

Question

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

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

II. TIMELINE OF EVENTS

BACKGROUND

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

Answer (Fifth Circuit)

Short response

In the Fifth Circuit, state law claims such as fraud, abuse of process, and intentional infliction of emotional distress included in a federal RICO complaint must meet the general plausibility standard of Rule 8(a) and, for fraud-based claims, the heightened particularity requirements of Rule 9(b), which demand detailed factual allegations tied to the specific elements of each claim. Each element must be supported by specific facts from the record, including the "who, what, when, where, and how" of the alleged conduct, and must be clearly linked to the enumerated factual timeline in the complaint.

Summary

Federal RICO complaints in the Fifth Circuit that include state law claims must comply with both the general pleading requirements of Rule 8(a) and, for fraud or fraud-like claims, the heightened standards of Rule 9(b). This means that for each state law claim—such as fraud, abuse of process, or

intentional infliction of emotional distress—the complaint must set out specific, non-conclusory facts that support every element of the claim, and for fraud, must detail the circumstances of the alleged misconduct with particularity.

To properly plead these claims, the complaint should explicitly connect each factual allegation to the relevant element of the cause of action, referencing the timeline and record citations (e.g., "REC. [page]"). For fraud, this includes identifying the speaker, the content and timing of the misrepresentation, and the resulting harm; for abuse of process and intentional infliction of emotional distress, the complaint must similarly provide detailed facts showing each required element, ensuring that the allegations are not merely formulaic but are substantiated by the record.

Background and Relevant Law

Federal Pleading Standards: Rule 8(a) and Rule 9(b)

All federal complaints must satisfy Rule 8(a), which requires a "short and plain statement" showing entitlement to relief, supported by factual allegations that make the claim plausible rather than speculative. This standard, articulated in Twombly and Iqbal, requires more than labels, conclusions, or a formulaic recitation of elements; the complaint must provide enough factual content to allow the court to reasonably infer liability ([Belton v. Regions Bank](#); [Clapper v. Am. Realty Investors, Inc.](#) (2018); [Arruda v. Curves Int'l, Inc.](#)).

For claims sounding in fraud—including common law fraud, statutory fraud, and claims under the Texas Deceptive Trade Practices Act (TDTPA)—Rule 9(b) imposes a heightened standard. The complaint must state with particularity the circumstances constituting fraud, which the Fifth Circuit interprets as requiring the "who, what, when, where, and how" of the alleged fraud ([Cloud49, LLC v. Rackspace Tech.](#); [United Healthcare Sevices, Inc. v. Next Health, LLC](#) (2021); [AHBP LLC v. The Lynd Co.](#); [Fonseca v. Allstate Vehicle & Prop. Ins. Co.](#)). This means specifying the statements or omissions considered fraudulent, the identity of the speaker, the time and place of the statements, and what was obtained as a result.

Elements of State Law Claims

Fraud

To plead fraud under Texas law, the plaintiff must allege: (1) a material misrepresentation; (2) falsity; (3) knowledge of falsity or reckless disregard; (4) intent to induce reliance; (5) actual and justifiable reliance; and (6) resulting injury ([Sw. Marine & Gen. Ins. Co. v. Valentine](#); [Everhart v. CitiMortgage, Inc.](#); Related State Torts). Each of these elements must be supported by specific facts, and for Rule 9(b), the circumstances of the misrepresentation must be detailed.

Abuse of Process

While not subject to Rule 9(b) unless the gravamen is fraud, abuse of process claims must still meet Rule 8(a)'s plausibility standard. The elements typically include: (1) an illegal, improper, or perverted use of the process; (2) an ulterior motive or purpose; and (3) resulting damage. The complaint must allege facts showing how the process was misused and the harm caused.

Intentional Infliction of Emotional Distress

To state a claim for intentional infliction of emotional distress under Texas law, the plaintiff must allege: (1) intentional or reckless conduct; (2) that is extreme and outrageous; (3) causing emotional distress; and (4) the distress is severe ([Dean v. Ford Motor Credit Co.](#); Related State Torts). The conduct must be more than mere insults or annoyances; it must be so outrageous as to go beyond all possible bounds of decency.

Analysis

Application of Pleading Standards to the Factual Timeline

I. Jurisdiction and Venue; II. Parties; III. Record References

The complaint must begin by establishing federal subject matter jurisdiction (e.g., under RICO, 18 U.S.C. § 1964(c)), personal jurisdiction over each defendant, and proper venue. The parties must be clearly identified, and the complaint should reference the public records and judicially noticeable documents, as permitted in the Fifth Circuit (Miller v. Dunn; LUV N' Care, Ltd. v. Jackel Int'l Ltd.).

IV. Introduction; V. Factual Timeline

The introduction and factual timeline should set out the narrative, but to meet Rule 8(a) and 9(b), each material fact must be tied to the elements of the claims. For example, the timeline's description of the Myers-Branthroover enterprise (¶¶ 1-7) should be cross-referenced in the fraud and RICO sections, with each misrepresentation or act of extortion specifically identified by date, content, and actor.

VI. The RICO Enterprise

The complaint must allege the existence of an enterprise, its structure, purpose, and continuity, and the roles of each defendant. The factual timeline (e.g., Myers and Branthroover's planning, interstate travel, and document preparation) should be cited to show the enterprise's existence and operation, as required for a RICO claim ([Civil Rico: A Tool of Advocacy](#)).

VII. Predicate Acts

Each predicate act (wire fraud, extortion, Travel Act violation, fraudulent court filings) must be described with particularity. For wire fraud, the complaint should specify the date, content, and method of each fraudulent communication (e.g., Myers's transfer of funds to Branthoover's PayPal account on December 16, 2023, REC. 723, 728-730), and explain how it furthered the scheme. For extortion, the complaint should detail the threats or misuse of legal process (e.g., Carter and Kaitcer's actions in presenting and enforcing fraudulent orders, REC. 888, 795).

VIII. RICO Conspiracy

The complaint must allege facts showing an agreement among the defendants to further the enterprise's unlawful goals, and identify overt acts in furtherance of the conspiracy, referencing the timeline (e.g., joint preparation of documents, coordinated court actions).

IX. Potential Defenses

The complaint should anticipate and address potential defenses, such as preclusion, Rooker-Feldman, Younger abstention, and judicial immunity, by alleging facts that show why these doctrines do not bar the claims (e.g., ongoing injury, lack of final judgment, or acts outside the scope of judicial immunity).

X. State Law Claims

A. Fraud

For each alleged fraudulent act, the complaint must specify:

- Who made the misrepresentation (e.g., Myers, Branthoover, Carter, Kaitcer, Munford, Baker);
- What was said or omitted (e.g., false statements in affidavits, court filings, or emails);
- When and where the statement was made (e.g., December 18, 2023, original petition for divorce, REC. 86, 99, 102, 107);
- Why the statement was false (e.g., evidence to the contrary, REC. 1715, 1735);
- What the defendant obtained (e.g., removal of Plaintiff from home, control of business assets).

Each element of fraud must be supported by specific facts from the record, not merely conclusions ([Sw. Marine & Gen. Ins. Co. v. Valentine](#); [Cloud49, LLC v. Rackspace Tech.](#); [Unitedhealthcare Servs., Inc. v. Next Health, LLC](#) (2018)).

B. Abuse of Process

The complaint must allege facts showing that the defendants used legal process (e.g., court orders, motions, or filings) for an improper purpose, such as to coerce Plaintiff into relinquishing property or to obstruct relief. The timeline should be referenced to show specific instances (e.g., use of temporary orders to lock Plaintiff out of his home, REC. 1748, 888, 795).

C. Intentional Infliction of Emotional Distress

The complaint must allege facts showing that the defendants' conduct was intentional or reckless, extreme and outrageous, and caused severe emotional distress. The timeline should be used to show the cumulative effect of the defendants' actions (e.g., repeated deprivation of home and business, interference with parent-child relationship, and ongoing litigation harassment, REC. 183, 888, 1748, 1629-1631, 3281).

D. Other State Law Claims

For any additional state law claims, the complaint must set out the elements and tie each to specific facts in the record, ensuring that the allegations are not conclusory.

XI. Claims for Relief; XII. Damages; XIII. Prayer for Relief

The complaint should specify the relief sought, including compensatory, treble, and punitive damages, as well as injunctive and declaratory relief. The damages section should tie the claimed losses to the specific acts and injuries described in the timeline (e.g., loss of home, business income, and client relationships).

Tying Allegations to the Factual Record

To satisfy the pleading standards, each element of each claim must be supported by specific factual allegations, with references to the record (e.g., "REC. [page]"). For fraud, this means identifying the precise misrepresentation, the context, and the resulting harm. For abuse of process and intentional infliction of emotional distress, the complaint must detail the conduct, the improper purpose or outrageousness, and the resulting injury.

The complaint should avoid group or collective allegations; instead, it must specify which defendant is responsible for each act ([Fonseca v. Allstate Vehicle & Prop. Ins. Co.](#)). This individualized pleading is essential to give each defendant fair notice and to prevent dismissal under Rule 12(b)(6).

Exceptions and Caveats

- If the complaint fails to plead fraud with particularity, or if it relies on conclusory or collective allegations, it is subject to dismissal ([Ripley v. State Farm Lloyds](#); [Aviles v. Allstate Fire & Cas., Ins. Co.](#)).

- For claims not sounding in fraud, Rule 8(a) still requires factual allegations that make the claim plausible, not speculative.
- For intentional infliction of emotional distress, courts in the Fifth Circuit have set a high bar for what constitutes "extreme and outrageous" conduct ([Bordelon v. Wells Fargo Fin. La., LLC](#)).

Conclusion

In a federal RICO complaint in the Fifth Circuit, state law claims such as fraud, abuse of process, and intentional infliction of emotional distress must be pleaded with specificity and factual detail. Fraud-based claims must meet Rule 9(b)'s heightened standard, requiring the "who, what, when, where, and how" of the alleged misconduct, while all claims must satisfy Rule 8(a)'s plausibility requirement. Each element of each claim must be tied to specific facts in the record, with individualized allegations against each defendant, ensuring that the complaint provides fair notice and a clear basis for relief. Failure to meet these standards risks dismissal at the pleading stage.

Legal Authorities

[Douglas v. Renola Equity Fund II, LLC, CIVIL ACTION NO: 13-6192 \(E.D. La. Mar 14, 2014\)](#)

U.S. District Court — Eastern District of Louisiana

Extract

To survive a Rule 12 (b)(6) motion to dismiss, the plaintiff must plead enough facts to 'state a claim to relief that is plausible on its face.' Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is facially plausible 'when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.' Id. A court must accept all well-pleaded facts as true and must draw all reasonable inferences in favor of the plaintiff. Lormand v. U.S. Unwired, Inc., 565 F.3d 228, 239 (5th Cir. 2009). ... The requirements of Rule 9(b) are 'supplemental to the Supreme Court's recent interpretation of Rule 8(a) requiring enough facts [taken as true] to state a claim to relief that is plausible on its face.' Lentz v. Trinchard, 730 F. Supp. 2d 567, 579 (E.D. La. 2010) (citing Grubbs, 565 F.3d at 185) (quoting Twombly, 550 U.S. at 570). Further, a plaintiff may plead fraud "upon information and belief" only when the relevant facts are peculiarly within the opposing party's knowledge, and the plaintiff supports his allegations with an adequate factual basis.

Summary

Pleading requirements for fraud claims in federal court, emphasizing the need for specificity under Rule 9(b) and the general plausibility standard under Rule 8(a) as interpreted by the Supreme Court. It highlights that fraud must be pled with particularity, and claims must be plausible on their

face, allowing the court to infer liability. This is relevant to the question as it provides the standard for pleading state law claims in a federal RICO complaint, which would include fraud, abuse of process, and intentional infliction of emotional distress.

[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 move to dismiss pro se plaintiff Donald W. Bordelon's ('Bordelon') claims for violation of the Racketeer Influenced and Corrupt Organizations Act ('RICO'), fraud, and intentional infliction of emotional distress pursuant to Federal Rule of Civil Procedure 12(b)(6). Other sections of this Court have dismissed lawsuits alleging intentional infliction of emotional distress based on conduct similar to or more egregious than filing a lawsuit and sending demand letters. For example, the Court granted summary judgment in favor of a defendant with respect to the plaintiff's intentional infliction of emotional distress claims in a case in which the plaintiff alleged that the defendant improperly initiated wage garnishment proceedings against him. *Murungi v. Tex. Guaranteed*, 693 F. Supp. 2d 597, 607 (E.D. La. Feb. 18, 2010) (Vance, J.). The plaintiff also alleged that he received 'harassing and embarrassing' phone calls from the defendant, yet that was not enough to meet the standard for outrageous conduct.

Summary

For a claim of intentional infliction of emotional distress to succeed, the conduct must meet a high standard of outrageousness. The court has dismissed claims where the conduct was not sufficiently outrageous, even if it involved improper legal actions or harassing communications. This suggests that in the Fifth Circuit, plaintiffs must demonstrate conduct that is extreme and outrageous to meet the pleading requirements for intentional infliction of emotional distress.

[Everhart v. CitiMortgage, Inc., CIVIL ACTION H-12-1338 \(S.D. Tex. Jan 22, 2013\)](#)

U.S. District Court — Southern District of Texas

Extract

To state a claim for fraud under Texas law a plaintiff must allege (1) that the defendant made a representation to the plaintiff, (2) that the representation was material, (3) that the representation was false, (4) that when the

misrepresentation was made the defendant knew it was false or made it recklessly and without knowledge of its truth, (5) that the defendant made it with the intent that the plaintiff act on it, (6) that the plaintiff relied on the representation, and (7) that the representation caused injury to the plaintiff.

Summary

Specific elements required to plead a fraud claim under Texas law, which is relevant to the Fifth Circuit. These elements include making a representation, its materiality, falsity, knowledge of its falsity, intent for the plaintiff to act on it, reliance by the plaintiff, and resulting injury. This information is essential for understanding how to properly plead a fraud claim in a federal RICO complaint when state law claims are involved.

[Cummings v. Wells Fargo, N.A., CIVIL ACTION NO. 1:18-CV-72-SA-DAS \(N.D. Miss. Jan 11, 2019\)](#)

U.S. District Court — Northern District of Mississippi

Extract

The Plaintiff asserts various fraud-based claims against the Defendant, including fraudulent misrepresentation, constructive fraud, fraudulent inducement, fraudulent deceit, and fraudulent conveyance. In addition to the standard articulated by the Supreme Court in Iqbal and Twombly, Rule 9(b) of the Federal Rules of Civil Procedure requires that, '[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.'

Summary

When pleading fraud-based claims in federal court, including in the Fifth Circuit, the plaintiff must meet the heightened pleading standard of Rule 9(b) of the Federal Rules of Civil Procedure. This rule requires that the circumstances constituting fraud or mistake be stated with particularity. This means that the plaintiff must specify the who, what, when, where, and how of the alleged fraud. This requirement is in addition to the general pleading standards set by the Supreme Court in Iqbal and Twombly, which require that a complaint state a plausible claim for relief.

[Quintel Tech. Ltd. v. Huawei Techs. USA, Inc., CIVIL ACTION NO. 4:15-cv-00307-GHD-CMC \(E.D. Tex. Sep 27, 2016\)](#)

U.S. District Court — Eastern District of Texas

Extract

The Court 'applies a four-prong test for fraudulent concealment under Texas law, under which the plaintiff must demonstrate: '(1) the existence of the underlying tort; (2) the defendant's knowledge of the tort; (3) the defendant's use of deception to conceal the tort; and (4) the plaintiff's reasonable reliance on the deception.'

Summary

Clear framework for establishing a claim of fraudulent concealment under Texas law, which is relevant to the pleading requirements for state law claims in a federal RICO complaint. The four-prong test requires demonstrating the existence of the underlying tort, the defendant's knowledge, the use of deception, and the plaintiff's reliance on the deception. This framework can be used to tie the factual record to the legal requirements for fraud claims in the context of a RICO complaint.

[Gabriel v. Outlaw, CASE NO. 3:20-CV-60-E-BK \(N.D. Tex. Mar 01, 2021\)](#)

U.S. District Court — Northern District of Texas

Extract

Plaintiffs also claim Nation, through the same ostensibly illegal acts alleged in their RICO claim, intentionally inflicted emotional distress on them. Doc. 3 at 15. Nation argues the claim should be dismissed because Plaintiffs have not plausibly alleged facts to establish the essential elements of this tort. Doc. 8 at 15. To plausibly allege IIED under Texas law, a plaintiff must establish that (1) a person acted intentionally or recklessly, (2) the person's conduct was extreme or outrageous, (3) the conduct caused the plaintiff's emotional distress, and (4) the distress was severe. *Guthrie v. Tifco Ind.*, 941 F.2d 374, 379 (5th Cir. 1991). The bar for extreme or outrageous conduct is high. Tortious or otherwise wrongful conduct does not, by itself, satisfy this element. *Bradford v. Vento*, 48 S.W.3d 749, 758 (Tex. 2001). To be sufficient, the alleged conduct must be so outrageous in character, so extreme in degree, as to go beyond all possible bounds of decency and be regarded as atrocious and utterly intolerable in civilized society. *Id.* Plaintiffs' allegations do not come close to meeting this high bar.

Summary

To successfully plead a claim for IIED under Texas law in the Fifth Circuit, a plaintiff must establish four elements: intentional or reckless conduct, extreme or outrageous conduct, causation of emotional distress, and severity of the distress. The standard for what constitutes extreme or outrageous conduct is very high, requiring conduct that is beyond all possible bounds of decency. This passage provides guidance on the pleading

requirements for IIED, which is relevant to understanding how state law claims should be articulated in a federal RICO complaint.

[Cloud49, LLC v. Rackspace Tech.](#)

U.S. District Court — Western District of Texas

Extract

When evaluating a motion to dismiss for failure to state a claim under Rule 12(b)(6) the complaint must be liberally construed in favor of the plaintiff and all facts pleaded therein must be taken as true. *Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 164 (1993); *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996). Although Federal Rule of Civil Procedure 8 mandates only that a pleading contain a “short and plain statement of the claim showing that the pleader is entitled to relief,” this standard demands more than unadorned accusations, “labels and conclusions,” “a formulaic recitation of the elements of a cause of action,” or “naked assertion[s]” devoid of “further factual enhancement.” ... To the extent a complaint alleges claims sounding in fraud, Federal Rule of Civil Procedure 9(b) requires that plaintiffs go a step beyond the typical pleading standard: the underlying factual circumstances must be pleaded “with particularity.” FED. R. CIV. P. 9(b). “Put simply, Rule 9(b) requires ‘the who, what, when, where, and how’ to be laid out.” *Benchmark Elecs. v. J.M. Huber Corp.*, 343 F.3d 719, 724 (5th Cir. 2003) (citing *Williams v. WMX Techs., Inc.*, 112 F.3d 175, 179 (5th Cir. 1997)). Rule 9(b) requires that “[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.” While “particularity” varies with the circumstances of each case, Rule 9(b) generally requires specificity of the time, place, contents, and the identity of the person making false representations. *Benchmark Elecs., Inc.*, 343 F.3d at 724; *WMX Techs., Inc.*, 112 F.3d at 179 (requiring the “who, what, when, where, and how” of the alleged fraud be stated).

Summary

Pleading requirements under Federal Rules of Civil Procedure 8 and 9(b) for claims, especially those sounding in fraud. Rule 8 requires a “short and plain statement” of the claim, while Rule 9(b) requires fraud claims to be stated with particularity, detailing the “who, what, when, where, and how” of the alleged fraud. This is crucial for tying the factual record to the claims in a RICO complaint.

[Grupo Tava, LLC v. DMS Co., CIVIL ACTION NO. 4:20-CV-4133 \(S.D. Tex. Apr 12, 2021\)](#)

U.S. District Court — Southern District of Texas

Extract

Rule 9(b) states that, '[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.' Fed. R. Civ. P. 9(b). The particularity required for such pleading, however, varies from case to case. See Benchmark Elec., Inc. v. J.M. Huber Corp., 343 F.3d 719, 724 (5th Cir. 2003), modified on other grounds, 355 F. 3d 356 (5th Cir. 2003). '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 724 (internal citations omitted). More precisely, Rule 9(b)'s particularity requirement compels that 'the who, what, when, where, and how [] be laid out.' Id. 'Claims alleging... fraud [and] fraudulent inducement... are subject to [Rule 9(b)'s] requirements.' Frith v. Guardian Life Ins. Co. of Am., 9 F.Supp.2d 734, 742 (S.D. Tex. 1998).

Summary

In the Fifth Circuit, when alleging fraud or mistake in a federal RICO complaint, the plaintiff must adhere to the heightened pleading standard of Rule 9(b) of the Federal Rules of Civil Procedure. This rule requires that the circumstances constituting fraud be stated with particularity, which includes detailing the time, place, and contents of the false representations, the identity of the person making the misrepresentation, and what was obtained as a result. This ensures that the allegations are specific enough to provide the defendant with notice of the claims against them and to prevent frivolous claims.

[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.'

Summary

General pleading requirements for a federal RICO complaint, emphasizing the need for more than mere labels and conclusions. It highlights the

necessity of stating a plausible claim for relief based on factual allegations. Specifically, when fraud is a predicate act, the complaint must meet the heightened pleading standard of Federal Rule of Civil Procedure 9(b), which requires particularity in stating the circumstances constituting fraud. This is relevant to the question as it provides guidance on how to plead state law claims like fraud within a RICO complaint.

[Fustok v. UnitedHealth Grp., Inc., CIVIL ACTION NO. 12-cv-787 \(S.D. Tex. May 20, 2013\)](#)

U.S. District Court — Southern District of Texas

Extract

United's fraud claim is subject to the heightened pleading requirements of Federal Rule of Civil Procedure 9(b). Rule 9(b) requires a plaintiff to 'state with particularity the circumstances constituting fraud or mistake.' In the Fifth Circuit, the Rule 9(b) standard requires 'specificity as to the statements (or omissions) considered to be fraudulent, the speaker, when and why the statements were made, and an explanation of why they were fraudulent.' Plotkin v. IP Axess, Inc., 407 F.3d 690, 696 (5th Cir. 2005); see also Southland Secs. Corp. v. Inspire Ins. Solutions, Inc., 365 F.3d 353, 362 (5th Cir. 2004). Essentially, the standard requires the complaint to allege answers to 'newspaper questions' ('who, what, when, where, and how') of the alleged fraud.

Summary

Fraud claims in the Fifth Circuit must meet the heightened pleading requirements of Rule 9(b), which demands specificity in detailing the fraudulent acts. This includes identifying the fraudulent statements or omissions, the speaker, the timing, the reasons for the statements, and why they are fraudulent. This standard is applicable to fraud claims in federal court within the Fifth Circuit.

[Gonzalez v. State Farm Lloyds, 326 F.Supp.3d 346 \(S.D. Tex. 2017\)](#)

U.S. District Court — Southern District of Texas

Extract

Twombly and Iqbal lay out a two-prong approach to Rule 12(b)(6) dismissal motions, which is relevant here for understanding what constitutes the baseline federal pleading standard. First, the plaintiff must plead 'enough facts to state a claim to relief that is plausible on its face.' A claim has facial plausibility when its factual content 'allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.' Second, the plaintiff must prove the plausibility of his claim with case-specific facts,

not mere conclusions: 'a pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do.' 'Nor does a complaint suffice if it tenders naked assertion[s] devoid of further factual enhancement.' Thus, although courts must accept as true all well-pleaded facts, they need not accept as true overt legal conclusions, or legal conclusions which have been 'couched' as factual allegations. Moreover, Federal Rule of Civil Procedure 9(b) heightens the traditional 12(b)(6) pleading standard when the claim in question involves fraud, requiring that 'a party must state with particularity the circumstances constituting fraud or mistake.' The Fifth Circuit has clarified what it means to state 'with particularity' the circumstances constituting fraud: the plaintiff must allege the '[1] time, [2] place, [3] contents of the false representations, as well as the [4] identity of the person making the misrepresentations and [5] what he obtained thereby.' This doctrine has expanded to include 'all cases where the gravamen of the claim is fraud even though the theory supporting the claim is not technically termed fraud.'

Summary

Pleading requirements for fraud and related claims in federal court, emphasizing the need for specificity under Rule 9(b). This includes detailing the time, place, content, identity, and benefit of the alleged fraudulent acts. The passage also highlights the general pleading standard under Rule 12(b)(6), which requires claims to be plausible and supported by specific facts rather than mere conclusions. These standards are crucial for tying state law claims to the factual record in a federal RICO complaint, ensuring that each element of the claim is supported by detailed and specific allegations.

[Sw. Marine & Gen. Ins. Co. v. Valentine](#)

U.S. District Court — Northern District of Texas

Extract

In conducting this analysis, courts look to the pleading requirements set out in Rule 8(a)(2). See *Wooten v. McDonald Transit Assocs., Inc.*, 788 F.3d 490, 497 (5th Cir. 2015). Factual allegations in the complaint need only 'be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).' *Wooten*, 788 F.3d at 497 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The pleading must present 'more than an unadorned, the-defendant-unlawfully-harmed-me accusation,' but 'detailed factual allegations' are not required. ... For common law fraud, Plaintiff must show '(1) a material misrepresentation; (2) that is false; (3) made with knowledge of its falsity or recklessness as to its truth; (4) made with the intention that it should be acted upon by another party; (5) relied upon by the other party; and (6) causing injury.' *Flaherty & Crumrine Income Fund, Inc. v. TXU Corp.*, 565 F.3d 200, 212-13 (5th Cir. 2009) (citations omitted) (discussing Texas law). But '[i]n federal court, fraud claims must also satisfy the heightened pleading standard set out in Federal

Rule of Civil Procedure 9(b).¹ Edge Adhesives, Inc. v. Sharpe Concepts, LLC, No. 4:15-CV-405-O, 2015 WL 12743618, at *3-4 (N.D. Tex. Aug. 31, 2015) (citations omitted); see also Fed.R.Civ.P. 9(b) ('In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.'). The Fifth Circuit interprets Rule 9(b) to require, at minimum 'specificity as to the statements (or omissions) considered to be fraudulent, the speaker, when and why the statements were made, and an explanation of why they were fraudulent.'

Summary

General pleading requirements under Rule 8(a)(2) and the specific heightened pleading requirements for fraud under Rule 9(b) in federal court. It specifies that for fraud claims, the plaintiff must provide detailed allegations, including the specifics of the fraudulent statements, the speaker, timing, and reasons for the fraudulence. This is crucial for tying the factual record to the legal claims in a RICO complaint, as it ensures that the allegations are sufficiently detailed to meet the federal standards.

[Omni USA, Inc. v. Parker-Hannifin Corp., 798 F.Supp.2d 831 \(S.D. Tex. 2011\)](#)

U.S. District Court — Southern District of Texas

Extract

Fraud claims must also satisfy the heightened pleading standard set out in Federal Rule of Civil Procedure 9(b): 'In allegations alleging fraud ..., a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.' The Fifth Circuit strictly construes the Rule and requires the plaintiff pleading fraud in federal court 'to specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent.'

Summary

The passage provides specific guidance on the heightened pleading standard required for fraud claims under Federal Rule of Civil Procedure 9(b) in the Fifth Circuit. It emphasizes the need for particularity in alleging fraud, including specifying the fraudulent statements, identifying the speaker, and explaining the fraudulent nature of the statements. This is crucial for tying the factual record to the legal claims in a RICO complaint.

[Martin v. Tex. Dept. of Protect. and Regul. Svcs., 405 F.Supp.2d 775 \(S.D. Tex. 2005\)](#)

U.S. District Court — Southern District of Texas

Extract

The Martins allege a state-law claim of intentional infliction of emotional distress by Haywood, Odin, and Hughes. (Docket Entry No. 1, ¶ 95). In *Wilson v. Monarch Paper Co.*, 939 F.2d 1138 (5th Cir.1991), the Fifth Circuit set out in detail the elements of a claim for intentional infliction of emotional distress under Texas law. First, a plaintiff must show that the defendant acted intentionally or recklessly. Second, she must show that the defendant's conduct was 'extreme and outrageous,' 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious.' *Dean v. Ford Motor Credit Co.*, 885 F.2d 300, 306 (5th Cir.1989) (quoting RESTATEMENT (SECOND) OF TORTS § 46 cmt. d).

Summary

To plead a claim for intentional infliction of emotional distress in the Fifth Circuit, a plaintiff must demonstrate that the defendant acted intentionally or recklessly and that the conduct was extreme and outrageous. This aligns with the requirements under Texas law and is relevant to federal RICO complaints when state law claims are included.

[McCoy v. McCormick, Civil Action 22-443-BAJ-RLB \(M.D. La. Feb 15, 2023\)](#)

U.S. District Court — Middle District of Louisiana

Extract

To the extent Plaintiff has made allegations of fraud, including as part of her RICO claims, they are subject to the heightened pleading standard set out in Rule 9 of the Federal Rules of Civil Procedure. See *Tel-Phonic Servs., Inc. v. TBS Int'l, Inc.*, 975 F.2d 1134, 1138-39 (5th Cir. 1992). Rule 9 requires a plaintiff who 'alleg[es] fraud' to 'state with particularity the circumstances constituting fraud. . .,' but allows '[m]alice, intent, knowledge, and other conditions of a person's mind [to] be alleged generally.' Fed.R.Civ.P. 9(b). To meet this burden, a plaintiff must plead '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.'

Summary

In the Fifth Circuit, when alleging fraud as part of a RICO claim, the plaintiff must adhere to the heightened pleading standard of Rule 9(b) of the Federal Rules of Civil Procedure. This requires stating with particularity the circumstances constituting fraud, including the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what was obtained thereby. This standard ensures that the allegations are specific enough to provide the defendant with notice of the claims against them and to prevent frivolous claims.

[Ripley v. State Farm Lloyds, NO. 4:19-CV-1066-A \(N.D. Tex. Apr 01, 2020\)](#)

U.S. District Court — Northern District of Texas

Extract

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), 'in order to give the defendant fair notice of what the claim is and the grounds upon which it rests.' Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal quotation marks and ellipsis omitted). Although a complaint need not contain detailed factual allegations, the 'showing' contemplated by Rule 8 requires a plaintiff to do more than simply allege legal conclusions or recite the elements of a cause of action. Id. at 555 & n.3. Thus, while a court must accept all the factual allegations in the complaint as true, it need not credit bare legal conclusions that are unsupported by any factual underpinnings... Rule 9(b) sets forth the heightened pleading standard imposed for fraud claims. 'In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.' Fed. R. Civ. P. 9(b). Succinctly stated, Rule 9(b) requires a party to identify in its pleadings 'the who, what, when, where, and how' of the events constituting the purported fraud. Dorsey v. Portfolio Equities, Inc., 540 F.3d 333, 339 (5th Cir. 2008).

Summary

General pleading requirements under Rule 8(a)(2) and the heightened requirements for fraud under Rule 9(b). Rule 8(a)(2) requires a short and plain statement of the claim, providing fair notice to the defendant. Rule 9(b) requires fraud claims to be stated with particularity, detailing the "who, what, when, where, and how" of the alleged fraud. These requirements are applicable in the Fifth Circuit and are essential for properly pleading state law claims in a federal RICO complaint.

[Aviles v. Allstate Fire & Cas., Ins. Co., CIVIL ACTION NO. 5:19-CV-00023 \(S.D. Tex. Jul 09, 2019\)](#)

U.S. District Court — Southern District of Texas

Extract

A civil claim may be dismissed under Federal Rule of Civil Procedure 12(b) (6) if it does not contain 'enough facts to state a claim to relief that is plausible on its face.' Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). Federal Rule of Civil Procedure 8(a)(2) provides the general requirement for pleadings in federal court: Each cause of action must include 'a short and plain statement of the claim showing that the pleader is entitled to relief.' While the complaint need not contain detailed factual allegations, it must set forth 'more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.' Twombly, 550 U.S. at 555 (internal citation omitted). Rather, the complaint's '[f]actual allegations must be

enough to raise a right to relief above the speculative level.' Id. ... Allegations of fraud or mistake are subject to even a higher pleading standard than other civil claims. Federal Rule of Civil Procedure 9(b) provides that a party alleging fraud 'must state with particularity the circumstances constituting fraud.' What constitutes 'particularity' varies depending on the facts of the case. Benchmark Elec., Inc. v. J.M. Huber Corp., 343 F.3d 719, 724 (5th Cir. 2003). At a minimum, though, the plaintiff must 'allege the particulars of [1] time, [2] place, and [3] contents of the false representations, as well as [4] the identity of the person making the representation and [5] what that person obtained thereby.'

Summary

General pleading requirements under Federal Rule of Civil Procedure 8(a)(2) and the heightened requirements for fraud under Rule 9(b). Rule 8(a)(2) requires a short and plain statement of the claim, while Rule 9(b) requires fraud claims to be stated with particularity, including details such as time, place, and contents of the false representations. This is relevant for tying state law claims to the factual record in a federal RICO complaint, as it provides the standard for how detailed the allegations must be.

[Unitedhealthcare Servs., Inc. v. Next Health, LLC, CIVIL ACTION NO. 3:17-CV-0243-S \(N.D. Tex. Jul 20, 2018\)](#)

U.S. District Court — Northern District of Texas

Extract

United must plead the elements of its fraud claim with the heightened particularity required by Rule 9(b). See, e.g., Coates v. Heartland Wireless Commc'ns, Inc., 26 F. Supp. 2d 910, 914 (N.D. Tex. 1998). 'In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.' FED. R. CIV. P. 9(b). '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.'

Summary

In the Fifth Circuit, when pleading fraud in a federal RICO complaint, the plaintiff must meet the heightened pleading standard of Rule 9(b) of the Federal Rules of Civil Procedure. This requires the plaintiff to state with particularity the circumstances constituting fraud, including the time, place, and contents of the false representations, the identity of the person making the misrepresentation, and what was obtained as a result. This standard ensures that the defendant is given sufficient notice of the claims against them and the specific fraudulent conduct alleged.

[Ardoin v. Stryker Corp., CIVIL ACTION NO. 4:18-CV-2192 \(S.D. Tex. Oct 07, 2019\)](#)

U.S. District Court — Southern District of Texas

Extract

Federal Rule of Civil Procedure 8(a) generally controls pleading requirements, calling for 'a short and plain statement of the claim showing that the pleader is entitled to relief.' FED. R. CIV. P. 8(a)(2). However, in cases alleging fraud or mistake, the heightened pleading requirements of Rule 9(b) apply. FED. R. CIV. P. 9(b). Under Rule 9(b), 'a party must state with particularity the circumstances constituting fraud or mistake.' Id.; see also Matter of Life Partners Holdings, Inc., 926 F.3d 103, 116-17 (5th Cir. 2019). In the Fifth Circuit, the Rule 9(b) pleading standard requires that the complaint contain factual allegations for the 'time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what [that person] obtained thereby.'

Summary

General pleading requirements under Rule 8(a) and the heightened requirements under Rule 9(b) for cases involving fraud or mistake. Rule 8(a) requires a short and plain statement of the claim, while Rule 9(b) requires that fraud be stated with particularity, including the time, place, contents of the false representations, the identity of the person making them, and what was obtained. This is crucial for tying state law claims to the factual record in a federal RICO complaint, as it ensures that the allegations are specific and detailed enough to meet the heightened pleading standard.

[Stoker v. Select Portfolio Servicing, No. 3:19-cv-00909-N-BT \(N.D. Tex. Mar 05, 2020\)](#)

U.S. District Court — Northern District of Texas

Extract

Defendant is also entitled to summary judgment on Plaintiff's fraudulent-inducement claim because her allegations do not meet Rule 9(b)'s heightened pleading standard. Federal Rule of Civil Procedure 9(b) requires a party alleging fraud or mistake to 'state with particularity the circumstance constituting fraud or mistake.' Fed. R. Civ. P. 9(b). 'The Fifth Circuit requires plaintiffs alleging fraud to specifically allege the 'time, place, and contents of the false representations, as well as the identity of the person making the representation and what the person obtained thereby.'

Summary

In the Fifth Circuit, when alleging fraud in a federal RICO complaint, the plaintiff must meet the heightened pleading standard of Rule 9(b). This requires the plaintiff to state with particularity the circumstances constituting fraud, including the time, place, and contents of the false representations, the identity of the person making the representation, and what the person obtained thereby. This standard ensures that the defendant is given sufficient information to respond to the allegations and that the court can determine whether the claim is plausible.

[Llort v. BMW of N. Am., LLC, Case No. 1:20-CV-94-LY \(W.D. Tex. Jun 02, 2020\)](#)

U.S. District Court — Western District of Texas

Extract

Federal Rule of Civil Procedure 12(b)(6) allows a party to move to dismiss an action for failure to state a claim on which relief can be granted. In deciding a Rule 12(b)(6) motion to dismiss for failure to state a claim, the court 'accepts all well-pleaded facts as true, viewing them in the light most favorable to the [nonmovant].' *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (internal quotation marks omitted). The Supreme Court has explained that a complaint must contain sufficient factual matter 'to state a claim to relief that is plausible on its face.' *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Summary

The passage provides insight into the general pleading requirements under Rule 12(b)(6), which are applicable to state law claims in federal court, including those in a RICO complaint. It emphasizes the need for a complaint to contain sufficient factual matter to state a plausible claim for relief.

[Fonseca v. Allstate Vehicle & Prop. Ins. Co., CIVIL ACTION NO. 7:20-cv-00358 \(S.D. Tex. Dec 21, 2020\)](#)

U.S. District Court — Southern District of Texas

Extract

In addition, Federal Rule of Civil Procedure 9(b) requires that Plaintiffs, '[i]n alleging fraud or mistake,... must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.' Rule 9(b) extends to all claims or allegations in which the gravamen is fraud, even if the

associated theory of liability is not technically termed fraud. For example, Texas Deceptive Trade Practices-Consumer Protection Act claims generally have to meet the Rule 9(b) standard. 'The Fifth Circuit has interpreted Federal Rule of Civil Procedure 9(b) strictly, requiring the plaintiff to specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent. In short, plaintiffs must plead enough facts to illustrate the who, what, when, where, why and how of the alleged fraud.' This strict requirement is 'a gatekeeper to discovery, a tool to weed out meritless fraud claims sooner than later. [Courts] apply Rule 9(b) to fraud complaints with bite and without apology.' Nevertheless, 'fraud may be pleaded without long or highly detailed particularity.' To plead a claim for fraud by misrepresentation or omission, 'Rule 9(b) typically requires the claimant to plead the type of facts omitted, the place in which the omissions should have appeared, and the way in which the omitted facts made the representations misleading.' The 'particularity' required by Rule 9(b) also disallows collectivized or group allegations; Plaintiffs must delineate which Defendant is responsible for which allegedly fraudulent activity. Courts will 'treat a dismissal for failure to plead fraud with particularity under Rule 9(b) as a dismissal for failure to state a claim upon which relief can be granted.'

Summary

In the Fifth Circuit, when pleading fraud or related claims in a federal RICO complaint, the plaintiff must adhere to the strict requirements of Federal Rule of Civil Procedure 9(b). This rule mandates that the plaintiff specify the fraudulent statements, identify the speaker, and explain the circumstances of the fraud with particularity. The rule serves as a gatekeeper to prevent meritless claims from proceeding to discovery. The passage also emphasizes that fraud claims must be individualized, specifying which defendant is responsible for each alleged fraudulent act.

[Taylor v. Rothstein Kass & Co., Civil Action No. 3:19-CV-1594-D \(N.D. Tex. Feb 04, 2020\)](#)

U.S. District Court — Northern District of Texas

Extract

The elements of common law fraud in Texas are: (1) a material representation was made; (2) it was false when made; (3) the speaker either knew it was false, or made it without knowledge of its truth; (4) the speaker made it with the intent that it should be acted upon; (5) the party acted in reliance; and (6) the party was injured as a result. ... 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. ... More colloquially, plaintiffs must plead the 'who, what, when, where, and how' of the fraud.

Summary

In the Fifth Circuit, when pleading state law claims such as fraud in a federal RICO complaint, the plaintiff must meet the heightened pleading standard of Rule 9(b). This requires detailing the specifics of the alleged fraud, including the time, place, and content of the false representations, as well as identifying the person who made the misrepresentation and what they gained from it. This ensures that the claim is not speculative and provides a clear basis for the court to infer liability.

[United Healthcare Services, Inc. v. Next Health, LLC, NO. 3:17-CV-00243-E-BT \(N.D. Tex. Feb 26, 2021\)](#)

U.S. District Court — Northern District of Texas

Extract

A complaint alleging fraud also must satisfy the heightened pleading standard of Federal Rule of Civil Procedure 9(b). FED. R. CIV. P. 9(b). Generally, Rule 9(b)'s 'particularity' standard requires 'specificity as to the statements (or omissions) considered to be fraudulent, the speaker, when and why the statements were made, and an explanation of why they are fraudulent.' Plotkin v. IF Axess, Inc., 407 F.3d 690, 696 (5th Cir. 2005); Benchmark Elecs., Inc. v. J.M. Huber Corp., 343 F.3d 719, 724 (5th Cir. 2003). Accordingly, a plaintiff must plead the 'who, what, when, where, and how' of the fraud. Benchmark Elecs., Inc., 343 F.3d at 724 (citation omitted).

Summary

Heightened pleading standard required for fraud claims under Federal Rule of Civil Procedure 9(b), which is applicable in federal court, including the Fifth Circuit. This standard requires detailed specificity in the allegations, including the "who, what, when, where, and how" of the fraudulent conduct.

[Dean v. Ford Motor Credit Co., 885 F.2d 300 \(5th Cir. 1989\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

To prevail on a claim for intentional infliction of emotional distress, Texas law requires that the following four elements be satisfied: '(1) the defendant acted intentionally or recklessly, (2) the conduct was 'extreme and outrageous', (3) the actions of the defendant caused the plaintiff emotional distress, and (4) the emotional distress suffered by the plaintiff was severe.' Tidelands Auto Club v. Walters, 699 S.W.2d 939, 942 (Tex.App.--Beaumont, 1985, writ ref'd, n.r.e.).

Summary

Specific elements that must be proven to establish a claim for intentional infliction of emotional distress under Texas law. These elements are essential for pleading such a claim in a federal RICO complaint when state law claims are included. The elements provide a framework for tying the factual allegations to the legal requirements, ensuring that the complaint adequately addresses each element.

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

Extract

In pursuing this action, D&T brings claims under three subsections of the RICO statute. See id. §§ 1962 (a), (c) & (d). Though the subsections are distinct, each shares 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.' 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 common elements required for a RICO claim in the Fifth Circuit: a person engaging in a pattern of racketeering activity connected to an enterprise. This is relevant to understanding how state law claims might be integrated into a RICO complaint, as they would need to be tied to these elements to establish a pattern of racketeering activity.

[Austin v. Bank of N.Y. Mellon](#)

Extract

A claim for common law fraud must meet the heightened pleading standard required by Federal Rule of Civil Procedure 9(b). Fed. R. Civ. P. 9(b) ('In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.); see also Biliouris v. Sundance Res., Inc., 559 F. Supp. 2d 733, 736 (N.D. Tex. 2008) (applying Rule 9(b)'s heightened pleading standard to claims for common-law fraud, statutory fraud, and negligent misrepresentation). '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.' Benchmark Elecs., Inc. v. J.M. Huber Corp., 343 F.3d 719, 724 (5th Cir. 2003) (quotation omitted). 'Put simply, Rule 9(b) requires the who, what, when, where, and how to be laid out.' Id. (quotation omitted).

Summary

Heightened pleading standard for fraud claims under Federal Rule of Civil Procedure 9(b), which requires specific details about the alleged fraud, including the time, place, content, and identity of the person making the misrepresentation. This standard is applicable to fraud claims in federal court, including those within a RICO complaint.

[Belton v. Regions Bank](#)

Extract

A Rule 12(b)(6) motion to dismiss tests the sufficiency of the complaint against the legal standard set forth in Rule 8, which requires 'a short and plain statement of the claim showing that the pleader is entitled to relief.' Fed.R.Civ.P. 8(a)(2). In order to survive a Rule 12(b)(6) motion, a pleading's language, on its face, must demonstrate that there exists plausibility for entitlement to relief. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 557 (2007). 'Determining whether a complaint states a plausible claim for relief [is]... a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.' Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). In determining whether it is plausible that a pleader is entitled to relief, a court does not assume the truth of conclusory statements, but rather looks for facts which support the elements of the pleader's claim. Twombly, 550 U.S. at 557. Factual assertions are presumed to be true, but 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action' alone are not enough to withstand a 12(b)(6) motion. Iqbal, 556 U.S. at 678.

Summary

Pleading requirements under Rule 8 and the standards for surviving a Rule 12(b)(6) motion to dismiss. It emphasizes the need for a complaint to provide a plausible claim for relief, supported by factual assertions rather than mere conclusions or formulaic recitations of legal elements. This is relevant to state law claims in a federal RICO complaint, as these claims must also meet the plausibility standard to survive dismissal.

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

Extract

Rule 9(b) imposes a heightened pleading standard for fraud claims and requires that a party state with particularity facts supporting each element of fraud." "To survive the motions to dismiss under Rule 12(b)(6), plaintiffs 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). 'A claim has facial plausibility when the plaintiff[s] 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).

Summary

Pleading standards under Rule 9(b) for fraud claims, which require particularity in stating facts supporting each element of fraud. It also references Rule 12(b)(6), which requires that a complaint state a plausible claim for relief. These standards are applicable in the context of federal RICO complaints in the Fifth Circuit.

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

Extract

Rule 8(a) of the Federal Rules of Civil Procedure requires a Complaint set forth 'sufficient facts from which the court can determine the existence of subject matter jurisdiction and from which the defendants can fairly appreciate the claim made against them.' While Rule 8's pleading standard does not require 'detailed factual allegations,' it does demand more than an 'unadorned, the-defendant-unlawfully-harmed-me accusation.' Moreover, when a plaintiff alleges fraud, Rule 9 requires that the fraud claim be pleaded with particularity. '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.'

Summary

Requirements under the Federal Rules of Civil Procedure for pleading state law claims in a federal complaint. Rule 8(a) requires sufficient factual allegations to establish subject matter jurisdiction and to inform defendants of the claims against them. Rule 9(b) imposes a heightened pleading standard for fraud claims, requiring specific details about the alleged fraudulent conduct.

[AHBP LLC v. The Lynd Co.](#)

Extract

Claims alleging fraud and fraudulent inducement are subject to the requirements of Rule 9(b) of the Federal Rules of Civil Procedure. Rule 9(b) states that '[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.' '[A]rticulating the elements of fraud with particularity requires a plaintiff to specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent.' *Williams v. VMX Technologies, Inc.*, 112 F.3d 175, 177 (5th Cir.

1997). 'Directly put, the who, what, when, and where must be laid out.' Id. at 178.

Summary

Clear explanation of the heightened pleading standard for fraud claims under Rule 9(b) in the Fifth Circuit. It specifies that a plaintiff must detail the fraudulent statements, identify the speaker, and provide the time and place of the statements, as well as explain why they are fraudulent. This is essential for tying the factual record to the legal claims in a RICO complaint.

[Daughtry v. Silver Fern Chem.](#)

Extract

In order to succeed on their fraud claims, Plaintiffs' pleadings must also satisfy the federal pleading standards of Rule 9(b) of the Federal Rules of Civil Procedure. See Pace v. Cirrus Design Corp., 93 F.4th 879, 889 (5th Cir. 2024); Port of Corpus Christi Auth. v. Sherwin Alumina Co., L.L.C. (In re Sherwin Alumina Co., L.L.C.), 952 F.3d 229, 235 (5th Cir.), cert. denied, 141 S.Ct. 360 (2020). Rule 9(b) provides that in order to state a claim for fraud in federal court, the plaintiff must state with particularity the circumstances constituting the fraud. See FED. R. CIV. P. 9(b); Tellabs, Inc. v. Makor Issues & Rts., Ltd., 551 U.S. 308, 319 (2007); Pace, 93 F.4th at 889-90; Stringer v. Remington Arms Co., L.L.C., 52 F.4th 660, 661 (5th Cir. 2022). Specifically, Rule 9(b) states: 'In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.' FED. R. CIV. P. 9(b). Therefore, Rule 9(b) imposes a heightened standard of pleading for averments of fraud. See FED. R. CIV. P. 8(a), 9(b); Pace, 93 F.4th at 889; In re Sherwin Alumina Co., L.L.C., 952 F.3d at 235. A party must plead, at the minimum, the 'who, what, when, where, and how of the alleged fraud.' In re Sherwin Alumina Co., L.L.C., 952 F.3d at 235.

Summary

Heightened pleading standard for fraud claims under Rule 9(b), which requires plaintiffs to specify the "who, what, when, where, and how" of the alleged fraud. This standard is applicable in the Fifth Circuit and is essential for any federal RICO complaint that includes state law fraud claims.

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

Extract

Under Rule 12(b)(6), the court evaluates the pleadings by 'accept[ing] '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) (quoting Martin F. Eby Constr. Co. v. Dall. Area Rapid Transit, 369 F.

3d 464, 467 (5th Cir. 2004)). To survive a motion to dismiss, plaintiffs must allege enough facts 'to state a claim of relief that is plausible on its face.' Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). 'A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant[s] [are] liable for the misconduct alleged.' Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). '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.; see also Twombly, 550 U.S. at 555 ('Factual allegations must be enough to raise a right to relief above the speculative level[.]'). 'Rule 9(b) imposes a heightened pleading standard for fraud claims and requires that a party state with particularity facts supporting each element of fraud.' Turner v. AmericaHomeKey Inc., 2011 WL 3606688, at *2 (N.D. Tex. Aug. 16, 2011) (Fitzwater, C.J.) (citing Benchmark Elecs., Inc. v. J.M. Huber Corp., 343 F.3d 719, 724 (5th Cir. 2003)), aff'd, 514 Fed. Appx. 513 (5th Cir. 2013). '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. (quoting Benchmark Elecs., 343 F.3d at 724) (internal quotation marks omitted). More colloquially, plaintiffs must plead the 'who, what, when, where, and how' of the fraud. Williams v. BellHelicopter Textron, Inc., 417 F.3d 450, 453 (5th Cir. 2005) (quoting United States ex rel. Thompson v. Columbia/HCA Healthcare Corp., 125 F.3d 899, 903 (5th Cir. 1997)).

Summary

General pleading requirements under Rule 12(b)(6) and the heightened pleading standard under Rule 9(b) for fraud claims. It emphasizes the need for factual allegations that are plausible and specific, detailing the "who, what, when, where, and how" of the alleged fraud. This is essential for tying state law claims to the factual record in a federal RICO complaint.

[Llort v. BMW of N. Am., LLC](#)

Extract

In order to state a claim under the TDTPA, a plaintiff must allege the following elements: '(1) the plaintiff is a consumer, (2) the defendant engaged in false, misleading, or deceptive acts, and (3) these acts constituted a producing cause of the consumer's damages.' Doe v. Boys Clubs of Greater Dallas, Inc., 907 S.W.2d 472, 478 (Tex. 1995) (citing § 17.50(a)(1)). To prove a TDTPA action for failure to disclose information, as in this case, the plaintiff must show (1) a failure to disclose, (2) which was known at the time of the transaction, (3) which was intended to induce the plaintiff into a transaction, and (4) that the plaintiff otherwise would not have entered the transaction if the information had been disclosed. Hudspeth v. Enter. Life Ins. Co., 358 S.W.3d 373, 388 (Tex. App.—Houston [1st Dist.] 2011, no pet.). 'To be actionable under the DTPA, a failure to disclose material information necessarily requires that the defendant have known the information and have failed to bring it to the plaintiff's attention.'

Doe, 907 S.W.2d at 478. In addition, federal courts have held that claims under the TDTPA must also satisfy Rule 9(b)'s particularity requirement. E.g., Gonzalez v. State Farm Lloyds, 326 F. Supp. 3d 346, 350 (S.D. Tex. 2017); SHS Inv. v. Nationwide Mut. Ins. Co., 798 F. Supp. 2d 811, 815 (S.D. Tex. 2011).

Summary

Elements required to state a claim under the TDTPA, which includes being a consumer, the defendant's engagement in deceptive acts, and the causation of damages. It also emphasizes the need for particularity in pleading under Rule 9(b) for such claims. This is relevant to understanding the pleading requirements for state law claims in a federal RICO complaint, as similar standards of specificity and element satisfaction would apply.

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

Extract

A complaint alleging fraud also must satisfy the heightened pleading standard of Federal Rule of Civil Procedure 9(b). FED. R. CIV. P. 9(b). Generally, Rule 9(b)'s 'particularity' standard requires 'specificity as to the statements (or omissions) considered to be fraudulent, the speaker, when and why the statements were made, and an explanation of why they are fraudulent.' Plotkin v. IF Axess, Inc., 407 F.3d 690, 696 (5th Cir. 2005); Benchmark Elecs., Inc. v. J.M. Huber Corp., 343 F.3d 719, 724 (5th Cir. 2003). Accordingly, a plaintiff must plead the 'who, what, when, where, and how' of the fraud. Benchmark Elecs., Inc., 343 F.3d at 724 (citation omitted).

Summary

Clear explanation of the heightened pleading standard required for fraud claims under Federal Rule of Civil Procedure 9(b). It emphasizes the need for specificity in the allegations, including details about the fraudulent statements, the speaker, the timing, the reasons for the statements, and why they are considered fraudulent. This standard is crucial for ensuring that defendants have adequate notice of the claims against them and can prepare a defense.

[Relaxing rule 9\(b\): why False Claims Act relators should be held to a flexible pleading standard.](#)

Case Western Reserve Law Review - Case Western Reserve University School of Law - Smoter, Sara A. - 2015-09-22

Extract

Rule 9(b) strives mainly to put defendants on notice and allow them to prepare an appropriate defense. Further, it serves to protect defendants from frivolous claims and deter cases filed purely for settlement value, merely to reopen a completed transaction, or only to obtain discovery. Therefore, '[a] court should hesitate to dismiss a complaint under Rule 9(b) if the court is satisfied (1) that the defendant has been made aware of the particular circumstances for which she will have to prepare a defense at trial, and (2) that plaintiff has substantial prediscovery evidence of those facts.'

Summary

The passage highlights the purpose of Rule 9(b), which is to ensure that defendants are adequately informed of the claims against them so they can prepare a defense. It also emphasizes that courts should be cautious in dismissing complaints under Rule 9(b) if the defendant is aware of the circumstances and the plaintiff has substantial evidence. This suggests that in a federal RICO complaint, the plaintiff must provide specific details of the fraudulent scheme and evidence to support the claims, ensuring that the defendants are on notice.

[Conley v. Gibson](#)

Civil Procedure: Pleading - The Center for Computer - Assisted Legal Instruction (CALI) - Hillel H. Levin - 2011-03-09

Extract

In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

Summary

When alleging fraud in a federal complaint, the plaintiff must provide specific details about the fraudulent acts, including the "who, what, when, where, and how" of the alleged fraud. This requirement ensures that the defendant is given sufficient notice of the claims against them. However, conditions of the mind, such as intent or knowledge, can be alleged more generally. This standard is applicable in the Fifth Circuit and would apply to any state law fraud claims included in a federal RICO complaint.

[Related State Torts](#)

Litigating Employment Discrimination Cases. Volume 1-2 - James Publishing - Andrew H. Friedman - 2023-05-01

Extract

To recover damages for intentional infliction of emotional distress, a plaintiff must prove that: (1) the defendant acted intentionally or recklessly; (2) the conduct was extreme and outrageous; (3) the actions of the defendant caused the plaintiff emotional distress; and (4) the resulting emotional distress was severe." (GTE Southwest, Inc. v. Bruce, 998 S.W.2d 605, 611 (Tex. 1999)). "In order to sustain an action for fraud, the plaintiff must prove (1) that the defendant made a representation, (2) as to a material fact, (3) which was false, (4) and known to be false by the defendant, (5) that the representation was made for the purpose of inducing the other party to rely upon it, (6) that the other party rightfully did so rely, (7) in ignorance of its falsity, (8) to his injury.

Summary

The passage provides the elements required to plead intentional infliction of emotional distress and fraud under Texas law, which is relevant to the Fifth Circuit. For intentional infliction of emotional distress, the conduct must be intentional or reckless, extreme and outrageous, and cause severe emotional distress. For fraud, the plaintiff must show a false representation of a material fact, known to be false, made to induce reliance, which the plaintiff relied upon to their detriment.

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

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

Extract

A RICO-based complaint must be drafted with the following instructions from Sedima as a guide. 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 practitioner through their pleadings must articulate with great care and attention a viable racketeering conspiracy. The court must read the facts alleged in the complaint in the light most favorable to the plaintiff. But a plaintiff who is unable to identify the enterprise, satisfy the pattern requirement, or plead other statutory elements with sufficient specificity can be subject to a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Additionally, to the extent that any predicate acts sound in fraud, the pleading of those acts must satisfy the particularity requirements of Federal Rule of Civil Procedure 9(b), which provides: 'In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.' The complaint

must describe the predicate acts with specificity and state the time, place, and content of the alleged communications perpetrating the fraud.

Summary

A RICO complaint must allege each element of a RICO violation with specificity, particularly when fraud is involved. The complaint must satisfy Federal Rule of Civil Procedure 9(b) by stating the circumstances of the fraud with particularity, including the time, place, and content of the alleged fraudulent communications. This requirement is crucial to withstand a motion to dismiss under Rule 12(b)(6).

[Famously Fake: Using the Law to Reverse the Demise of Social Media Credibility](#)

Federal Communications Law Journal - The George Washington University Law School - Dunn, Delaney - 2023-01-01

Extract

The elements of a fraud claim in New York and California are: (1) a misrepresentation, (2) knowledge of falsity, (3) intent to defraud, (4) justifiable reliance, and (5) resulting damage.

Summary

Foundational understanding of what constitutes a fraud claim, which can be applied to the Fifth Circuit's requirements.

[§ 2.07 Other Potential Charges](#)

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

Extract

RICO also provides for civil remedies. Under Section 1964 'any person injured in his business or property by reason of a violation of section 1962' may bring a civil action in either state or federal court for redress. Thus, a plaintiff in a civil action must show, in addition to one of the four acts described in § 1962, an injury to business or property. A showing of such injury requires proof of concrete financial loss, not 'mere injury' to a valuable intangible property interest. *Oscar v. University Students Co-Op. Ass'n*, 965 F.2d 783, 785 (9th Cir. 1992). Generally, personal injuries are not recoverable under RICO. See id. at 785-86 (citing *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339, 99 S. Ct. 2326, 60 L. Ed. 2d 931 (dictum)). Further, in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 268 112 S. Ct. 1311, 117 L. Ed. 2d 532 , the United States Supreme Court held that the "by

reason of language in section 1964(c) means that in order to prevail on a civil RICO claim, the plaintiff must show that the defendant's violation was the 'proximate cause' of the plaintiff's injury.'

Summary

For a civil RICO claim, a plaintiff must demonstrate an injury to business or property, which requires proof of concrete financial loss. Personal injuries are generally not recoverable under RICO. Additionally, the plaintiff must show that the defendant's violation was the proximate cause of the injury. This information is relevant to understanding the requirements for pleading state law claims in a federal RICO complaint, as it highlights the necessity of demonstrating a direct link between the alleged RICO violation and the injury claimed.

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