and he has alleged a direct causal connection between these losses and the defendants' racketeering activities.

As noted in [Defending RICO Claims In The Business Context Part II: RICO Claims Must Allege Injury To Business Or Property](#) (2022-05-17), courts have determined that "injuries to business or property" include "lost profits, excessive interest charges, property damage and interference with business, such as decreased business profits or increased costs of doing business." The plaintiff's alleged business disruption and financial losses fall squarely within these recognized categories of injury.

Proper Venue in the Western District of Oklahoma

The plaintiff has established venue in the Western District of Oklahoma on two grounds:

1. Under [28 U.S.C. § 1391](#) (2025), venue is proper in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." The plaintiff alleges that substantial parts of the events giving rise to the claim occurred in the Western District of Oklahoma, including:
 - Myers' travel to Oklahoma to coordinate with Branthoover
 - Preparation of fraudulent court documents at Branthoover's Oklahoma residence
 - Planning and coordination of the scheme at Branthoover's Oklahoma residence
2. Under [18 U.S.C. § 1965](#) (2025), a civil RICO action "may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs." The plaintiff alleges that Branthoover resides in Canadian County, which is within the Western District of Oklahoma.

The defendants' argument that venue is improper because events occurred primarily outside this district is not supported by the law, which requires only that "a substantial part" of the events occurred in the district, not that most events occurred there.

Pro Se Plaintiff Considerations

As noted in [Mendlow v. Seven Locks Facility, 86 F.Supp.2d 55 \(D. Conn. 2000\)](#), "Where a plaintiff is appearing pro se, the complaint must be liberally construed in the plaintiff's favor and must be held to the less stringent

standards than formal pleadings drafted by lawyers." The plaintiff's pro se status entitles him to a more lenient evaluation of his pleadings, although the court must still focus on whether the complaint states valid grounds for relief.

The plaintiff's complaint, while drafted pro se, demonstrates a sophisticated understanding of RICO requirements and provides detailed factual allegations supporting each element of his claims. When construed liberally, as required for pro se litigants, the complaint clearly states valid grounds for relief under RICO.

Domestic Dispute Context

The defendants argue that the case is an improper use of RICO because it arises from a domestic dispute. However, neither the RICO statute nor binding precedent categorically excludes domestic disputes from RICO's reach. The determinative factor is not the underlying relationship between the parties, but whether the alleged conduct meets the statutory requirements for a RICO claim.

As explained in [Civil Rico: A Tool of Advocacy](#) (2024-01-01), RICO's broad definition of racketeering activity and its inclusion of mail and wire fraud as predicate offenses creates "a potentially broad pathway to pleading of such a claim." While courts should be cautious about allowing ordinary domestic disputes to be transformed into federal RICO claims, the plaintiff's allegations go well beyond a typical domestic dispute, describing a coordinated scheme involving interstate travel, wire fraud, and manipulation of judicial proceedings that continued for over 18 months.

Conclusion: The Complaint Survives the Motion to Dismiss

For a motion to dismiss to succeed, the defendants must show that the complaint fails to state a claim upon which relief can be granted or that venue is improper. Based on the analysis above, the plaintiff's complaint should survive the motion to dismiss for several reasons:

1. **Valid Enterprise:** The plaintiff has alleged specific facts establishing an association-in-fact enterprise between Myers and Branthoover, with a structure distinct from the pattern of racketeering activity itself.
2. **Sufficient Predicate Acts:** The plaintiff has alleged multiple acts of wire fraud and violations of the Travel Act, which qualify as predicate acts under RICO.
3. **Pattern of Racketeering Activity:** The plaintiff has alleged related acts spanning over 18 months, demonstrating both closed-ended and open-ended continuity.

4. **Concrete Injury to Business and Property:** The plaintiff has alleged specific financial losses and business disruption directly caused by the defendants' racketeering activities.
5. **Proper Venue:** The plaintiff has established venue in the Western District of Oklahoma by showing that substantial parts of the events occurred there and that defendant Branthoover resides there.
6. **Detailed Factual Allegations:** The complaint provides specific dates, amounts, communications, and actions that, when accepted as true for purposes of the motion to dismiss, state a plausible claim for relief under RICO.

As stated in *Evans v. United States Environmental Protection Agency* ARB CASE NO. 08-059, ALJ CASE NO. 2008-CAA-003 (2012-07-31), a complaint has "facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." The plaintiff's detailed factual allegations, when accepted as true and viewed in the light most favorable to him as a pro se litigant, allow the court to reasonably infer that the defendants are liable for RICO violations.

Therefore, the plaintiff's complaint states a claim upon which relief can be granted, establishes proper venue, and should survive the defendants' motion to dismiss.

Legal Authorities

[Raineri Constr., LLC v. Taylor, Case No. 4:12-CV-2297 \(CEJ\) \(E.D. Mo. Jan 31, 2014\)](#)

U.S. District Court — Eastern District of Missouri

Extract

In order to avoid dismissal for failure to state a claim, a plaintiff must plead specific facts, not mere conclusory allegations, which establish the existence of an enterprise. An enterprise can include any 'union or group of individuals associated in fact although not a legal entity.' However, the alleged enterprise must be an entity separate and distinct from the pattern of racketeering activity in which it engages. In other words, 'there must be some showing of an ascertainable structure beyond that inherent in the pattern of racketeering activity.'

Summary

To survive a motion to dismiss a RICO claim, the plaintiff must plead specific facts that establish the existence of an enterprise. This enterprise must be distinct from the pattern of racketeering activity itself and must have an ascertainable structure. The passage provides guidance on what is

necessary to establish a RICO enterprise, which is crucial for the plaintiff's complaint to withstand a motion to dismiss.

[Hershewe v. Givens, CIVIL ACTION NO. 1:14cv655-MHT \(WO\) \(M.D. Ala. Sep 29, 2015\)](#)

U.S. District Court — Middle District of Alabama

Extract

The defendants next argue that Hershewe does not meet the substantive requirements for pleading a civil RICO claim under 18 U.S.C. § 1962(c). To establish a RICO claim, a plaintiff must plead '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' *Williams v. Mohawk Indus., Inc.*, 465 F.3d 1277, 1282 (11th Cir. 2006). As a 'breed of fraud claims,' civil RICO allegations 'must be pled with an increased level of specificity.' *Ambrosia Coal & Const. Co. v. Pages Morales*, 482 F.3d 1309, 1316 (11th Cir. 2007).

Summary

Framework for understanding the necessary elements of a RICO claim, which are conduct, enterprise, pattern, and racketeering activity. The plaintiff in the current case has detailed allegations that align with these elements, including the conduct of an enterprise (*Myers and Branthoover*), a pattern of racketeering activity (wire fraud and Travel Act violations), and specific predicate acts. This specificity and alignment with the required elements can help the plaintiff's complaint withstand a motion to dismiss.

[Bonton v. Archer Chrysler Plymouth, Inc., 889 F.Supp. 995 \(S.D. Tex. 1995\)](#)

U.S. District Court — Southern District of Texas

Extract

Reduced to its three essentials, a civil RICO claim must involve: (1) a person who engages in (2) a pattern of racketeering activity; (3) connected to the acquisition, establishment, conduct, or control of an enterprise... Without regard to Bonton's failure to establish a predicate act, a RICO plaintiff must also establish that there was a 'pattern of racketeering activity.' *Delta Truck & Tractor, Inc.*, 855 F.2d at 242. A 'pattern of racketeering activity,' as required by § 1962(c), requires at least two acts of racketeering activity within a ten year period. 18 U.S.C. § 1961(5). Although at least two acts of racketeering are necessary to constitute a pattern, two acts may not be sufficient. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 n. 14, 105 S.Ct. 3275, 3285 n. 14, 87 L.Ed.2d 346 (1985)... Rule 9(b)'s particularity requirement applies to pleading fraud as a predicate act in a RICO claim. *Tel-Phonic Servs., Inc. v. TBS Int'l, Inc.*, 975 F.2d 1134, 1138 (5th Cir.1992);

Landry, 901 F.2d at 430; Elliott, 867 F.2d at 880; Haroco, Inc., 747 F.2d at 405. To satisfy Rule 9(b), a plaintiff must at a minimum allege the 'time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby.'

Summary

A civil RICO claim must involve a person engaging in a pattern of racketeering activity connected to an enterprise. The pattern requires at least two acts of racketeering within ten years, but two acts alone may not be sufficient. The acts must be related and continuous. Rule 9(b) requires fraud to be pleaded with particularity, specifying the time, place, and contents of false representations, the identity of the person making them, and what was obtained. The plaintiff's complaint must meet these standards to survive a motion to dismiss.

[Allstate Ins. Co. v. Benhamou, 190 F.Supp.3d 631 \(S.D. Tex. 2016\)](#)

U.S. District Court — Southern District of Texas

Extract

A violation of § 1962(c) requires (1) conduct or participation (2) of an enterprise (3) through a pattern (4) of racketeering activity. Sedima, 473 U.S. at 496, 105 S.Ct. 3275. A plaintiff must allege each of these elements in order to state a claim. ... Regardless of whether an enterprise is alleged to be a legal entity or an association-in-fact, the enterprise must be an entity separate and apart from the pattern of activity in which it engages. Old Time Enters., Inc. v. Int'l Coffee Corp., 862 F.2d 1213, 1217 (5th Cir.1989). Thus, a plaintiff must plead specific facts which establish that the association exists for purposes other than simply to commit the predicate acts. Fofas, 867 F.2d at 881. Although proof of one does not necessarily establish the other, 'evidence used to prove the pattern of racketeering activity and the evidence establishing an enterprise 'may in particular cases coalesce.'

Summary

To successfully allege a RICO claim under § 1962(c), a plaintiff must demonstrate conduct or participation in an enterprise through a pattern of racketeering activity. The enterprise must be distinct from the pattern of racketeering activity, and the plaintiff must plead specific facts establishing the existence of the enterprise for purposes beyond merely committing predicate acts. The evidence for the pattern of racketeering activity and the enterprise may overlap but must be distinct.

[City of New York v. Cyco.Net, Inc., 383 F.Supp.2d 526 \(S.D. N.Y. 2005\)](#)

U.S. District Court — Southern District of New York

Extract

Plaintiff alleges that the Defendants conducted the management and operation of the affairs of their own enterprises, directly or indirectly, through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5), and 1962(c), in violation of 18 U.S.C. § 1962(c), consisting of continuous and multiple instances of mail and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343. (Am.Compl.¶¶ 16, 64, 80, 90.) ... Where a plaintiff in a RICO claim alleges racketeering activity based on the predicate acts of violating the mail or wire fraud statutes, he or she must prove three elements: (1) scheme to defraud, including proof of intent; (2) money or property as object of scheme; (3) use of mails or wires to further the scheme. See *United States v. Autuori*, 212 F.3d 105, 115 (2d Cir.2000); *United States v. Dinome*, 86 F.3d 277, 283 (2d Cir.1996).

Summary

Elements required to establish a RICO claim based on mail and wire fraud: a scheme to defraud, intent, money or property as the object, and the use of mails or wires to further the scheme. The plaintiff in the current case has alleged similar predicate acts of wire fraud and violations of the Travel Act, which are recognized as racketeering activities under RICO. The plaintiff's complaint details a scheme involving fraudulent transfers and interstate communications, which aligns with the elements required for a RICO claim. Therefore, the complaint sufficiently alleges a pattern of racketeering activity, which is necessary to withstand a motion to dismiss.

[Rutz v. Discover Fin. Servs., Civil No. 12-5024 \(W.D. Ark. Sep 25, 2012\)](#)

U.S. District Court — Western District of Arkansas

Extract

3. Pursuant to Fed. R. Civ. P. 8(a), a complaint must contain, among other things, a short and plain statement of the claim showing that the complainant is entitled to relief. To survive a motion to dismiss for failure to state a claim, a complaint must contain sufficient facts stating a claim that is plausible on its face and will allow a court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). For purposes of deciding the motion, the Court takes the alleged facts as true, construing all reasonable inferences arising from the complaint in the light most favorable to the plaintiff. *Morton v. Becker*, 793 F.2d 185, 187 (8th Cir. 1986).

Summary

Standard for surviving a motion to dismiss under Federal Rule of Civil Procedure 8(a). A complaint must provide a short and plain statement of the claim that is plausible on its face, allowing the court to infer the defendant's

liability. The court must accept the alleged facts as true and view them in the light most favorable to the plaintiff. This standard is derived from the Supreme Court's decision in *Ashcroft v. Iqbal* and is applicable in federal courts.

[Mendlow v. Seven Locks Facility, 86 F.Supp.2d 55 \(D. Conn. 2000\)](#)

U.S. District Court — District of Connecticut

Extract

Where a plaintiff is appearing pro se, the complaint must be liberally construed in the plaintiff's favor and must be held to the less stringent standards than formal pleadings drafted by lawyers. *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). However, the court's focus remains on whether the complaint states any valid ground for relief. *Ferran v. Town of Nassau*, 11 F.3d 21, 22 (2d Cir.1993), cert. denied, 513 U.S. 1014, 115 S.Ct. 572, 130 L.Ed.2d 489 (1994).

Summary

In U.S. Federal Courts, complaints filed by pro se plaintiffs are subject to a liberal construction standard, meaning they are interpreted more leniently than those drafted by attorneys. This is to ensure that pro se litigants are not unfairly disadvantaged due to their lack of legal expertise. The court's primary focus is on whether the complaint states any valid ground for relief, rather than on technical deficiencies in the pleading.

[Smith v. Fed. Title & Escrow Co., Civil Case No. 17-cv-01580 \(RCL\) \(D. D.C. Jun 20, 2018\)](#)

U.S. District Court — District of Columbia

Extract

A violation of § 1962(a) of the RICO Act consists of four elements: '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' *W. Assocs. Ltd. P'ship v. Mkt Square Assocs.*, 235 F.3d 629, 633 (D.C. Cir. 2000) (citing *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985)). Because Plaintiffs fail to allege sufficient facts to plausibly plead a pattern of racketeering activity—RICO's third element—the claim must be dismissed. To show that a pattern of racketeering activity exists, RICO requires at least two predicate criminal racketeering acts over a ten-year period. See 18 U.S.C. § 1961(5). The Supreme Court has further required that these predicate acts show elements of 'relatedness' and 'continuity.' *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989). For the relatedness element, the criminal acts must share 'similar purposes, results, victims, or

methods of commission, or otherwise are interrelated by distinguishing characteristics.' Id at 240. Continuity may be proved by establishing either a 'closed period of repeated conduct' or a threat of future criminal activity. Id. at 241.

Summary

Essential elements required to establish a RICO claim, specifically focusing on the need to demonstrate a pattern of racketeering activity. This pattern requires at least two predicate acts that are related and continuous. The passage emphasizes the importance of showing relatedness (similar purposes, results, victims, or methods) and continuity (either a closed period of repeated conduct or a threat of future criminal activity). This framework is applicable in federal courts when evaluating RICO claims.

[Kovalev v. Stepansky, CIVIL ACTION NO. 19-5579 \(E.D. Pa. Feb 04, 2020\)](#)

U.S. District Court — Eastern District of Pennsylvania

Extract

Under the federal civil RICO statute, '[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter[, which prohibits racketeering activity,] may sue therefor in any appropriate United States district court. . . .' 18 U.S.C. § 1964(c). 'In order to have standing to litigate a civil RICO claim, a plaintiff must show that [he] suffered an injury to [his] business or property and that the injury was proximately caused by the defendant's racketeering activities.' *Miller v. Pocono Ranch Lands Prop. Owners Ass'n Inc.*, 557 F. App'x 141, 145 (3d Cir. 2014) (per curiam). Because '[i]njuries to one's business or property differ from injuries to one's person,' the United States Court of Appeals for the Third Circuit 'has rejected the argument that personal injuries qualify as RICO injuries to 'business or property.'" *Williams v. BASF Catalysts LLC*, 765 F.3d 306, 323 (3d Cir. 2014) (citing *Maio v. Aetna, Inc.*, 221 F.3d 472, 483, 492 (3d Cir. 2000)). Furthermore, RICO does not provide a cause of action where the damages alleged are 'speculative.' *Maio*, 221 F.3d at 495 (speculative damages that were 'predicated exclusively on the possibility that future events might occur' could not form the basis of a RICO injury).

Summary

To have standing to litigate a civil RICO claim, a plaintiff must demonstrate an injury to business or property that is proximately caused by the defendant's racketeering activities. Personal injuries do not qualify as RICO injuries to business or property, and speculative damages cannot form the basis of a RICO injury. The plaintiff in the current case has alleged specific financial losses and business disruptions, which are concrete injuries to business or property, thus satisfying the standing requirement for a RICO claim.

[Taylor v. Chesapeake Operating, Inc., Case No. CIV-18-565-D \(W.D. Okla. Nov 20, 2019\)](#)

U.S. District Court — Western District of Oklahoma

Extract

To survive a Rule 12(b)(6) motion to dismiss a § 1962(c) claim, Plaintiffs must allege that Defendant '(1) participated in the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' Tal, 453 at 1244. '[R]acketeering activity' is defined to include several predicate acts, including the two alleged here—mail fraud and wire fraud. In addition to these elements, Plaintiffs must also show proximate causation between the RICO predicate act and the injury. Hemi Group, LLC v. City of New York, 559 U.S. 1, 8 (2010).

Summary

The plaintiff's allegations must include participation in an enterprise, a pattern of racketeering activity, and a direct link between the predicate acts and the injury suffered. The passage also clarifies that there is no requirement for a separate "racketeering injury" beyond the injury to business or property caused by the racketeering activity itself.

[Remsnyder v. MBA Mortg. Servs., Civil Action CCB-19-0492 \(D. Md. Sep 09, 2021\)](#)

U.S. District Court — District of Maryland

Extract

To survive a motion to dismiss, the factual allegations of a complaint 'must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact).' Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citations omitted). 'To satisfy this standard, a plaintiff need not 'forecast' evidence sufficient to prove the elements of the claim.- However, the complaint must allege sufficient facts to establish those elements.' Walters v. McMahan, 684 F.3d 435, 439 (4th Cir. 2012) (citation omitted). 'Thus, while a plaintiff does not need to demonstrate in a complaint that the right to relief is 'probable,' the complaint must advance the plaintiff's claim 'across the line from conceivable to plausible.'

Summary

Standard for a complaint to survive a motion to dismiss in federal court. The complaint must contain factual allegations that raise the right to relief above a speculative level, assuming all allegations are true. The plaintiff does not

need to prove the elements of the claim at this stage but must allege sufficient facts to make the claim plausible, not just conceivable. This standard is derived from the Supreme Court's decision in *Bell Atl. Corp. v. Twombly* and is applicable in federal courts.

[18 U.S.C. § 1965 18 U.S.C. § 1965 Venue and Process](#)

Extract

(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

Summary

The passage from 18 U.S.C. § 1965(a) provides that a civil action under the RICO statute can be instituted in any district where the defendant resides, is found, has an agent, or transacts his affairs. This is relevant to the question of venue, which is one of the grounds for the motion to dismiss. The defendants in this case are alleged to have engaged in activities that could be considered as transacting affairs within the Western District of Oklahoma, thus potentially making venue proper in that district.

[28 U.S.C. § 1331 28 U.S.C. § 1331 Federal Question](#)

Extract

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Summary

28 U.S.C. § 1331 provides federal district courts with original jurisdiction over civil actions that arise under the Constitution, laws, or treaties of the United States. This means that if a plaintiff's complaint involves a federal question, such as a claim under the Racketeer Influenced and Corrupt Organizations Act (RICO), the federal court has jurisdiction to hear the case. In this scenario, the plaintiff's complaint involves allegations under RICO, which is a federal statute. Therefore, the federal court has jurisdiction to hear the case, and the motion to dismiss for lack of jurisdiction would not be successful.

[18 U.S.C. § 1964 18 U.S.C. § 1964 Civil Remedies](#)

Extract

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee...

Summary

The U.S. Code provides a civil remedy for individuals who have been injured in their business or property due to a RICO violation. This includes the ability to sue in federal court and recover threefold the damages sustained, along with the cost of the suit and reasonable attorney's fees. This provision supports the plaintiff's ability to bring a RICO claim in federal court and seek substantial damages if the allegations are proven.

[18 U.S.C. § 1343 18 U.S.C. § 1343 Fraud By Wire, Radio, Or Television](#)

Extract

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

Summary

Elements of wire fraud, which include devising a scheme to defraud and using interstate wire communications to execute the scheme. This is relevant to the plaintiff's complaint because the plaintiff alleges that the defendants engaged in wire fraud by transferring funds from a joint account using interstate wire communications. This alleged wire fraud is a predicate act under RICO, which supports the plaintiff's claim that the defendants engaged in a pattern of racketeering activity. The plaintiff's complaint includes specific allegations of wire fraud, which, if proven, would satisfy the requirements for a RICO claim. Therefore, the complaint has a basis in law and fact that could withstand a motion to dismiss.

[18 U.S.C. § 1952 18 U.S.C. § 1952 Interstate and Foreign Travel Or Transportation In Aid of Racketeering Enterprises](#)

Extract

Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to- distribute the proceeds of any unlawful activity; or commit any crime of violence to further any unlawful activity; or otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform- (A) an act described in paragraph or shall be fined under this title, imprisoned not more than 5 years, or both; or (B) an act described in paragraph shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life.

Summary

The Travel Act under 18 U.S.C. § 1952 criminalizes the use of interstate commerce facilities with the intent to promote or facilitate unlawful activities. This is relevant to the plaintiff's complaint as it alleges that the defendants engaged in interstate travel and communications to further a fraudulent scheme, which could constitute a violation of the Travel Act. The plaintiff's complaint includes allegations of wire fraud and violations of the Travel Act, which are recognized as predicate acts under RICO. If the plaintiff can establish these predicate acts, it supports the claim of a pattern of racketeering activity, which is essential to withstand a motion to dismiss under Rule 12(b)(6).

[28 U.S.C. § 1391 28 U.S.C. § 1391 Venue Generally](#)

Extract

A civil action may be brought in- a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

Summary

The venue is proper in a judicial district where any defendant resides if all defendants are residents of the state in which the district is located. Additionally, venue is proper in a district where a substantial part of the events or omissions giving rise to the claim occurred. In this case, the plaintiff has alleged that a substantial part of the events giving rise to the claim occurred within the Western District of Oklahoma, which would make venue proper under 28 U.S.C. § 1391(b)(2).

[18 U.S.C. § 1961 18 U.S.C. § 1961 Definitions](#)

Extract

As used in this chapter- 'racketeering activity' means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 932 (relating to straw purchasing), section 933 (relating to trafficking in firearms), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351 (relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1592 (relating to peonage, slavery, and trafficking in persons),¹ sections 1831 and 1832 (relating to economic espionage and theft of trade secrets), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section

2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic),² sections 175-178 (relating to biological weapons), sections 229-229F (relating to chemical weapons), section 831 (relating to nuclear materials), (C) any act which is indictable under title 29, United States Code, section 29186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(B);

Summary

The definition of "racketeering activity" under 18 U.S.C. § 1961 includes acts that are indictable under certain provisions of the U.S. Code, such as wire fraud (18 U.S.C. § 1343) and violations of the Travel Act (18 U.S.C. § 1952). These acts are relevant to the plaintiff's complaint, which alleges that the defendants engaged in a pattern of racketeering activity involving wire fraud and Travel Act violations. The plaintiff's complaint outlines specific instances of wire fraud and interstate travel with the intent to commit unlawful acts, which are recognized as predicate acts under the RICO statute. Therefore, the plaintiff's complaint sufficiently alleges a pattern of racketeering activity, which is a necessary element to survive a motion to dismiss under Rule 12(b)(6).

[Civil Rico: A Tool of Advocacy](#)

The Brief - American Bar Association - 2024-01-01

Extract

RICO's broad definition of racketeering activity and the act's reference to mail and wire fraud as predicate offenses begs the question: Why not RICO? That is, should the plaintiff consider adding a RICO count to an existing state cause of action? Moreover, since an action under RICO arises under federal law, a plaintiff can elect to have access to federal court. Civil RICO is so broad and offers such a potentially broad pathway to pleading of such a claim in light of the inclusion of mail and wire fraud as predicate acts that a plaintiff can take almost any given set of facts and fashion their pleadings and be... RICO's prohibitions may be enforced in both criminal and civil contexts. In the context of a civil action, a plaintiff must be directly injured by reason of the defendant's racketeering activities. Proximate cause, as an aspect of RICO's "by reason of" standard, requires a RICO plaintiff to show that the defendant's racketeering offenses led directly to the plaintiff's injuries. RICO creates a private cause of action under 18 U.S.C. § 1964(c). To state a civil RICO claim, a plaintiff must allege (1) two or more predicate racketeering offenses, (2) the existence of an enterprise affecting interstate commerce, (3) a connection between the racketeering offenses, and (4) an injury by reason of the above.

Summary

The passage explains that RICO's broad definition of racketeering activity, including mail and wire fraud as predicate offenses, provides a wide pathway for plaintiffs to plead a RICO claim. In a civil RICO action, the plaintiff must demonstrate direct injury from the defendant's racketeering activities, which must include at least two predicate offenses, an enterprise affecting interstate commerce, a connection between the offenses, and an injury resulting from them. This broad framework allows plaintiffs to fashion their pleadings to fit within the RICO statute, making it a powerful tool in federal court.

[Blue-collar crime: conspiracy, organized labor, and the anti-union civil RICO claim.](#)

Albany Law Review - Albany Law School - Levin, Benjamin - 2011-09-22

Extract

Section 1964(c) of the Act created a private right of action for '[a]ny person injured in his business or property by reason of a violation of section 1962....' To succeed in a civil RICO action, a plaintiff must show the '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' In turn, a 'pattern of racketeering activity' requires at least two 'predicate acts' in a ten-year period.

Summary

Requirements for a civil RICO action under Section 1964(c), which includes showing conduct of an enterprise through a pattern of racketeering activity. This pattern requires at least two predicate acts within a ten-year period. The passage highlights the private right of action for individuals injured in their business or property due to a RICO violation, which is relevant to the plaintiff's complaint.

['Plausible' Deniability](#)

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

Extract

Among the 86 Federal Rules of Civil Procedure, Rule 8 is arguably one of the most—if not the most—important, as it sets the initial test all federal plaintiffs must pass in pursuing their claims... Courts have long wrestled with how deeply to scrutinize allegations at the pleading stage, but that question has become even more thorny following two decisions from the U.S. Supreme Court that have altered both the language and the landscape of pleading in civil cases: *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)... With plausibility, context matters. As the Tenth Circuit has explained (echoing the Third Circuit), 'the degree of specificity necessary to establish plausibility and fair notice, and therefore the need to include sufficient factual allegations, depends on context.'

Summary

Importance of Rule 8 in the Federal Rules of Civil Procedure, which requires a "short and plain statement of the claim" to survive a motion to dismiss. The passage highlights the impact of the *Twombly* and *Iqbal* decisions, which require that a complaint must state a plausible claim for relief. The Tenth Circuit's explanation emphasizes that the degree of specificity needed to establish plausibility depends on the context of the case.

[Evans v. United States Environmental Protection Agency ARB CASE NO. 08-059,ALJ CASE NO. 2008-CAA-003](#)

USDOL Administrative Review Board Decisions

Extract

To initiate an adjudicatory proceeding in federal district court, the Federal Rules of Civil Procedure require a plaintiff to submit to the court a 'short and plain statement of' the grounds for jurisdiction, entitlement to a claim,

and a demand for relief. In 2007 and 2009, the Supreme Court interpreted Rule 8 to require that plaintiffs allege in their complaints 'sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' Under this standard, a complaint filed in federal district court has 'facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'

Summary

Requirements under Rule 8 of the Federal Rules of Civil Procedure, which mandates that a complaint must contain sufficient factual matter to state a claim that is plausible on its face. This means that the complaint must provide enough factual content to allow the court to reasonably infer that the defendant is liable for the alleged misconduct. This standard was established by the Supreme Court in 2007 and 2009, emphasizing the need for factual plausibility rather than mere legal conclusions.

[US Tech Workers v. IO Datasphere, Inc.](#)

DOJ Office of the Chief Administrative Hearing Officer Decisions

Extract

A Complaint must state a claim upon which relief can be granted. 28 C.F.R. § 68.10(b). Respondent may file a motion highlighting this issue to the Court, and alternatively, '[t]he Administrative Law Judge may dismiss the complaint... without a motion from the respondent, if the Administrative Law Judge determines that the complainant has failed to state a claim upon which relief can be granted.' 28 C.F.R. § 68.10(b). See *Zajradhara v. Jin Joo Corp.*, 19 OCAHO no. 1554a, 2-3 (dismissing § 1324b retaliation claim for failure to state a claim under ALJ's own authority); *Patel v. USCIS Boston*, 14 OCAHO no. 1353, 3-4 (noting that OCAHO ALJs may sua sponte dismiss a complaint for failure to state a claim, after providing complainant an opportunity to amend). Whether potential deficiencies in a Complaint are brought to the Court's attention by way a motion, or based on its own determination, the same legal standards for analyzing the pleadings apply. OCAHO's Rules of Practice and Procedure provide that complaints shall contain: 'A clear and concise statement of facts, upon which an assertion of jurisdiction is predicated'; 'The alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred'; and 'A short statement containing the remedies and/or sanctions sought to be imposed against the respondent.' 28 C.F.R. § 68.7(b)-.

Summary

Standards for analyzing pleadings, which apply whether deficiencies are highlighted by a motion or determined by the court itself. This is relevant to understanding the requirements for a complaint to survive a motion to dismiss.

[Sharma v. NVIDIA Corp.](#)

DOJ Office of the Chief Administrative Hearing Officer Decisions

Extract

To meet pleading standards, a complaint must contain '[t]he alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred.' 28 C.F.R. § 68.7(b). ... receive sufficient notice of the complainant's allegations. Separately, the legal standard for a motion to dismiss requires an analysis as to whether the complaint states a claim upon which relief may be granted. 28 C.F.R. § 68.10; see *Heath v. Tringapps, Inc.*, 15 OCAHO no. 1410, 3. When reviewing a motion to dismiss, OCAHO 'accepts the facts alleged in the complaint as true and construes the facts in the light most favorable to the complainant.' *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381d, 10 (citation omitted). ... OCAHO's legal standard for a motion to dismiss is 'modeled after Federal Rule of Civil Procedure 12(b).' *Tringapps, Inc.*, 15 OCAHO no. 1410, at 3. While Rule 12(b) can serve as a model, case law applying the rule is instructive only to the extent it does not contradict Section 68.10. See *Split Rail Fence Co., Inc.*, 10 OCAHO no. 1181, at 4; *infra* Part IV.A. When analyzing a motion to dismiss, '[t]he court must accept the complainant's allegations of fact as true, along with such reasonable inferences as may be drawn in the complainant's favor[.]' See *Udala v. N.Y. State Dep't of Educ.*, 4 OCAHO no. 633, 390, 394 (citations omitted). Bearing in mind the interdependent nature of an analysis of a Rule 12-based motion and pleading standards, by meeting the pleading standard here, the Complaint has stated a claim upon which relief can be granted because he has identified a theory by which this Respondent allegedly violated 8 U.S.C. § 1324b.

Summary

If the complaint meets these standards, it states a claim upon which relief can be granted, thus defeating a motion to dismiss.

[US Tech Workers v. IO Datasphere, Inc.](#)

DOJ Office of the Chief Administrative Hearing Officer Decisions

Extract

A Complaint must state a claim upon which relief can be granted. 28 C.F.R. § 68.10(b). Respondent may file a motion highlighting this issue to the Court, and alternatively, '[t]he Administrative Law Judge may dismiss the complaint... without a motion from the respondent, if the Administrative Law Judge determines that the complainant has failed to state a claim upon which relief can be granted.' 28 C.F.R. § 68.10(b). See *Zajradhara v. Jin Joo Corp.*, 19 OCAHO no. 1554a, 2-3 (dismissing § 1324b retaliation claim for

failure to state a claim under ALJ's own authority); *Patel v. USCIS Boston*, 14 OCAHO no. 1353, 3-4 (noting that OCAHO ALJs may sua sponte dismiss a complaint for failure to state a claim, after providing complainant an opportunity to amend). Whether potential deficiencies in a Complaint are brought to the Court's attention by way a motion, or based on its own determination, the same legal standards for analyzing the pleadings apply. OCAHO's Rules of Practice and Procedure provide that complaints shall contain: 'A clear and concise statement of facts, upon which an assertion of jurisdiction is predicated'; 'The alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred'; and 'A short statement containing the remedies and/or sanctions sought to be imposed against the respondent.' 28 C.F.R. § 68.7(b)-.

Summary

Requirements for a complaint to survive a motion to dismiss, emphasizing the need for a clear and concise statement of facts, alleged violations of law, and the remedies sought. These requirements are generally applicable to complaints under OCAHO's jurisdiction. The passage also notes that a complaint can be dismissed if it fails to state a claim upon which relief can be granted, but the complainant must be given an opportunity to amend the complaint.

[Pajany v. Capgemini, Inc.](#)

Immigration Decisions of the Administrative Law Judge

Extract

A complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim will have 'facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.' This standard demands 'more than a sheer possibility that a defendant has acted unlawfully.'

Summary

For a complaint to survive a motion to dismiss, it must present sufficient factual matter that, when accepted as true, states a claim that is plausible on its face. This means the complaint must allow the court to reasonably infer that the defendant is liable for the alleged misconduct. The standard requires more than just a possibility of unlawful action; it requires factual content that supports the claim.

[Pajany v. Capgemini, Inc.](#)

Immigration Decisions of the Administrative Law Judge

Extract

A complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim will have 'facial plausibility' when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.' This standard demands 'more than a sheer possibility that a defendant has acted unlawfully.'

Summary

For a complaint to survive a motion to dismiss, it must contain enough factual matter to make the claim plausible on its face. This means that the complaint must provide enough detail to allow the court to reasonably infer that the defendant is liable for the alleged misconduct. The standard is not met by mere possibility; there must be enough factual content to make the claim plausible.

[RICO: A Primer](#)

Extract

Mail and wire fraud are the most common predicate acts... The racketeering acts need not be similar or directly related to each other; rather, it is sufficient that the racketeering acts are related in some way to the affairs of the charged enterprise, including, for example, that: the racketeering acts furthered the goals of or benefitted the enterprise, the enterprise or the defendant's role in the enterprise enabled the defendant to commit, or facilitated the commission of, the racketeering acts, the racketeering acts were committed at the behest of, or on behalf of, the enterprise, or the racketeering acts had the same or similar purposes, results, participants, victims or methods of commission. The continuity requirement is likewise satisfied where the predicates are a regular way of conducting the defendant's ongoing legitimate business (in the sense that it is not a business that exists for criminal purposes), or of conducting or participating in an ongoing and legitimate RICO 'enterprise.' A plaintiff may demonstrate a pattern by establishment that the predicate acts pose a threat of continued criminal activity, which is generally demonstrated by showing either: * Closed-ended continuity. Proving 'a series of related predicate acts extending over a substantial period of time.' * Open-ended continuity. A threat of 'continuing criminal activity extending indefinitely into the future,' in light of the nature of the enterprise and predicate acts alleged.

Summary

The passage explains that for a RICO claim to succeed, the plaintiff must demonstrate a pattern of racketeering activity, which can be established through related acts that further the goals of the enterprise. The acts do not need to be similar but must be related to the enterprise's affairs. Continuity

can be shown through closed-ended continuity (a series of acts over a substantial period) or open-ended continuity (a threat of ongoing criminal activity). The plaintiff's complaint alleges multiple predicate acts, including wire fraud and violations of the Travel Act, which are related to the enterprise's goal of defrauding the plaintiff. The complaint also demonstrates continuity, as the acts span over 18 months and pose a threat of continued activity. This aligns with the requirements outlined in the passage, suggesting that the plaintiff's complaint sufficiently alleges a RICO violation.

[Defending RICO Claims In The Business Context Part II: RICO Claims Must Allege Injury To Business Or Property](#)

Extract

Fortunately for defendants, the RICO standing requirement greatly restricts the types of claims that can survive a motion to dismiss. If a plaintiff brings a civil suit alleging a RICO violation, the plaintiff must plausibly allege that his injury animating the RICO claim is associated with his business or property by reason of the defendant's violation of the RICO laws. Absent these allegations, the lawsuit must be dismissed. RICO standing is distinct from the more well-known concept of constitutional standing. For RICO claims, in addition to pleading a sufficiently specific injury, including allegations that the plaintiff has suffered known damages (as opposed to mere speculative or unprovable damages), the plaintiff must allege that he suffered an injury to his business or property that bears some causal relationship to the alleged act or acts that violated RICO. This fundamental RICO requirement helps ensure that RICO is not expanded beyond its original intent. ... In contrast, in addition to more obvious injuries to business or property, courts have determined that a plaintiff's alleged injuries were sufficient in cases involving lost profits, excessive interest charges, property damage and interference with business, such as decreased business profits or increased costs of doing business. Injuries to intangible business assets (such as lost customers or business relationships) are also usually sufficient. Moreover, the alleged injury to a plaintiff's business or property must be both factually and proximately caused by the defendant's alleged violation of RICO. This means not only that absent the defendant's alleged violation of RICO, the injury to the plaintiff's business or property would not have occurred (i.e., but-for causation), but also that the alleged violation must directly lead to the plaintiff's injuries. The latter significantly limits RICO's reach and prohibits those indirectly harmed from bringing flimsy RICO claims.

Summary

For a RICO claim to survive a motion to dismiss, the plaintiff must allege a specific injury to business or property that is causally related to the defendant's RICO violation. The injury must be concrete and not speculative, and it must be both factually and proximately caused by the alleged RICO violation. The passage provides examples of sufficient injuries, such as lost

profits and interference with business, which align with the plaintiff's allegations in the complaint.

[RICO: A Primer](#)

Extract

Mail and wire fraud are the most common predicate acts... The racketeering acts need not be similar or directly related to each other; rather, it is sufficient that the racketeering acts are related in some way to the affairs of the charged enterprise, including, for example, that: the racketeering acts furthered the goals of or benefitted the enterprise, the enterprise or the defendant's role in the enterprise enabled the defendant to commit, or facilitated the commission of, the racketeering acts, the racketeering acts were committed at the behest of, or on behalf of, the enterprise, or the racketeering acts had the same or similar purposes, results, participants or methods of commission. The continuity requirement is likewise satisfied where the predicates are a regular way of conducting the defendant's ongoing legitimate business (in the sense that it is not a business that exists for criminal purposes), or of conducting or participating in an ongoing and legitimate RICO 'enterprise.' A plaintiff may demonstrate a pattern by establishment that the predicate acts pose a threat of continued criminal activity, which is generally demonstrated by showing either: * Closed-ended continuity. Proving 'a series of related predicate acts extending over a substantial period of time.' * Open-ended continuity. A threat of 'continuing criminal activity extending indefinitely into the future,' in light of the nature of the enterprise and predicate acts alleged.

Summary

The passage explains that for a RICO claim to be valid, the plaintiff must demonstrate a pattern of racketeering activity, which can be established through related predicate acts that further the goals of the enterprise. The continuity requirement can be satisfied by showing either closed-ended continuity (a series of related acts over a substantial period) or open-ended continuity (a threat of ongoing criminal activity). The plaintiff's complaint alleges multiple predicate acts, including wire fraud and violations of the Travel Act, which are related to the enterprise's goals and demonstrate both closed-ended and open-ended continuity. This supports the argument that the plaintiff's complaint sufficiently alleges a pattern of racketeering activity, which is essential to withstand a motion to dismiss.

This memo was compiled by Vincent AI based on vLex materials available as of June 26, 2025. [View full answer on vLex](#)