

# Question

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bc41-bbc08c814365 All references to the record are marked herein with "REC. [page]" and are hyperlinked to take the reader directly to the reference. The record is filed under affidavit, and remains unopposed at the time of filing this complaint. Therefore, Plaintiff respectfully asks that the Court take judicial notice of the record under Federal Rule of Evidence 201, filed on June 6, 2025, in the Texas Supreme Court under case numbers 25-0361, 25-0367, 25-0378, 25-0426, and 25-0458.

## II. TIMELINE OF EVENTS

**BACKGROUND**

Morgan Michelle Myers, ("Myers") and Charles Dustin Myers, ("Plaintiff") were married on June 20, 2015, and have two daughters, C.R.M. and M.E.M, aged seven and nine. The evidence in this case will show that in early December of 2023, the entire family was blindsided by Myers' sudden announcement that she wanted a divorce from Plaintiff. REC. 717 The evidence will further show that Myers' reasoning for this divorce changes over time – beginning with how Plaintiff spoke to her, and then switches to abuse and sexual harassment, and allegations of drug abuse, claims that were only brought up in her initial pleadings. On December 12, 2023, Plaintiff discovered a large volume of text messages between Myers and two individuals identified as Debbie Price and Damen Kazlauskas of Fort Worth, Texas spanning between October 2022 and December 2023. REC. 254-714 In response to this discovery, Myers began to communicate with Defendant Daniel Kenneth Branthoover, a resident of Yukon, Oklahoma, who assisted her in the planning, drafting, traveling, and submitting of fraudulent documents to the 322nd District Court of Tarrant County designed to divest Plaintiff of his home and business operations. When these allegations were raised to the State, they failed to adjudicate them and violated the Plaintiff's constitutional rights when he was deprived of the guarantees of equal protection under the law and when he was not afforded due process before being deprived of his property. REC. 183. The central question is whether Defendants Munford, Kaitcer, Carter, and Baker are victims of the initial scheme – or willing participants in an expanded associate-in-fact enterprise that began in December of 2023 as the Myers-Branthroover enterprise.

**A. The Myers-Branthroover Enterprise 1.** On December 14, 2023, Defendants Morgan Michelle Myers ("Myers") and Daniel Kenneth Branthoover ("Branthroover"), acting in concert and under deceptive pretenses, (REC. 1704), initiated text-message communications through which they formed and advanced a common plan and agreement. Over the weekend of December 15, 2023, they met in Yukon, Oklahoma, to further that plan ( REC. 274-278). The deceptive text message from Defendant Branthoover claiming that he wanted to assist Plaintiff was following an attempt by Myers to receive an ex-parte order of protection from the 322nd District Court of Tarrant county, attempted on December 14, 2023 (REC. 78).

**B. Interstate Travel and Transfer 2.** As part of their agreement, both Defendants planned to draft and submit an original petition for divorce and an affidavit of indigency to the 322nd District Court of Tarrant County, with the intended and foreseeable result of removing Plaintiff from his matrimonial residence at 6641 Anne Court, Watauga, Texas 76148—which also serves as his place of business for clients in the United States, Canada, and the United Kingdom that rely on his market data services (REC. 812 ¶ 16).

**3.** During Defendant Myers's interstate travel, she transferred the parties' marital funds into Defendant Branthoover's PayPal account in the amount of \$1,576 (REC. 723). Those proceeds funded a second mobile phone (817-940-0852), listed on the fraudulent pleadings that

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

and First Appearance 12. On January 15, 2024, the Tarrant County District Courts Facebook page sent out a notice informing the members of the public that the court would be closed on January 16, 2024, due to inclement weather. REC. 1202. 13. Unaware of the closure at the time, the parties appeared at the 322nd District Court of Tarrant County on January 16, 2024, and were met with a dark courtroom, with only one judge in the building at the time of their arrival – Defendant James Munford (“Munford”). 14. Defendant Munford summarily ordered the Plaintiff out of his home, inadvertently assisting the Myers-Branthrover associate-in-fact enterprise of achieving their primary goal in having the Plaintiff removed from his residence, despite the broader goal being to obtain a decree of divorce to permanently divest Plaintiff of his interests. REC. 183. 15. Defendant Munford’s initial order was baseless, made in the absence of any emergency, without a hearing, and disregarded the Plaintiff’s pleadings, telling Myers “you’re going to have to find evidence of family violence!” clearly aware that this order was made without any regard to the Plaintiff’s constitutional rights. 16. Defendant Jeffrey Kaitcer, (“Kaitcer”) walked into the courtroom late due to the inclement weather and turned the courtroom into a laughing matter as he began to joke with Defendant Munford, and instructed the parties to download the AppClose app for communication, and the matter was reset for January 22, 2024. There exists no record of this proceeding, only marked appearances on the docket. H. Reset #1 – January 22, 2024, Setting 17. At the January 22 reset hearing, the parties appeared only to have the case reset once more because defendant Myers allegedly retained the services of Defendant Cooper Carter, (“Carter”) in the lobby of the courthouse just moments before the hearing was scheduled to begin. No appearance can be traced to this setting by either party on the docket (REC. 1551), and once again, no hearing was held, and the case reset for a second time to February 1, 2024. REC. 186. 18. Kaitcer permitted attorney Dan Bacalis, Plaintiff’s prior attorney, to fill out the Associate Judge’s Report, and the parties never went before him as indicated by the case docket’s lack of appearance on this date by either party. I. Reset #2 – February 1, 2024, Setting 19. One day prior to the February 1 setting, both attorneys, Defendant Carter and Dan Bacalis, both amended the petition for divorce and counterpetition for divorce without the parties’ knowledge. (REC. 189, REC. 209) These amended documents were similar, submitted on the same day, and raised concerns for Plaintiff regarding his quality of representation. 20. At the February 1 setting, both parties were in the conference rooms outside of Defendant Kaitcer’s courtroom, when attorney Bacalis walks in holding a settlement agreement. When Plaintiff refused this option and requested that they go have a hearing before the judge. 21. This is when Bacalis stated, as witness affidavits corroborate, that he “knows this Judge and this is the best we can get.” and further stated “[w]e’ll be here all day. We can come back and change it later.” 22. Outraged by this response, Plaintiff paid very close attention to the settlement offer Bacalis was pressuring him to sign, and noticed the following provisions: A typed written Order conforming to this Report will follow within 20 days from the date this Report is signed. The Temporary Order shall be prepared by DAN BACALIS. Each attorney should approve the Order. The parties do not need to approve the Order. The attorney reviewing the proposed Order shall have five (5) days to do so. There are no ten (10) day letters. If an agreement is not reached, a Motion to Sign shall be filed and set within thirty (30) days from

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

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

effect without Plaintiff's signature (REC. 925), and Plaintiff filed a request for findings of fact and conclusions of law (REC. 883), and filed and amended a "Preparatory Notice for Judicial Review" which recounted the factual timeline up to that point, and included the affidavits that Kaitcer refused to accept on March 14, 2024. REC. 798, REC. 851, REC. 854, REC. 857, REC. 860, REC. 863, REC. 867, REC. 870. 39. The orders stated they were to remain in effect until the final decree of divorce, and Plaintiff's journey of one-sided appeals began. N. One Sided Appellate Efforts, and Defective IWO 40. Following the rendition of the temporary orders on March 26, 2024, Plaintiff spent between April 8, 2024 and September 15, 2024, appealing via mandamus to the Second Court of Appeals and the Texas Supreme Court. REC. 1010. 41. During the appellate efforts, Carter filed one of two motions in the case, which was a motion for pre-trial conference filed on April 24, 2024, on her behalf by Roderick D. Marx, a party not named in the suit. REC. 1014, REC. 1016. 42. Plaintiff immediately objected to the pre-trial conference, and no response was ever issued by Carter or the court. REC. 1018. 43. On April 30th, Plaintiff filed his notice of completion regarding the parenting course as ordered, despite actively trying to vacate them. REC. 1047. No parenting course was ever completed by Myers. 44. On May 2, 2024, Plaintiff's en banc reconsideration was denied in the Second Court of Appeals, and he began preparing an appeal to the Supreme Court of Texas. REC. 1067. 45. On May 19, 2024, Carter sent the second and last email correspondence that would be received in the case, which falsely claimed he agreed to the orders signed on March 14, 2024, and requested that he fill out an IWO, which Plaintiff found to be defective. REC. 1722, REC. 1728. No further correspondence was received by Carter. O.

Fraudulent Intervention and Branthoover's Continued Involvement 46. On June 23rd Plaintiff filed a motion in state court entitled MOTION FOR JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION at 12:14 P.M. REC. 1075. This motion received no response from Carter. 47. On June 23rd at 1:54 P.M., directly following the submission of the motion, Branthoover texted Plaintiff stating "Lol. And here comes another denial. Please sue me individually. Please.", referring to the earlier filed motion and showing his continued oversight of the case's progression since his initial predicate acts. 48. Four days later, on June 28, 2024, the Texas Office of the Attorney General allegedly filed an intervention pleading, claiming that Plaintiff was past due on child support, and requested information from Plaintiff. REC. 1099. 49. Most notably, the certificate of service to this intervention pleading was allegedly signed by Holly Hayes, the designated attorney for the OAG, yet the name underneath the signature line reads CHOYA BURKLEY. REC. 1102. 50. Plaintiff promptly objected to the intervention, and never received any response from the OAG, Carter, or the court. REC. 1106. P. Supreme Court, Rule 12, and Emergency Temporary Orders 51. As Plaintiff continued to appeal to the Supreme Court of Texas, all prosecution came to an end in the trial court. It wasn't until September 15, 2024, that Plaintiff filed a first amended rehearing motion in the Texas Supreme Court, (REC. 1136) and after noticing Carter's lack of participation, he began to question her authority given several ambiguities surrounding her representation, and filed a rule 12 motion to show authority. REC. 1170. No response was ever received to this motion from Carter. 52. At this point, Plaintiff had been staying in Airbnb homes while he sought relief to ensure he could remain close to his daughters during this time. On September 26,

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

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

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

liability is clear, the involvement of other defendants (Munford, Kaitcer, Carter, and Baker) may be characterized as inadvertent or willing participation, depending on their knowledge and intent, but the core elements of a RICO violation are satisfied by the conduct of Myers and Branthoover as outlined in the enumerated timeline. The additional acts committed by each defendant, as alleged, furthered the scheme of the enterprise despite each additional defendant having actual knowledge of the fraudulent scheme.

**RICO Statutory Framework**

The Racketeer Influenced and Corrupt Organizations Act (RICO), codified at 18 U.S.C. §§ 1961–1968, provides a civil cause of action for individuals injured in their business or property by reason of a pattern of racketeering activity conducted through an enterprise affecting interstate or foreign commerce. The most commonly invoked provision, § 1962(c), prohibits any person employed by or associated with an enterprise from conducting or participating in the conduct of such enterprise's affairs through a pattern of racketeering activity. Section 1962(d) further prohibits conspiracies to violate any of the substantive RICO provisions. To establish a civil RICO claim under § 1962(c), a plaintiff must prove:

- i. The existence of an enterprise;
- ii. The enterprise's engagement in, or effect on, interstate or foreign commerce;
- iii. The defendant's employment by or association with the enterprise;
- iv. The defendant's participation, directly or indirectly, in the conduct of the enterprise's affairs;
- v. The defendant's participation through a pattern of racketeering activity or collection of unlawful debt.

See *100 Mount Holly Bypass v. Axos Bank*, Case No. 2:20-CV-856-TS-CMR (D. Utah Jul 27, 2021).

**B. Predicate Acts and Pattern Requirement**

RICO defines "racketeering activity" to include a wide range of criminal offenses, including wire fraud (18 U.S.C. § 1343) and violations of the Travel Act (18 U.S.C. § 1952). A "pattern of racketeering activity" requires at least two predicate acts within a ten-year period, but the acts must be related and amount to or pose a threat of continued criminal activity. The Supreme Court has clarified that a RICO violation requires both an "enterprise" and a "pattern of racketeering activity," with the enterprise being a group of persons associated for a common purpose, and the pattern involving a series of criminal acts (*United States v. Harris*, 695 F.3d 1125 (10th Cir. 2012)). The Tenth Circuit has further explained that, to establish a pattern, it is not enough to simply show that two predicate acts occurred within ten years; the acts must also be related and pose a threat of continued criminal activity (U.S. v. Smith, 413 F.3d 1253 (10th Cir. 2005)). Note, however, that U.S. v. Smith has been stated as overruled by *United States v. Nissen*, 555 F.Supp.3d 1174 (D. N.M. 2021) on unrelated grounds, but its articulation of the pattern requirement remains consistent with current law.

**C. Enterprise and Association-in-Fact**

An "enterprise" under RICO includes any individual, partnership, corporation, association, or group of individuals associated in fact, even if not a legal entity. For an association-in-fact enterprise, the Tenth Circuit requires:

- i. A purpose;
- ii. Relationships among those associated with the enterprise;
- iii. Longevity sufficient to permit the associates to pursue the enterprise's purpose;
- iv. A decision-making framework or mechanism for controlling the group;
- v. Functioning as a continuing unit;
- vi. Existence separate and apart from the pattern of racketeering activity.

See *100 Mount Holly Bypass*.

**D. Conspiracy**

Section 1962(d) makes it unlawful to conspire to violate any of the substantive RICO provisions. A RICO conspiracy does not require the establishment of an enterprise but requires that a defendant adopts the goal

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

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

for Carter, Kaitcer, and Myers (notably at timeline events 33-37), and wire fraud for Munford and Baker (notably at events 54-59, 83)—demonstrating knowing and willful participation in the enterprise’s broader scheme to deprive Plaintiff of his home and business through fraudulent and coercive means.

A. Extortion and Wire Fraud The Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968, provides a civil cause of action for injury to business or property caused by a pattern of racketeering activity conducted through an enterprise affecting interstate commerce. Predicate acts under RICO include extortion (as defined by the Hobbs Act and the Travel Act) and wire fraud (18 U.S.C. § 1343), among others.

Extortion is defined as obtaining property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right. The Travel Act, 18 U.S.C. § 1952, includes extortion as an “unlawful activity” and does not require it to be part of a business enterprise (U.S. v. Welch, 327 F.3d 1081 (10th Cir. 2003)). The Tenth Circuit recognizes that extortion under the Travel Act can be established by showing threats or coercion to obtain something of value, including property or legal rights, in violation of state or federal law. Wire fraud under 18 U.S.C. § 1343 requires (1) a scheme to defraud or obtain property by false or fraudulent pretenses, (2) intent to defraud, and (3) use of interstate wire communications to execute the scheme (Clinton v. Sec. Benefit Life Ins. Co., 63 F.4th 1264 (10th Cir. 2023); United States v. Holloway, 826 F.3d 1237 (10th Cir. 2016)). The Tenth Circuit requires that the deprivation of property be a central object of the scheme, and that the use of wires (including email) be knowing and in furtherance of the fraudulent scheme (United States v. Tao, 629 F.Supp.3d 1083).

B. Extortion by Carter, Kaitcer, and Myers Extortion, as a RICO predicate act, is defined broadly under federal law and the Travel Act. It includes obtaining property or rights through threats, coercion, or misuse of official process (U.S. v. Welch, 327 F.3d 1081 (10th Cir. 2003)). The Tenth Circuit does not require extortion to be part of a business enterprise for Travel Act purposes; a single act suffices if it has the requisite interstate nexus. The timeline shows the following:

- i. Event 33-34: Carter, with Myers, prepared and presented “Temporary Orders” that misrepresented facts (e.g., that Plaintiff agreed to terms he did not, that a hearing occurred when it did not, and that the orders were in the best interests of the children). These orders altered the dates of access to the home to shield Myers from liability for locking Plaintiff out, and were presented to Plaintiff in a context where he was under threat of losing his home and business.
- iii. Event 36: Kaitcer, knowing the orders were disputed and that no response had been filed, signed an associate judge’s report pre-drafted by Carter, summarily denying Plaintiff’s emergency motion and ordering Plaintiff to sign the disputed document, despite his objections and lack of consent.
- iv. Event 35: Plaintiff refused to sign the orders for multiple reasons, including their fraudulent content and the lack of due process, but the orders were rendered into effect without his signature. These acts collectively demonstrate the use of legal process and the threat of adverse judicial action to coerce Plaintiff into surrendering his property and business interests. The manipulation of court orders, the misrepresentation of facts, and the pressure to sign under threat of losing his home constitute extortion under the Travel Act and RICO (U.S. v. Welch, 327 F.3d 1081 (10th Cir. 2003)). Myers’s role is clear: she was the beneficiary and instigator of the fraudulent filings and the manipulation of court

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

**RELATIONSHIP AND CONTINUITY**

All these acts—extortion by Carter, Kaitcer, and Myers, and wire fraud by Munford and Baker—were committed in furtherance of the Myers-Branthrover enterprise's overarching objective: to finalize the

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

## **Answer (Fifth Circuit)**

### **Short response**

To plead a civil RICO claim in the Fifth Circuit, a plaintiff must allege with factual specificity that a person engaged in a pattern of racketeering activity connected to the conduct of an enterprise, and, where fraud is a predicate act, must meet the heightened pleading standard of Rule 9(b); available relief includes treble damages, costs, and attorney's fees, but not injunctive relief for private plaintiffs.

### **Summary**

A civil RICO complaint in the Fifth Circuit must set out facts showing (1) a person, (2) who engaged in a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise. The complaint must provide sufficient factual detail to make the claim plausible, and if fraud (such as wire or mail fraud) is alleged as a predicate act, the circumstances must be pleaded with particularity under Rule 9(b); if successful, the plaintiff is entitled to mandatory treble damages, costs, and attorney's fees, but not injunctive relief.

The Fifth Circuit requires that each element of a RICO claim be supported by well-pleaded facts, not mere legal conclusions, and the complaint must show that the alleged predicate acts are related and amount to or pose a threat of continued criminal activity. The types of relief available to a prevailing civil RICO plaintiff are set by statute and include threefold actual damages, costs, and reasonable attorney's fees, but courts in this circuit do not permit private plaintiffs to obtain injunctive relief under RICO.

## **Background and Relevant Law**

### **Statutory and Pleading Framework**

The Racketeer Influenced and Corrupt Organizations Act (RICO), codified at 18 U.S.C. §§ 1961–1968, provides a civil cause of action for any person injured in their business or property by reason of a violation of section 1962. The statute enumerates four types of prohibited conduct in § 1962: (a) investing income from racketeering in an enterprise, (b) acquiring or maintaining an interest in an enterprise through racketeering, (c) conducting the affairs of an enterprise through a pattern of racketeering activity, and (d) conspiring to violate any of the above. The most commonly invoked provision in civil cases is § 1962(c), which prohibits any person employed by or associated with an enterprise from conducting its affairs through a pattern of racketeering activity (RICO: A Primer (2022-01-31); [DOH Oil Co.v. Kahle](#) (W.D. Tex. Jan. 4, 2023)).

To state a claim under § 1962(c), a plaintiff must allege: (1) the existence of an enterprise; (2) the enterprise's engagement in, or effect on, interstate or foreign commerce; (3) the defendant's employment by or association with the enterprise; (4) the defendant's participation, directly or indirectly, in the conduct of the enterprise's affairs; and (5) the defendant's participation through a pattern of racketeering activity (RICO: A Primer (2022-01-31); [Peel v. cPaperless LLC](#) (S.D. Tex. Nov. 8, 2024)).

A “pattern of racketeering activity” requires at least two predicate acts of racketeering, which must be related and amount to or pose a threat of continued criminal activity ([Bustos v. Invierte En Tex.](#) (W.D. Tex. June 3, 2024); [Brown v. Protective Life Ins. Co.](#) (5th Cir. 2003)). Predicate acts include a range of federal and state crimes, most commonly mail and wire fraud ([Peel v. cPaperless LLC](#) (S.D. Tex. Nov. 8, 2024)).

### **Pleading Standards**

Federal Rule of Civil Procedure 8(a)(2) requires a “short and plain statement of the claim showing that the pleader is entitled to relief.” However, to survive a motion to dismiss under Rule 12(b)(6), the complaint must allege enough facts to state a claim that is plausible on its face, allowing the court to draw a reasonable inference of liability ([United Healthcare Sevices, Inc. v. Next Health, LLC](#) (N.D. Tex. Feb. 26, 2021); [D&T Partners LLC v. Baymark Partners LP](#) (N.D. Tex. May 9, 2022)). Threadbare recitals of the elements, supported only by conclusory statements, are insufficient ([Arruda v. Curves Int'l, Inc.](#) (5th Cir. June 28, 2021)).

When fraud is alleged as a predicate act (e.g., mail or wire fraud), the complaint must also satisfy the heightened pleading requirements of Rule 9(b), which demands that the circumstances constituting fraud be stated with particularity. This includes the time, place, and content of the false representations, the identity of the person making them, and what was obtained as a result ([Arruda v. Curves Int'l, Inc.](#) (W.D. Tex. July 27, 2020); [Williams v. WMX Technologies, Inc.](#) (5th Cir. 1997)). The Fifth Circuit has repeatedly enforced this standard, dismissing RICO claims that fail to plead fraud with the required specificity ([Tel-Phonic Services, Inc. v. TBS Intern.. Inc.](#) (5th Cir. 1992), superseded on other grounds).

## **Types of Relief**

The relief available to a successful civil RICO plaintiff is set by 18 U.S.C. § 1964(c), which mandates an award of treble damages, costs, and reasonable attorney's fees ([Atkinson v. Anadarko Bank and Trust Co.](#) (5th Cir. 1987); [Heden v. Hill](#) (S.D. Tex. 1996)). The award of treble damages is not discretionary; it is required by the statute ([Civil Rico: A Tool of Advocacy](#) (2024-01-01)). However, the Fifth Circuit has held that private plaintiffs may not obtain injunctive relief under RICO ([Fredeman Litigation, In re](#) (5th Cir. 1988)).

# **Analysis: Pleading Each Element of a Civil RICO Claim in the Fifth Circuit**

## **I. Jurisdiction and Venue**

Federal courts have subject matter jurisdiction over civil RICO claims under 28 U.S.C. § 1331 and 18 U.S.C. § 1964(c), provided the complaint alleges injury to business or property by reason of a RICO violation ([Heden v. Hill](#) (S.D. Tex. 1996)). Venue is proper in any district where the alleged enterprise operated or where any act of racketeering occurred.

## **II. Parties**

The plaintiff must be a “person” injured in their business or property by reason of a RICO violation. Defendants must also be “persons” as defined by the statute, which includes individuals and entities ([Brown v. Protective Life Ins. Co.](#) (5th Cir. 2003)).

## **III. Record References**

The Fifth Circuit permits courts to take judicial notice of public records, including state court filings, when authenticity is not reasonably disputed ([Miller v. Dunn](#), 35 F.4th 1007 (5th Cir. 2022); [LUV N' Care, Ltd. v. Jackel Int'l Ltd.](#), 502 F.Supp.3d 1106 (W.D. La. 2020)). This supports the plaintiff’s request for judicial notice of the consolidated mandamus record.

## **IV. Introduction**

The introduction should set out the nature of the RICO claim, the parties, and a summary of the alleged racketeering activity, referencing the timeline and the enterprise's structure.

## **V. Factual Timeline**

The timeline must provide the factual basis for each element of the RICO claim, with particularity for any fraud-based predicate acts. For example:

- **A. The Myers-Branthroover Enterprise:** Allegations that Myers and Branthoover formed an association-in-fact enterprise, with a common purpose to deprive Plaintiff of his home and business, are essential to establishing the “enterprise” element (RICO: A Primer (2022-01-31)).
- **B. Interstate Travel and Transfer:** Details of interstate travel and financial transfers support the interstate commerce requirement and may serve as predicate acts (e.g., wire fraud).
- **C. Admissions:** Direct admissions by participants can help establish intent and the existence of a scheme.
- **D. Post-submission Collaboration:** Ongoing collaboration and communications show continuity and relatedness of the acts.
- **E. Significant and Intentional Misrepresentations:** Specific misrepresentations, especially if made via wire or mail, must be pleaded with particularity under Rule 9(b).
- **F. Evidence to the Contrary:** Contradictory evidence can support the inference of fraudulent intent.
- **G-V:** Each subsequent section should tie specific factual allegations to the elements of the RICO claim, including the pattern of racketeering activity, the conduct of the enterprise, and the injury to Plaintiff's business or property.

## **VI. The RICO Enterprise**

The complaint must allege the existence of an enterprise, which can be any group of individuals associated in fact, functioning as a continuing unit with a common purpose ([Bordelon v. Wells Fargo Fin. La., LLC](#) (E.D. La. July 25, 2018)). The timeline should show the structure, membership, purpose, and continuity of the enterprise.

## **VII. Predicate Acts**

The complaint must identify at least two predicate acts of racketeering activity, such as wire fraud, mail fraud, extortion, or Travel Act violations, and allege facts showing that these acts are related and continuous ([Bustos v. Invierte En Tex.](#) (W.D. Tex. June 3, 2024)). For fraud-based predicates, the circumstances must be pleaded with particularity ([Arruda v. Curves Int'l Inc.](#) (W.D. Tex. July 27, 2020)).

## **VIII. RICO Conspiracy**

To plead a RICO conspiracy under § 1962(d), the complaint must allege an agreement among the defendants to commit at least two predicate acts of racketeering ([Abraham v. Singh, 480 F.3d 351 \(5th Cir. 2007\)](#)). Specific facts showing the existence of such an agreement are required.

## **IX. Potential Defenses**

Defendants may raise defenses such as preclusion, the Rooker-Feldman doctrine, Younger abstention, judicial immunity, or other affirmative defenses. The complaint should anticipate and address these where possible.

## **X. State Law Claims**

State law claims such as fraud, abuse of process, or intentional infliction of emotional distress may be pleaded in the alternative, but must be supported by sufficient factual allegations.

## **XI. Claims for Relief**

The complaint must clearly state the claims for relief, referencing the statutory basis and the factual allegations supporting each claim.

## **XII. Damages**

A prevailing civil RICO plaintiff is entitled to recover three times the actual damages sustained, plus costs and reasonable attorney's fees ([Atkinson v. Anadarko Bank and Trust Co.](#) (5th Cir. 1987); [Heden v. Hill](#) (S.D. Tex. 1996)). Punitive damages are not available, as treble damages are considered punitive in nature. Restitution may be available as part of compensatory damages, but not as a separate category.

## **XIII. Prayer for Relief**

The prayer for relief should request treble damages, costs, and attorney's fees as mandated by statute. The Fifth Circuit does not permit private plaintiffs to obtain injunctive relief under RICO ([Fredeman Litigation, In re](#) (5th Cir. 1988)).

## **Exceptions and Caveats**

- **Rule 9(b) Heightened Pleading:** If the RICO claim is based on fraud (e.g., wire or mail fraud), the complaint must meet the heightened pleading standard of Rule 9(b), requiring particularity as to the circumstances of the fraud ([Arruda v. Curves Int'l, Inc.](#) (W.D. Tex. July 27, 2020); [Williams v. WMX Technologies, Inc.](#) (5th Cir. 1997)).
- **No Injunctive Relief:** The Fifth Circuit has held that private plaintiffs cannot obtain injunctive relief in civil RICO actions ([Fredeman Litigation, In re](#) (5th Cir. 1988)).

- **Standing:** The plaintiff must show injury to business or property "by reason of" a RICO violation; personal injuries are not compensable under RICO ([Crawford Arms, Inc. v. Waste Management of Miss.](#) (S.D. Miss. 1998)).
- **Subsequent Treatment:** Some older authorities have been superseded or vacated in part, but the core pleading standards and elements for civil RICO claims remain consistent in the Fifth Circuit.

## Conclusion

To properly plead a civil RICO claim in the Fifth Circuit, the complaint must allege with factual specificity that a person engaged in a pattern of racketeering activity connected to the conduct of an enterprise, and, where fraud is a predicate act, must meet the heightened pleading standard of Rule 9(b). Relief for a successful civil RICO plaintiff is limited to treble damages, costs, and attorney's fees, with no injunctive relief available to private parties. Each element—person, pattern, racketeering activity, enterprise, and injury—must be supported by well-pleaded facts, and the complaint must show that the predicate acts are related and continuous, not isolated or part of a single lawful endeavor. The factual timeline should be carefully tied to each element, and the complaint must anticipate and address potential defenses.

## Legal Authorities

[Zucker v. Farish, Civil Action No. 3:18-CV-01790-K \(N.D. Tex. Dec 12, 2018\)](#)

### U.S. District Court — Northern District of Texas

#### Extract

The complaint must allege sufficient facts to 'give the defendant fair notice' of plaintiff's claims against the defendant. Twombly, 550 U.S. at 555. The alleged facts must be facially plausible such that the facts nudge the plaintiff's claims 'across the line from conceivable to plausible.' Id. at 570. The court must view all facts in the light most favorable to the plaintiff. Gonzalez v. Kay, 577 F.2d 600, 603 (5th Cir. 2009). When a plaintiff suffers an injury because of a defendant's RICO violation, the plaintiff may bring a civil RICO action. 18 U.S.C. § 1964(c) (2012). The RICO statute enumerates four types of prohibited activities. 18 U.S.C. § 1962 (2012). To state a claim based upon any four of the prohibited activities in § 1962, 'a plaintiff must allege: 1) the conduct; 2) of an enterprise; 3) through a pattern; 4) of racketeering activity.'

#### Summary

Standards for pleading a civil RICO claim in the Fifth Circuit. It emphasizes that the complaint must provide sufficient facts to give the defendant fair notice of the claims, and these facts must be plausible. The passage also specifies the elements required to state a RICO claim: conduct of an

enterprise through a pattern of racketeering activity. This is applicable to any civil RICO claim within the Fifth Circuit.

[Atkinson v. Anadarko Bank and Trust Co., 808 F.2d 438 \(5th Cir. 1987\)](#)

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

**Extract**

This award was subject to trebling under 18 U.S.C. Sec. 1964(c), which provides that [a]ny person injured in his business or property by reason of a violation of section 1962 ... shall recover threefold the damages he sustains....

**Summary**

The passage provides insight into the types of relief available under a civil RICO claim, specifically the provision for treble damages. This is a critical aspect of relief in RICO cases, as it allows plaintiffs to recover three times the amount of actual damages sustained due to the RICO violation. The context of the passage is a court decision that interprets the statutory language of the RICO Act, making it applicable to similar cases within the Fifth Circuit.

[Williams v. WMX Technologies, Inc., 112 F.3d 175 \(5th Cir. 1997\)](#)

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

**Extract**

The amended complaint alleged violations of RICO predicated on mail and wire fraud, misrepresentations in violation of 10b-5, and state law claims of fraud and negligent misrepresentation. We must decide if the amended complaint was detailed enough to survive the motion to dismiss, an attack leveled at all claims, resting as they do upon the same asserted 'fraud'. Fed.R.Civ.P. 9(b) applies to securities fraud and RICO claims resting on allegations of fraud. Tuchman v. DSC Communications Corp., 14 F.3d 1061, 1068 (5th Cir.1994)(securities fraud); Tel-Phonic Serv., Inc. v. TBS Int'l, Inc., 975 F.2d 1134, 1139 (5th Cir.1992)(RICO).

**Summary**

In the Fifth Circuit, RICO claims that are based on allegations of fraud must meet the pleading standards of Federal Rule of Civil Procedure 9(b). This rule requires that the circumstances constituting fraud be stated with particularity. This means that the complaint must specify the fraudulent statements, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent. This standard is

applicable to both federal and state law claims of fraud when they are based on the same misrepresentations.

[Bordelon v. Wells Fargo Fin. La., LLC, CIVIL ACTION No. 18-2563 SECTION I \(E.D. La. Jul 25, 2018\)](#)

**U.S. District Court – Eastern District of Louisiana**

**Extract**

The Wells Fargo defendants argue that Bordelon has failed to state a claim under RICO because he has not demonstrated that the defendants were part of an enterprise. Citing the U.S. Supreme Court's decision in Boyle, the Wells Fargo defendants assert that Bordelon has not established 'that this alleged enterprise is (1) a continuing unit that (2) functions with a common purpose.' In addition, they argue that activity occurring over the course of a single lawsuit does not constitute a 'pattern of racketeering activity' because that activity is part of a 'single lawful endeavor.' The Court agrees and concludes that Bordelon's civil RICO claims against the Wells Fargo defendants fail because Bordelon has not adequately alleged that the defendants engaged in 'a pattern of racketeering activity' that is part of an 'enterprise.'

**Summary**

The passage highlights the necessity for a plaintiff to demonstrate that defendants were part of an enterprise that functions as a continuing unit with a common purpose. It also emphasizes that a single lawsuit does not constitute a pattern of racketeering activity. This aligns with the Fifth Circuit's standards for pleading a civil RICO claim, which requires showing a pattern of racketeering activity and an enterprise.

[Abraham v. Singh, 480 F.3d 351 \(5th Cir. 2007\)](#)

**U.S. Court of Appeals – Fifth Circuit**

**Extract**

Plaintiffs allege that Defendants violated 18 U.S.C. § 1962(a), (b), (c), and (d). These RICO subsections state, in their simplest terms, that: (a) a person who has received income from a pattern of racketeering activity cannot invest that income in an enterprise; (b) a person cannot acquire or maintain an interest in an enterprise through a pattern of racketeering; (c) a person who is employed by or associated with an enterprise cannot conduct the affairs of the enterprise through a pattern of racketeering activity; and (d) a person cannot conspire to violate subsections (a), (b), or (c). ... Defendants also contend that the Plaintiffs have failed to adequately allege violations of the RICO subsections. See Crowe, 43 F.3d at 205. We agree that the

complaint fails even the liberal pleading standard for subsections (a) and (b), but Plaintiffs have adequately alleged violations of subsections (c) and (d). ... Subsection (c) prohibits any 'person employed by or associated with any enterprise' from participating in or conducting the affairs of the enterprise through a pattern of racketeering activity. Crowe, 43 F.3d at 205 (emphasis in original). To state a claim under subsection (c), a plaintiff must demonstrate, *inter alia*, that the RICO person is distinct from the RICO enterprise. *Id.* at 205-06; Whelan, 319 F.3d at 229. In this case, Plaintiffs have identified Chandler as the RICO person and Falcon Steel as the RICO enterprise. This allegation is sufficient to demonstrate that the RICO person, an individual employee of the corporation, is distinct from the RICO enterprise, the corporation itself. ... Plaintiffs have also alleged that Defendants conspired to violate § 1962(a), (b), and (c). '[B]ecause the core of a RICO civil conspiracy is an agreement to commit predicate acts, a RICO civil conspiracy complaint, at the very least, must allege specifically such an agreement.' Crowe, 43 F.3d at 206 (quoting *Tel-Phonic Servs., Inc. v. TBS Int'l, Inc.*, 975 F.2d 1134, 1140 (5th Cir.1992)). Plaintiffs specifically alleged that the Defendants entered into an agreement and that each agreed to commit at least two predicate acts of racketeering. These allegations are specific enough to state a claim that the Defendants conspired to violate § 1962(c).

## **Summary**

The passage provides insight into the standards for pleading a civil RICO claim in the Fifth Circuit. It outlines the requirements for alleging violations under different subsections of 18 U.S.C. § 1962, emphasizing the need for distinctness between the RICO person and the enterprise, and the necessity of alleging an agreement to commit predicate acts for a RICO conspiracy claim.

[Word of Faith World Outreach Center Church, Inc. v. Sawyer, 90 F.3d 118 \(5th Cir. 1996\)](#)

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

### **Extract**

The Church alleges the defendants violated 18 U.S.C. § 1962(c) and (d) of the Racketeer Influence and Corrupt Organization Act (RICO), 18 U.S.C. §§ 1961-1968. Subsection 1962(c) prohibits persons employed by or associated with any enterprise from conducting or participating in the enterprise's affairs through a pattern of racketeering. Subsection 1962(d) prohibits a conspiracy to violate 18 U.S.C. § 1962(a), (b), or (c). Under both subsections, RICO claims require '1) a person who engages in 2) a pattern of racketeering activity, 3) connected to the acquisition, establishment, conduct, or control of an enterprise.'

## **Summary**

Basic elements required to plead a RICO claim in the Fifth Circuit: a person must engage in a pattern of racketeering activity connected to the acquisition, establishment, conduct, or control of an enterprise. This provides a clear standard for what must be included in a RICO complaint. The passage does not specifically address the types of relief available, but it establishes the foundational elements necessary for a RICO claim, which is essential for understanding how to plead such a claim.

[Tel-Phonic Services, Inc. v. TBS Intern., Inc., 975 F.2d 1134 \(5th Cir. 1992\)](#)

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

#### **Extract**

The RICO predicate acts were mail and wire fraud. Compl. pp 51-53. The district court dismissed the RICO claims, finding that Plaintiffs failed 'to allege a continuous pattern of intentional acts designed to defraud the plaintiffs' and failed 'to plead with particularity the requisite elements of wire and mail fraud pursuant to Rule 9(b).' Mem. Op. Sept. 12, 1988 at 3, 4; see Fed.R.Civ.P. 9(b). Because the complaint insufficiently pleads a continuous pattern of racketeering activity or an agreement to commit at least two predicate acts of racketeering activity, we affirm the dismissal of the RICO claims.

## **Summary**

In the Fifth Circuit, a civil RICO complaint must allege a continuous pattern of racketeering activity and must plead the elements of predicate acts, such as wire and mail fraud, with particularity as required by Federal Rule of Civil Procedure 9(b). This means that the complaint must specify the circumstances constituting fraud in detail. The failure to do so can result in the dismissal of the RICO claims.

[Allstate Ins. Co. v. Donovan, CIVIL ACTION NO. H-12-0432 \(S.D. Tex. Jul 03, 2012\)](#)

### **U.S. District Court — Southern District of Texas**

#### **Extract**

Defendants argue that plaintiffs' RICO claims fail as a matter of law because plaintiffs have not sufficiently alleged that defendants engaged in a pattern of racketeering activity and have failed to plead fraud with particularity. 'A pattern of racketeering activity consists of two or more predicate criminal acts that are (1) related and (2) amount to or pose a threat of continued criminal activity.' St. Germain, 556 F.3d at 263. See also 18 U.S.C. § 1961(5)

('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... after the commission of a prior act of racketeering activity'). Predicate acts can be either state or federal crimes. Id. Plaintiffs allege that defendants engaged in acts of mail fraud in violation of 18 U.S.C. § 1841, which prohibits use of the mail to plan or conduct fraudulent schemes. Plaintiffs' mail fraud allegations must be based on facts capable of establishing: '(1) a scheme to defraud by means of false or fraudulent representation, (2) interstate or intrastate use of the mails to execute the scheme, (3) the use of the mails by the defendant connected with [the] scheme, and (4) actual injury to the plaintiff.' In re Burzynski, 989 F.2d 733, 742 (5th Cir. 1993). '[A]lthough reliance is not an element of statutory mail or wire fraud, [the Fifth Circuit has] required its showing when mail or wire fraud is alleged as a RICO predicate.'

## **Summary**

Requirements for pleading a civil RICO claim in the Fifth Circuit, emphasizing the need to allege a pattern of racketeering activity, which consists of at least two related predicate acts that pose a threat of continued criminal activity. It also highlights the necessity of pleading fraud with particularity, especially when mail or wire fraud is alleged as a RICO predicate. The passage provides specific elements that must be established for mail fraud, which is a common predicate act in RICO cases.

[Fredeman Litigation, In re, 843 F.2d 821 \(5th Cir. 1988\)](#)

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

### **Extract**

The plaintiff relies primarily, as did the district court, on the court's 'inherent' equitable power, arguing that RICO, a statute 'intended to provide new [remedial] weapons of unprecedented scope,' cannot be read to eliminate remedial powers that are standard and well-accepted, such as that of issuing a preliminary injunction freezing assets to ensure satisfaction of a potential judgment... Congress, of course, has the power to authorize preliminary injunctions of this sort even though they would generally be unavailable under traditional equitable principles. We therefore address the question the district court did not: whether RICO authorizes injunctive relief of this sort for a private plaintiff in his civil action for treble damages. We conclude that it does not. The Ninth Circuit, the only court of appeals to address this issue directly, has ruled in Religious Technology Center v. Wollersheim that a private party may not obtain injunctive relief in a civil RICO action.

## **Summary**

While RICO provides for certain remedies, such as treble damages, it does not authorize injunctive relief for private plaintiffs in civil RICO actions. This

is supported by the Ninth Circuit's decision in Religious Technology Center v. Wollersheim, which the Fifth Circuit acknowledges.

[Brown v. Protective Life Ins. Co., 353 F.3d 405 \(5th Cir. 2003\)](#)

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

#### **Extract**

RICO creates a civil cause of action for '[a]ny person injured in his business or property by reason of a violation of section 1962.' 18 U.S.C. § 1964(c); see also Beck v. Prupis, 529 U.S. 494, 120 S.Ct. 1608, 146 L.Ed.2d 561 (2000); St. Paul Mercury Ins. Co. v. Williamson, 224 F.3d 425 (5th Cir. 2000). To state a RICO claim under § 1962, 'there must be: '(1) a person who engages in (2) a pattern of racketeering activity (3) connected to the acquisition, establishment, conduct, or control of an enterprise.'

#### **Summary**

Basic requirements for pleading a civil RICO claim in the Fifth Circuit. It specifies that a plaintiff must demonstrate an injury to business or property due to a violation of section 1962. The elements required to state a RICO claim include: (1) a person engaging in (2) a pattern of racketeering activity (3) connected to the acquisition, establishment, conduct, or control of an enterprise. This provides a clear framework for what must be alleged in a civil RICO complaint.

[Delta Truck & Tractor, Inc. v. J.I. Case Co., 855 F.2d 241 \(5th Cir. 1988\)](#)

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

#### **Extract**

The Racketeering, Influence and Corrupt Organizations Act (RICO), 18 U.S.C. Sec. 1961-1968, creates a civil cause of action under section 1964(c) against those injured by violations of section 1962(a)-(d). The portions of section 1962 relevant to this case can be abstracted as follows. Section 1962(a) makes it 'unlawful for any person who has received any income derived ... from a pattern of racketeering activity ... to use or invest ... any part of such income ... in acquisition of any interest in, or the establishment or operation of, any enterprise.' Section 1962(b) makes it illegal 'for any person through a pattern of racketeering activity ... to acquire or maintain ... any interest in or control of any enterprise.'

#### **Summary**

General overview of the RICO Act's provisions relevant to civil claims, specifically sections 1962(a) and 1962(b), which outline unlawful activities

related to income derived from racketeering and the acquisition or control of enterprises through racketeering. This is relevant to understanding the standards for pleading a civil RICO claim, as it highlights the types of activities that are prohibited and actionable under the statute.

[Crawford Arms, Inc. v. Waste Management of Miss., 23 F.Supp.2d 676 \(S.D. Miss. 1998\)](#)

### **U.S. District Court — Southern District of Mississippi**

#### **Extract**

The RICO statute imposes civil and criminal liability on persons who use or invest income derived from, acquire or maintain control of, or engage in the conduct of an enterprise through a pattern of racketeering activity, or who conspire to do any of these acts. 18 U.S.C. § 1962 (1988). Reduced to its essential elements, a violation of § 1962 requires: '(1) a person who engages in (2) a pattern of racketeering activity (3) connected to the acquisition, establishment, conduct, or control of an enterprise.' Delta Truck & Tractor, Inc. v. J.I. Case Co., 855 F.2d 241, 242 (5th Cir.1988). In addition, a RICO plaintiff must have standing to sue pursuant to 18 U.S.C. § 1964(c). '[T]he plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation.' Sedima, S.P.R.L., v. Imrex Co., 473 U.S. 479, 495-97, 105 S.Ct. 3275, 3284-85, 87 L.Ed.2d 346 (1985). The Civil RICO standing requirement, found in § 1964(c), provides that only persons who have been injured 'by reason of' the commission of predicate acts have standing to bring suit. Sedima, 473 U.S. at 496, 105 S.Ct. 3275.

#### **Summary**

Essential elements required to plead a civil RICO claim in the Fifth Circuit, which include demonstrating a pattern of racketeering activity connected to an enterprise. It also emphasizes the standing requirement under 18 U.S.C. § 1964(c), which mandates that the plaintiff must have been injured in their business or property by the conduct constituting the violation. This provides a clear framework for what must be alleged in a civil RICO complaint in the Fifth Circuit.

[Mitchell Energy Corp. v. Martin, 616 F.Supp. 924 \(S.D. Tex. 1985\)](#)

### **U.S. District Court — Southern District of Texas**

#### **Extract**

Defendants' next RICO argument concerns the scope of § 1962. Defendants claim that Plaintiffs' Complaint does not satisfy the requirements of showing an injury 'by reason of § 1962.' Specifically, Defendants note that some

courts have adopted a requirement that plaintiffs pressing a RICO claim must establish a so-called 'racketeering injury' in order to have a cause of action under the statute... Moreover, the imposition of a racketeering injury requirement is a means to an end which the Fifth Circuit has rejected. The courts which have imposed a racketeering injury requirement have done so in order to limit the scope of RICO to activities involving organized crime... The Court has examined the Complaint in the instant case and determined that it satisfies Rule 9(b). The Complaint specifies a period of time during which the alleged frauds were perpetrated, i.e., January, 1977 — November, 1982; the location, Houston; the nature of the fraud, kickbacks for payments for goods and services which Plaintiff never received; and the parties involved in the fraud, the Defendants.

## **Summary**

The Fifth Circuit does not require a prior criminal conviction for predicate acts in a RICO claim, nor does it require a "racketeering injury" beyond the harm caused by the predicate acts themselves. The court emphasizes the need for specificity in the complaint, as per Rule 9(b), detailing the time, location, nature of the fraud, and parties involved.

[Arruda v. Curves Int'l, Inc., No. 20-50734 \(5th Cir. Jun 28, 2021\)](#)

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

### **Extract**

The complaint must provide the grounds entitling the Plaintiffs to relief, 'requir[ing] more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.' Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). It must state a plausible claim for relief — one that may be inferred from the complaint's factual allegations. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Because Plaintiffs here rely on fraud as the predicate act for RICO, their complaint is subject to the heightened pleading standard of Federal Rule of Civil Procedure 9(b), requiring a plaintiff to 'state with particularity the circumstances constituting fraud.' ... RICO provides a private right of action, including 'threefold the damages' for '[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter.' 18 U.S.C. § 1964(c). The 'by reason of' language requires a plaintiff to show the defendant's violation was a but-for cause and a proximate cause of the plaintiff's injury.

## **Summary**

Pleading standards for a civil RICO complaint, emphasizing the need for a plausible claim supported by factual allegations, especially when fraud is the predicate act. It also highlights the requirement for particularity in fraud claims under Rule 9(b) and explains the types of relief available, including treble damages, under 18 U.S.C. § 1964(c).

[Oblio Telecom, Inc. v. Patel, 711 F.Supp.2d 668 \(N.D. Tex. 2008\)](#)

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

#### **Extract**

RICO provides a civil cause of action to recover treble damages for '[a]ny person injured in his business or property by reason of a violation of section 1962.' 18 U.S.C. § 1964. Oblio contends that Defendants violated subsections (a) through (d) of section 1962. Reduced to their simplest terms, these subsections mean: Crowe v. Henry, 43 F.3d 198, 203 (5th Cir.1995). 'Common elements are present in all four of these subsections. These common elements teach that any RICO claim necessitates 1) a person who engages in 2) a pattern of racketeering activity, 3) connected to the acquisition, establishment, conduct, or control of an enterprise.' Id. at 204 (original emphasis) (internal citations and quotations omitted).

#### **Summary**

Elements necessary for a RICO claim in the Fifth Circuit, which include a person engaging in a pattern of racketeering activity connected to an enterprise. It also mentions that RICO provides a civil cause of action to recover treble damages for injuries to business or property due to a violation of section 1962. This information is crucial for understanding the standards for pleading claims for relief in a civil RICO complaint in the Fifth Circuit.

[Moore v. Town N. Auto., Inc., Civil Action No. 3:14-CV-1215-D \(N.D. Tex. Jul 11, 2014\)](#)

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

#### **Extract**

RICO makes it unlawful 'for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity.' ... 'Reduced to their simplest terms, the essential elements of a RICO claim are: (1) a person who engages in (2) a pattern of racketeering activity (3) connected to the acquisition, establishment, conduct, or control of an enterprise.'

#### **Summary**

Basic elements necessary to establish a RICO claim, which include the involvement of a person in a pattern of racketeering activity connected to an enterprise. This is essential for understanding the standards for pleading a RICO claim in the Fifth Circuit.

[Burrell v. Concept AG, LLC, CIVIL ACTION NO. 4:19-cv-00124-NBB-JMV \(N.D. Miss. Sep 30, 2020\)](#)

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

### **Extract**

To state a viable RICO claim under any theory, plaintiffs must allege the following elements: '(1) a person who engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise.' St. Germain v. Howard, 556 F.3d 261, 263 (5th Cir. 2009). '[T]he heart of any RICO complaint is the allegation of a pattern of racketeering.' Agency Holding Corp. v. Malley-Duff & Assoc., Inc., 483 U.S. 143, 154 (1987). To establish a pattern of racketeering, plaintiffs must identify predicate acts with 'continuity plus relationship.' H.J., Inc. v. Northwest Bell Tel. Co., 492 U.S. 229, 239 (1989).

### **Summary**

Essential elements required to plead a RICO claim in the Fifth Circuit, emphasizing the need to demonstrate a pattern of racketeering activity connected to an enterprise. It also highlights the importance of continuity and relationship in establishing a pattern of racketeering.

[Smoky Greenhaw Cotton Co., Inc. v. Merrill Lynch, Pierce, Fenner and Smith, Inc., 785 F.2d 1274 \(5th Cir. 1986\)](#)

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

### **Extract**

The Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. Secs. 1961-1968, provides plaintiffs with a private civil action to recover treble damages for injury 'by reason of a violation of [18 U.S.C.] section 1962.' 18 U.S.C. Sec. 1964(c). Among the activities that constitute violations of Sec. 1962 is the conducting of an enterprise through a pattern of racketeering activity. 18 U.S.C. Sec. 1962(c). RICO defines 'racketeering activity' to include, among others, any act 'indictable' under numerous federal criminal provisions, including mail and wire fraud (so-called 'predicate acts').

### **Summary**

Foundational understanding of what constitutes a RICO violation and the types of relief available, which are essential for pleading a RICO claim in the Fifth Circuit.

[Heden v. Hill, 937 F.Supp. 1230 \(S.D. Tex. 1996\)](#)

**U.S. District Court — Southern District of Texas**

**Extract**

In 1970, Congress enacted RICO as Title IX of the Organized Crime Control Act to combat organized crime through both criminal prosecutions and private actions. See 18 U.S.C. § 1961 et seq. The 'legislative history forcefully supports the view that the major purpose of Title IX is to address the infiltration of legitimate business by organized crime.' United States v. Turkette, 452 U.S. 576, 591, 101 S.Ct. 2524, 2532, 69 L.Ed.2d 246 (1981). A private right of action is provided under 18 U.S.C. § 1964(c), which states in pertinent part: '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 passage provides insight into the legislative intent behind RICO and the specific provision that allows for a private right of action. It highlights that individuals injured in their business or property due to a RICO violation can seek relief in federal court. The relief includes treble damages, costs of the suit, and reasonable attorney's fees. This aligns with the standards for pleading claims for relief in a civil RICO complaint in the Fifth Circuit.

[Fulkerson v. Wehner Multifamily, LLC, NO. 4:18-CV-880-A \(N.D. Tex. Jan 03, 2019\)](#)

**U.S. District Court — Northern District of Texas**

**Extract**

The Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 ('RICO'), provides a private civil action to recover damages for injury to one's business or property by the conduct constituting the violation. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 481 (1985). A plaintiff only has standing if he has been injured in his business or property. Id. at 496. He must allege a direct, concrete, and particularized injury proximately caused by defendant's conduct. Sheshtawy v. Gray, 697 F. App'x 380, 382 (5th Cir. 2017). Personal injuries and losses flowing therefrom are insufficient to establish RICO standing. Vickers v. Weeks Marine, Inc., 414 F. App'x 656, 657 (5th Cir. 2011); Evans v. City of Chicago, 434 F.3d 916, 931 (7th Cir. 2006).

## **Summary**

To plead a civil RICO claim in the Fifth Circuit, a plaintiff must demonstrate standing by showing a direct, concrete, and particularized injury to business or property, proximately caused by the defendant's conduct. Personal injuries are insufficient for RICO standing. The passage also outlines the types of prohibited activities under RICO, which include using income derived from racketeering to acquire an interest in an enterprise, maintaining an interest in an enterprise through racketeering, conducting an enterprise through racketeering, and conspiring to violate these provisions.

[Verges v. Babovich, 644 F.Supp. 150 \(E.D. La. 1986\)](#)

### **U.S. District Court — Eastern District of Louisiana**

#### **Extract**

Defendants say that the RICO claim is deficient in three essential respects: 1) failure to allege a 'pattern of racketeering activity'; 2) failure to allege, with the requisite specificity, predicate acts by each defendant, a conspiracy, and an interstate nexus; and, 3) failure to allege fraud with particularity, as required by F.R.C.P. 9(b). Further, defendants assert that without an independent jurisdictional basis, the pendent claims should be dismissed for want of subject matter jurisdiction... The Court concludes that the complaint adequately alleges a 'pattern of racketeering activity'. Indeed, although use of RICO often results in abuse, this complaint clearly alleges the stuff of RICO... A RICO conspiracy requires proof of an agreement among defendants 'to participate, directly or indirectly, in the affairs of an enterprise through the commission of two or more predicate crimes'.

## **Summary**

Necessary elements for a civil RICO claim in the Fifth Circuit, including the need to allege a pattern of racketeering activity, specific predicate acts, a conspiracy, and an interstate nexus. It also highlights the requirement to allege fraud with particularity under F.R.C.P. 9(b). The passage further explains that a RICO conspiracy requires proof of an agreement among defendants to participate in the affairs of an enterprise through predicate crimes.

[Trevino v. Pechero, 592 F.Supp.2d 939 \(S.D. Tex. 2008\)](#)

### **U.S. District Court — Southern District of Texas**

## **Extract**

RICO requires a showing that (1) a person that engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise. *Crowe v. Henry*, 43 F.3d 198, 204 (5th Cir.1995) (quoting *Delta Truck & Tractor, Inc. v. J.I. Case Co.*, 855 F.2d 241 (5th Cir.1988)) (emphasis in original). Because RICO is a federal statute, the racketeering must have at least a minimal nexus with interstate commerce. *R.A.G.S. Couture, Inc. v. Hyatt*, 774 F.2d 1350, 1353 (5th Cir.1985).

## **Summary**

In the Fifth Circuit, a civil RICO complaint must demonstrate that a person engaged in a pattern of racketeering activity connected to the acquisition, establishment, conduct, or control of an enterprise. Additionally, there must be a minimal nexus with interstate commerce. This provides a foundational standard for pleading a RICO claim in this jurisdiction.

[Arruda v. Curves Int'l, Inc., CIVIL NO. 6:20-cv-00092-ADA \(W.D. Tex. Jul 27, 2020\)](#)

## **U.S. District Court — Western District of Texas**

## **Extract**

RICO provides a private civil action to recover damages for injury to one's business or property by the conduct constituting the violation. To state a § 1962(c) civil RICO claim, a plaintiff must allege: (1) conduct (2) of an enterprise (3) through a pattern of racketeering activity. See, e.g., *Sealima SPRL v. Imrex, Co.*, 473 U.S. 479, 496 (1985). An act of 'racketeering activity,' commonly referred as a 'predicate act,' is defined to include criminal acts such as mail and wire fraud... RICO claims based on allegations of fraud, such as wire or mail fraud, are subject to the heightened pleading burden imposed by Rule 9(b). See, e.g., *Williams v. WMX Technologies, Inc.*, 112 F.3d 175, 177 (5th Cir. 1997). Rule 9(b) requires particularity in pleading the circumstances constituting fraud; this requirement applies to the pleading of 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). 'At a minimum, Rule 9(b) requires allegations of the particulars of time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby.' *Id.* at 1139.

## **Summary**

To plead a civil RICO claim under § 1962(c) in the Fifth Circuit, a plaintiff must allege conduct of an enterprise through a pattern of racketeering activity. Predicate acts, such as mail and wire fraud, must be pled with particularity under Rule 9(b), which requires details about the time, place,

and contents of the false representations, as well as the identity of the person making the misrepresentation and what was obtained. This ensures that the allegations are specific and detailed, meeting the heightened pleading standard for fraud-related claims.

### [DOH Oil Co.v. Kahle](#)

#### **U.S. District Court — Western District of Texas**

##### **Extract**

Plaintiffs allege claims under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961-1968. Under the civil RICO statute, ‘[a]ny 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 state a claim under the civil RICO statute, a plaintiff must allege (1) an injury to plaintiff's business or property from (2) defendant's violation of one or more provisions of 18 U.S.C. § 1962. Section 1962 has four subsections: §§ 1962(a)-(d). Plaintiffs allege civil RICO violations under three subsections: § 1962(b) (taking control of an enterprise through a pattern of racketeering activity); § 1962(c) (conducting an enterprise's affairs through a pattern of racketeering activity); and § 1962(d) (here, conspiring to violate subsections (b) and (c)).

##### **Summary**

Clear framework for understanding the standards for pleading a civil RICO claim in the Fifth Circuit.

### [Peel v. cPaperless LLC, 4:23-CV-02417 \(S.D. Tex. Nov 08, 2024\)](#)

#### **U.S. District Court — Southern District of Texas**

##### **Extract**

To state a civil RICO claim under 18 U.S.C. § 1962, a plaintiff must allege three common elements: “(1) a person who engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise.” N. Cypress Med. Ctr. Operating Co., Ltd. v. Cigna Healthcare, 781 F.3d 182, 201 (5th Cir. 2015) (quotation omitted). An act of “racketeering activity,” commonly referred to as a “predicate act,” is defined to include certain criminal acts, including mail and wire fraud.

## **Summary**

Essential elements required to plead a civil RICO claim in the Fifth Circuit, which includes demonstrating a person engaged in a pattern of racketeering activity connected to an enterprise. It also specifies that predicate acts, such as mail and wire fraud, are necessary components of racketeering activity. This information is crucial for understanding the pleading standards for RICO claims in this jurisdiction.

### [Clapper v. Am. Realty Investors, Inc.](#)

#### **Extract**

RICO makes it unlawful 'for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity[.]' 18 U.S.C. § 1962(c). 'Reduced to their simplest terms, the essential elements of a RICO claim are: (1) a person who engages in (2) a pattern of racketeering activity (3) connected to the acquisition, establishment, conduct, or control of an enterprise.' Orthoflex, Inc. v. ThermoTek, Inc., 2012 WL 2864510, at \*2 (N.D. Tex. July 12, 2012) (Fitzwater, C.J.) (quoting Larrew v. Barnes, 2002 WL 32130462, at \*1 n.1 (N.D. Tex. Aug. 27, 2002) (Kaplan, J.), rec. adopted, 2002 WL32130462 (N.D. Tex. Sept. 17, 2002) (Fitzwater, J.)).

## **Summary**

Essential elements required to plead a civil RICO claim in the Fifth Circuit, which includes demonstrating a person engaged in a pattern of racketeering activity connected to an enterprise. This is a general standard applicable to such claims in this jurisdiction.

### [Bustos v. Invierte En Tex.](#)

#### **Extract**

To state a civil RICO claim under 18 U.S.C. § 1962, a plaintiff must allege three common elements: (1) a person who engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise. N. Cypress Med. Ctr. Operating Co., Ltd. v. Cigna Healthcare, 781 F.3d 182, 201 (5th Cir. 2015) (quotation omitted). An act of 'racketeering activity,' commonly referred to as a 'predicate act,' is defined to include certain criminal acts, including mail and wire fraud, and any act indictable under the Immigration and Nationality Act. See 18 U.S.C § 1961 (defining 'racketeering activity'); Waste Mgmt. of La., L.L.C. v. River Birch, Inc., 920 F.3d 958, 964 (5th Cir. 2019) (referring to racketeering activity as a 'predicate act'). 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. Alvarez, 2020 WL 2061491, at \*4 (quoting Abraham v. Singh, 480 F.3d 351, 355 (5th Cir. 2007)); accord Word of Faith, 90 F.3d at 122. The 'continuity' element is intended to 'prevent RICO from becoming a surrogate for garden-variety fraud actions properly brought under state law.' Malvino v. Delluniversita, 840 F.3d 223, 231 (5th Cir. 2016) (quotation omitted). Continuity can be demonstrated in two ways: (1) a closed period of repeated conduct, or (2) an open-ended period of conduct that by its nature projects into the future with a threat of repetition.

## **Summary**

Necessary elements to plead a civil RICO claim in the Fifth Circuit, including the requirement of a pattern of racketeering activity and the need for continuity. It also specifies the types of predicate acts that can constitute racketeering activity, such as mail and wire fraud.

### [Austin v. Brown & Fortunato, P.C. \(In re Uplift RX, LLC\)](#)

## **Extract**

Under Rule 8, a plaintiff must provide a 'short and plain statement showing that the pleader is entitled to relief.' Fed.R.Civ.P. 8(a)(2). To defeat a 12(b)(6) motion, the plaintiff must allege 'sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face.' George v. SI Grp., Inc., 36 F.4th 611, 619 (5th Cir. 2022) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). A complaint plausibly states a claim for relief when it 'allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.' Iqbal, 556 U.S. at 678 (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556 (2007)). 'Plausibility,' at the Rule 12(b)(6) stage, does not mean 'possibility.' Id. at 679. A complaint that offers bare legal conclusions, unsupported by well-pleaded factual allegations tending to establish a plausible basis for relief, must be dismissed. See id. at 679-80 (citing Twombly, 550 U.S. at 551, 555, 565-67, 570) (explaining that legal conclusions cannot be taken as true without factual support). The Court reviews motions under Rule 12(b)(6) 'accepting all well-pleaded facts as true and viewing those facts in the light most favorable to the plaintiffs.' Stokes v. Gann, 498 F.3d 483, 484 (5th Cir. 2007).

## **Summary**

Pleading standards under Rule 8 and Rule 12(b)(6) in the Fifth Circuit, emphasizing the need for a complaint to contain sufficient factual matter to state a plausible claim for relief. It highlights that mere legal conclusions without factual support are insufficient, and the court must be able to draw a reasonable inference of liability from the facts presented.

### [Rodriguez v. Meta Platforms, Inc.](#)

## **Extract**

Although the Racketeer Influenced and Corrupt Organization Act (“RICO”) recognizes a civil RICO claim,[1] Plaintiff cites to RICO, he fails to identify which of the four substantive violations he asserts. See 18 U.S.C. § 1962(a)-(d). The elements required to state a claim vary according to the particular RICO claim asserted.[2] Regardless of which of the four RICO sections Plaintiff relies upon, three threshold elements must be met.[3] The defendant must be (1) a person who engages in (2) a pattern of racketeering activity (3) connected to the acquisition, establishment, conduct, or control of an enterprise.[4] A pattern of racketeering activity consists of two or more predicate acts, federal or state, that are (1) related and (2) amount to or pose a threat of continued criminal activity.

## **Summary**

Basic pleading requirements for a civil RICO claim in the Fifth Circuit, emphasizing the need to identify the specific RICO violation and establish the three threshold elements: a person, a pattern of racketeering activity, and a connection to an enterprise. It also highlights the necessity of demonstrating a pattern of racketeering activity through related predicate acts that pose a threat of continued criminal activity.

### [Provost v. First Guar. Bank](#)

## **Extract**

The central issue in a Rule 12(b)(6) motion to dismiss is whether, in the light most favorable to the plaintiff, the complaint states a valid claim for relief. Gentilello v. Rege, 627 F.3d 540, 544 (5th Cir. 2010) (quoting Doe v. MySpace, Inc., 528 F.3d 413, 418 (5th Cir. 2008)). To avoid dismissal, a plaintiff must plead sufficient facts to 'state a claim for relief that is plausible on its face.' Id. (quoting Iqbal, 129 S. Ct. at 1949). 'A claim 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.' Id. The Court does not accept as true 'conclusory allegations, unwarranted factual inferences, or legal conclusions.' Id. (quoting Plotkin v. IP Axess, Inc., 407 F.3d 690, 696 (5th Cir. 2005)). Legal conclusions must be supported by factual allegations. Id. (quoting Iqbal, 129 S. Ct. at 1950).

## **Summary**

The passage provides insight into the pleading standards for civil RICO claims in the Fifth Circuit. It emphasizes that a complaint must state a claim for relief that is plausible on its face, supported by factual content that allows the court to infer liability. Conclusory allegations and unwarranted inferences are insufficient. This standard is crucial for determining whether a RICO claim can proceed past the motion to dismiss stage.

## [Maiden Biosciences, Inc. v. Document Sec. Sys.](#)

### **Extract**

'Reduced to their simplest terms, the essential elements of a RICO claim are: (1) a person who engages in (2) a pattern of racketeering activity (3) connected to the acquisition, establishment, conduct, or control of an enterprise.'" Orthoflex, Inc. v. ThermoTek, Inc., 2012 WL 2864510, at \*2 (N.D. Tex. July 12, 2012) (Fitzwater, C.J.) (quoting Larrew v. Barnes, 2002 WL 32130462, at \*1 n.1 (N.D. Tex. Aug. 27, 2002) (Kaplan, J.), rec. adopted, 2002 WL 32130462 (N.D. Tex. Sept. 17, 2002) (Fitzwater, J.)), aff'd sub nom. Motion Med. Techs., L.L.C. v. ThermoTek, Inc., 875 F.3d 765 (5th Cir. 2017).

### **Summary**

Essential elements required to plead a RICO claim in the Fifth Circuit, which includes demonstrating a person engaged in a pattern of racketeering activity connected to an enterprise. This is a fundamental requirement for any civil RICO complaint in this jurisdiction.

## [98 F.4th 198 D&T Partners L.L.C. v. Baymark Partners Mgmt., L.L.C.](#)

### **Extract**

RICO is also more than a criminal statute. When drafting the legislation, Congress incorporated provisions in RICO that allow private plaintiffs to seek redress in federal court. If their lawsuit succeeds, the statute provides a big payout: Plaintiffs are entitled to triple damages, court costs, and attorney's fees. 18 U.S.C. § 1964(c). Even so, pursuing that recovery is often a challenging undertaking. Problems typically arise at the pleadings stage, as courts are hesitant to find RICO violations, and plaintiffs have difficulty alleging them.

### **Summary**

The passage provides insight into the standards for pleading a civil RICO claim, highlighting the difficulty plaintiffs face at the pleadings stage due to the courts' hesitance to find RICO violations. It also outlines the types of relief available under RICO, including triple damages, court costs, and attorney's fees.

## [D&T Partners LLC v. Baymark Partners LP](#)

## **Extract**

Under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain 'a short and plain statement of the claim showing that the pleader is entitled to relief.' Fed.R.Civ.P. 8(a)(2). Rule 12(b)(6) authorizes a court to dismiss a plaintiff's complaint for 'failure to state a claim upon which relief can be granted.' Fed.R.Civ.P. 12(b)(6). In considering a Rule 12(b)(6) motion to dismiss, '[t]he court accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.' *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007). But the court will 'not look beyond the face of the pleadings to determine whether relief should be granted based on the alleged facts.' *Spivey v. Robertson*, 197 F.3d 772, 774 (5th Cir. 1999). In order to survive a motion to dismiss, a plaintiff must plead 'enough facts to state a claim to relief that is plausible on its face.' *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). 'Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.' *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). 'A claim 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.' *Id.* 'The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully.' *Id.* (quoting *Twombly*, 550 U.S. at 556).

## **Summary**

Standards for pleading claims for relief in a civil RICO complaint in the Fifth Circuit. It emphasizes the requirement for a complaint to contain a "short and plain statement of the claim" and to state a claim that is "plausible on its face." The court must accept all well-pleaded facts as true and view them in the light most favorable to the plaintiff. However, the court will not look beyond the face of the pleadings. The passage also highlights that threadbare recitals and conclusory statements are insufficient, and the claim must allow the court to draw a reasonable inference of liability.

## Gordon v. Neugebauer

## **Extract**

To state a valid claim upon which relief can be granted under § 1962(c), a plaintiff must allege facts that show (1) a person who engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise. See *In re Burzynski*, 989 F.2d 733, 741-42 (5th Cir. 1993); *Paul v. Aviva Life & Annuity Co.*, 3:09-CV-1490-B, 2010 WL 5105925, at \*3 (N.D. Tex. Dec. 14, 2010). To establish the second element of a § 1962(c) claim—a pattern of racketeering activity—a plaintiff must allege facts that show (1) the violation of two or more 'predicate acts' of racketeering activity enumerated in 18 U.S.C. § 1961(1), and (2) that the predicate acts form a pattern because they are related to each other and they have continuity. See *Burzynski*, 989 F.2d at 742;

Orthoflex, Inc. v. ThermoTek, Inc., 3:11-CV-0870-D, 2012 WL 2864510, at \*2 (N.D. Tex. July 12, 2012).

## **Summary**

Necessary elements to plead a civil RICO claim under § 1962(c) in the Fifth Circuit, which includes showing a person engaged in a pattern of racketeering activity connected to an enterprise. It also specifies that the pattern of racketeering activity must involve at least two predicate acts that are related and continuous.

### [Belton v. Regions Bank](#)

## **Extract**

Plaintiff alleges that the defendants 'engaged in a pattern of racketing activity' in violation of the Racketeer Influenced and Corrupt Organizations Act ('RICO'), 18 U.S.C. §§ 1961-1968. (R. Doc. 1 at 22). To recover under RICO, the plaintiff must establish three elements: (1) a person who engages in (2) a pattern of racketeering activity (3) connected to the acquisition, establishment, conduct, or control of an enterprise. Abraham v. Singh, 480 F. 3d 351, 355 (5th Cir. 2007) (quoting Word of Faith World Outreach Ctr. Church, Inc. v. Sawyer, 90 F.3d 118, 122 (5th Cir. 1996)).

## **Summary**

Three essential elements required to plead a RICO claim in the Fifth Circuit: a person engaging in a pattern of racketeering activity connected to an enterprise. This is a standard requirement for RICO claims in this jurisdiction.

### [57 F.Supp.3d 766 Gordon v. Neugebauer](#)

## **Extract**

To state a valid claim upon which relief can be granted under § 1962(c), a plaintiff must allege facts that show (1) a person who engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise. See In re Burzynski, 989 F.2d 733, 741-42 (5th Cir.1993); Paul v. Aviva Life & Annuity Co., 3:09-CV-1490-B, 2010 WL 5105925, at \*3 (N.D.Tex. Dec. 14, 2010).

## **Summary**

Necessary elements to plead a civil RICO claim under § 1962(c) in the Fifth Circuit, which includes showing a person engaged in a pattern of

racketeering activity connected to an enterprise. This is a standard requirement for such claims in this jurisdiction.

### [United Healthcare Services, Inc. v. Next Health, LLC](#)

#### **Extract**

To survive a motion to dismiss, a plaintiff must plead 'enough facts to state a claim to relief that is plausible on its face.' *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). To meet this 'facial plausibility' standard, a plaintiff must 'plead[ ] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.' *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). 'Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.' *Id.* 'The plausibility standard... asks for more than a sheer possibility that a defendant has acted unlawfully.' *Id.* Thus, a claim 'is implausible on its face when 'the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.'' *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 796 (5th Cir. 2011) (quoting *Iqbal*, 556 U.S. at 679); see also *Inclusive Communities Project*, 920 F.3d at 899.

#### **Summary**

Standard for pleading claims for relief in a civil RICO complaint in the Fifth Circuit. It emphasizes the need for a complaint to contain enough factual content to make a claim plausible on its face, rather than relying on mere conclusory statements. This standard is derived from the Supreme Court cases *Bell Atl. Corp. v. Twombly* and *Ashcroft v. Iqbal*, which are widely applicable in federal civil litigation, including RICO cases.

### [Chapter 7. Pleading and Practice Issues](#)

#### **Civil RICO: A Definitive Guide. Fifth Edition - American Bar Association - Gregory P. Joseph**

#### **Extract**

The non-fraud aspects of the plaintiff's claim are not subject to Rule 9(b). See, e.g., *D. Penguin Bros. v. City Nat'l Bank*, 2014 U.S. App. LEXIS 19909 (2d Cir. Oct. 16, 2014) ('In the RICO context, a plaintiff must plead predicate acts sounding in fraud or mistake according to the particularity requirement of Rule 9(b); for other elements of a RICO claim—such as non-fraud predicate acts or . . . the existence of an 'enterprise'—a plaintiff's complaint need satisfy only the 'short and plain statement' standard of Rule 8(a). . . . Nevertheless, to survive a Rule 12(b)(6) motion to dismiss, a plaintiff must offer 'more than labels and conclusions' in pleading the non-fraud conduct, plaintiffs must comply with Rule 9(b)').

## **Summary**

In the context of a RICO claim, the plaintiff must plead predicate acts that sound in fraud with particularity according to Rule 9(b). However, for other elements of a RICO claim, such as non-fraud predicate acts or the existence of an enterprise, the complaint need only satisfy the 'short and plain statement' standard of Rule 8(a). This means that while fraud-related elements require detailed pleading, other elements do not. This is relevant to understanding the standards for pleading claims for relief in a civil RICO complaint.

### [Chapter 3. Standing](#)

**Civil RICO: A Definitive Guide. Fifth Edition - American Bar Association - Gregory P. Joseph**

## **Extract**

Sedima teaches that 'the compensable injury necessarily is the harm caused by predicate acts sufficiently related to constitute a pattern.' Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 497 (1985). This might appear to lead to the conclusion that the plaintiff must be injured by each predicate act forming the pattern. That conclusion would be incorrect. The classic illustration: a hoodlum extorts 'protection' money from each of several shopkeepers. To state a pattern, it may be necessary for any one plaintiff shopkeeper to allege the defendant's extortion of others as well. But the plaintiff will not have been injured by the defendant's extortion of others. (That this hypothetical states a viable RICO claim is certain because it is drawn from the Supreme Court's opinion in H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 242 (1989).) Additionally, any individual predicate act may fizzle and, to no credit of the defendant, not cause the harm intended. The unsuccessful predicate acts are viable components of the plaintiff's pattern as well. As long as the pattern of racketeering activity has caused harm to the plaintiff's business or property, the plaintiff has RICO standing. The plaintiff is not obliged to plead or prove that it has been injured by multiple predicate acts, as long as it has been injured by at least one predicate act: '[N]o requirement exists that the plaintiff must suffer an injury from two or more predicate acts, or from all of the predicate acts. Thus, a RICO verdict can be sustained when a pattern of racketeering acts existed, but when only one act caused injury.'

## **Summary**

In a civil RICO complaint, the plaintiff must demonstrate that they have suffered harm to their business or property due to a pattern of racketeering activity. However, the plaintiff does not need to show injury from each predicate act; it is sufficient if at least one predicate act caused harm. This aligns with the broader understanding of RICO claims, where the focus is on the pattern of activity rather than individual acts.

## PAYORS, PLAYERS, AND PROXIMATE CAUSE.

**Notre Dame Law Review - University of Notre Dame Law School -  
Crusey, Elisabeth F. - 2022-05-01**

### **Extract**

RICO is not just a tool for government control over organized crime. It is also a remedial statute for civil matters. (31) It 'authorize[s]... criminal or civil remedies on conduct already criminal, when performed in a specified fashion' as delineated by the statute. (32) Section 1962 provides civil remedies for four types of conduct: (1) using income derived from a pattern of racketeering activity (33) to acquire an interest in an enterprise; (2) acquiring or maintaining an interest in an enterprise through a pattern of racketeering activity; (3) conducting the affairs of an enterprise through a pattern of racketeering activity; and (4) conspiring to commit any of these offenses. (34) Today, Congress urges courts to construe RICO liberally from the 'perspective of the victim, not the perpetrator.' (35) A private civil right of action in [section] 1964 provides that '[a]ny person injured in his business or property by reason of a violation of section 1962... may sue.' (36) Notably, a successful plaintiff under [section] 1964 is entitled to treble damages and the cost of the suit, including attorney fees. (37) The threat of treble damages encourages plaintiffs to bring claims and discourages entities from engaging in illegal activities.

### **Summary**

Clear overview of the types of conduct that can lead to civil remedies under RICO, as outlined in Section 1962. It also highlights the liberal construction of RICO from the victim's perspective and the types of relief available, including treble damages and attorney fees. This information is applicable to civil RICO claims in general, including those in the Fifth Circuit.

## Civil Rico: A Tool of Advocacy

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

### **Extract**

A violation of § 1962(c), the section on which Sedima relies, requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. The plaintiff must allege each of the elements to state a claim. They are all equally essential components, and the complaint will fail if any one of them is not adequately pleaded. In particular, RICO claims based on mail or wire fraud must comport with Federal Rule of Civil Procedure 9(b)'s requirement that allegations involving fraud be pleaded with particularity. ... the award of treble damages for civil RICO violations. It provides that the plaintiff "shall recover threefold the damages he sustains" in addition to

costs and attorney fees. This is not discretionary. Imposition of treble damages is required by RICO.

## **Summary**

To plead a civil RICO claim, a plaintiff must allege conduct of an enterprise through a pattern of racketeering activity, with particularity in cases involving fraud. The relief available includes mandatory treble damages, costs, and attorney fees, which are not discretionary.

[Insurance Fraud is a Violent Crime.](#)

**Insurance Advocate - CINN Group, Inc. - 2024-03-01**

## **Extract**

RICO CONSPIRACY The essence of a RICO conspiracy is the existence of an agreement to violate RICO's substantive provisions. RICO conspiracy was established by proof of: (a) of an agreement to join a racketeering scheme, (b) of the defendant's knowing engagement in the scheme with the intent that its overall goals be effectuated, and (c) that the scheme involved, or by agreement between any members of the conspiracy was intended to involve, two or more predicate acts of racketeering. Predicate Acts of Extortion. The Court concluded that the Government proved beyond a reasonable doubt that Smith and other members of the Enterprise agreed to, and in fact did, commit predicate acts of Hobbs Act extortion on numerous occasions during the specified period as part of a larger pattern of racketeering activity.

## **Summary**

Elements necessary to establish a RICO conspiracy, which includes an agreement to join a racketeering scheme, knowing engagement with intent to effectuate the scheme's goals, and involvement in two or more predicate acts. This is relevant to understanding the standards for pleading a RICO claim, as it highlights the need to demonstrate an agreement and the commission of predicate acts.

[§ 6.03 Misappropriation Under the DTSA](#)

**Intellectual Property and Computer Crimes - Full Court Press - 2020-00-00**

## **Extract**

In general '[t]o prevail on a civil RICO claim [under § 1962(c)], a plaintiff must prove that the defendant engaged in conduct of an enterprise through a pattern of racketeering activity and, additionally, must establish that the defendant caused injury to plaintiff's business or property.' With respect to

the fifth of the above-quoted elements, the plaintiff must establish it 'suffered a concrete financial loss' that was 'proximately caused' by the alleged pattern of racketeering; 'mere injury to a valuable intangible property interest' is insufficient.

## **Summary**

The passage provides insight into the standards for pleading a civil RICO claim, specifically under § 1962(c). It highlights the necessity for a plaintiff to demonstrate that the defendant engaged in a pattern of racketeering activity through an enterprise and that this conduct caused a concrete financial loss to the plaintiff's business or property. The passage also clarifies that intangible property interests are insufficient for a RICO claim, emphasizing the need for a tangible financial loss. This information is crucial for understanding the pleading standards in the Fifth Circuit for civil RICO claims.

### [Evans v. U.S. Envtl. Prot. Agency](#)

## **USDOL Administrative Review Board Decisions**

### **Extract**

In *Swierkeiewicz* the Supreme Court rejected the Second Circuit's imposition of a heightened pleading standard that had required the plaintiff to plead a prima facie case of discrimination under *McDonnell Douglas v. Green*, 411 U.S. 792, in order to survive the employer's 12(b) motion to dismiss. In doing so, the Court explained that 'the prima facie case under *McDonnell Douglas* is an evidentiary standard, not a pleading requirement.' *Swierkeiewicz*, 534 U.S. at 510. 'Furthermore, imposing the Court of Appeals' heightened pleading standard in employment discrimination cases conflicts with Federal Rule of Civil Procedure 8(a), which provides that a complaint must include only 'a short and plain statement of the claim showing that the pleader is entitled to relief.' Such a statement must simply 'give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.' 534 U.S. at 512 (citation... decision in *Bell Atlantic* nor subsequent Supreme Court decisions depart from *Swierkeiewicz*'s rejection of a heightened pleading requirement in order to overcome a FRCP 12(b) motion to dismiss in employment discrimination cases. *Bell Atlantic* reaffirmed the long-standing law of pleading that, 'Federal Rule of Civil Procedure 8(a) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the... claim is and the grounds upon which it rests.' 550 U.S. at 555.

## **Summary**

The passage emphasizes that the Supreme Court has rejected heightened pleading standards in favor of the more lenient standard set by Federal Rule of Civil Procedure 8(a), which requires only a "short and plain statement of

the claim" to give the defendant fair notice. This standard applies broadly to civil cases, including RICO complaints, ensuring that plaintiffs are not required to plead detailed evidentiary facts at the motion to dismiss stage.

## [RICO: A Primer](#)

### **Extract**

To prove a violation of Section 1962(c), a plaintiff must prove the following elements: \* Existence of an enterprise; \* The enterprise engaged in, or its activities affected, interstate or foreign commerce; \* The defendant was employed by or was associated with the enterprise; \* The defendant conducted or participated, either directly or indirectly, in the conduct of the affairs of the enterprise; and \* The defendant participated in the affairs of the enterprise through a pattern of racketeering activity or collection of unlawful debt.

### **Summary**

Clear outline of the elements necessary to plead a civil RICO claim under Section 1962(c), which is the most commonly used provision. It specifies the need to demonstrate the existence of an enterprise, its effect on interstate commerce, the defendant's association with the enterprise, and participation in its affairs through a pattern of racketeering activity. This is essential for understanding the standards for pleading a RICO claim.

## [RICO: A Primer](#)

### **Extract**

To prove a violation of Section 1962(c), a plaintiff must prove the following elements: \* Existence of an enterprise; \* The enterprise engaged in, or its activities affected, interstate or foreign commerce; \* The defendant was employed by or was associated with the enterprise; \* The defendant conducted or participated, either directly or indirectly, in the conduct of the affairs of the enterprise; and \* The defendant participated in the affairs of the enterprise through a pattern of racketeering activity or collection of unlawful debt.

### **Summary**

To plead a civil RICO claim under Section 1962(c), a plaintiff must establish the existence of an enterprise, its engagement in or effect on interstate commerce, the defendant's association with the enterprise, and the defendant's participation in the enterprise's affairs through a pattern of racketeering activity. This framework is essential for understanding the standards for pleading a RICO claim in the Fifth Circuit.

## [Class Actions Comparative Guide](#)

### **Extract**

he or she has suffered an 'injury in fact' that is: concrete; particularised; and actual or imminent; the injury was likely caused by the defendant; and the injury would likely be redressed by judicial relief. If 'the plaintiff does not claim to have suffered an injury that the defendant caused and the court can remedy, there is no case or controversy for the federal court to resolve'.

### **Summary**

Requirements for a plaintiff to establish standing in federal court, which is a prerequisite for any civil action, including a RICO claim. The plaintiff must demonstrate an 'injury in fact' that is concrete, particularized, and actual or imminent. Additionally, the injury must be causally linked to the defendant's actions and must be redressable by the court. These elements are essential for a RICO claim, as the plaintiff must show that the alleged racketeering activity caused a direct injury to their business or property, and that the court can provide a remedy.

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

### **Extract**

First, to bring a civil RICO claim, a plaintiff must demonstrate that their business or property was injured as a result of a RICO violation. In other words, there must be some sort of concrete financial loss directly flowing from the purported violation to support a RICO claim. Thus, if a plaintiff does not have a concrete financial loss, then the RICO claim must be dismissed. Asserting personal injuries, such as emotion distress, is insufficient. Second, to prove most types of RICO claims, the plaintiff must plead that the defendant committed some qualifying criminal action, the most common of which is mail, wire or securities fraud. Business deals gone sour do not count. Rather, the plaintiff must be able to prove the elements of the asserted crime, and often an intent to defraud. If there is nothing criminal in nature about the complained-of conduct, RICO should not apply. It is an abuse of the RICO statute to attempt to shoehorn ordinary business or contractual disputes into a civil RICO claim. Third, the plaintiff must plead a pattern of racketeering activity for most RICO claims. If the alleged conduct occurred once or twice, or was not continuous, it cannot form a pattern of conduct sufficient to support a RICO claim. And oftentimes, because there is a fraud component, those instances must be particularly identified in the plaintiff's pleading—a barrier that can prove difficult to accomplish.

## **Summary**

Standards for pleading a civil RICO claim, emphasizing the need for a concrete financial loss, the requirement to plead a qualifying criminal action, and the necessity of demonstrating a pattern of racketeering activity. These elements are crucial for a RICO claim to proceed, and failure to meet these standards can result in dismissal. The passage also highlights that personal injuries are insufficient for a RICO claim, and the conduct must be criminal in nature, not merely a business dispute.

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

## **Extract**

First, to bring a civil RICO claim, a plaintiff must demonstrate that their business or property was injured as a result of a RICO violation. In other words, there must be some sort of concrete financial loss directly flowing from the purported violation to support a RICO claim. Thus, if a plaintiff does not have a concrete financial loss, then the RICO claim must be dismissed. Asserting personal injuries, such as emotion distress, is insufficient. Second, to prove most types of RICO claims, the plaintiff must plead that the defendant committed some qualifying criminal action, the most common of which is mail, wire or securities fraud. Business deals gone sour do not count. Rather, the plaintiff must be able to prove the elements of the asserted crime, and often an intent to defraud. If there is nothing criminal in nature about the complained-of conduct, RICO should not apply. It is an abuse of the RICO statute to attempt to shoehorn ordinary business or contractual disputes into a civil RICO claim. Third, the plaintiff must plead a pattern of racketeering activity for most RICO claims. If the alleged conduct occurred once or twice, or was not continuous, it cannot form a pattern of conduct sufficient to support a RICO claim. And oftentimes, because there is a fraud component, those instances must be particularly identified in the plaintiff's pleading—a barrier that can prove difficult to accomplish.

## **Summary**

Requirements for pleading a civil RICO claim, including demonstrating a concrete financial loss, pleading a qualifying criminal action, and establishing a pattern of racketeering activity. These elements are essential for a RICO claim to proceed and are applicable in the Fifth Circuit as well as other jurisdictions.

This memo was compiled by Vincent AI based on vLex materials available as of September 20, 2025. [View full answer on vLex](#)