

Question

Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 1 of 45 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA CHARLES DUSTIN MYERS, § § Plaintiff, § V. § § DANIEL KENNETH BRANTHOOVER § & § MORGAN MICHELLE MYERS § § Defendants § FILED JUN 24 2025 JOAN KANE, CLERK ~vs. D1sr. cou5J~" 2t'ND IST. OKLA. ---.....f...{;(t.J- ~:::..!::_, DEPUTY Case No. CIV-24-1311-R FIRST AMENDED COMPLAINT Plaintiff Charles Dustin Myers, representing himself pro-se and proceeding in Jonna pauperis respectfully files this First Amended Complaint against Daniel Kenneth Branthoover and Morgan Michelle Myers. The original complaint filed on December 16, 2024, is respectfully amended to incorporate Morgan Michelle Myers as an additional defendant and Plaintiff has provided this Court with the necessary materials to effectuate service prior to the July 11 deadline, as extended by this court pursuant to its recent order issued on June 11, 2025. 1 1 See Doc 15. 1 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 2 of 45 . . I. JURISDICTION AND VENUE 1. This Honorable Court possesses subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as Plaintiff's claims arise under the laws of the United States, specifically the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964(c) and § 1964(d), which explicitly grants federal courts jurisdiction over civil RICO actions. Further, jurisdiction is established under 18 U.S.C. § 1965, which provides for nationwide service of process and jurisdiction in RICO actions, thereby ensuring that all Defendants, regardless of their physical location within the United States, are subject to the jurisdiction of this Court. 2. Venue is proper in the United States District Court for the Western District of Oklahoma pursuant to 18 U.S.C. § 1965(a) and 28 U.S.C. § 1391(b). A substantial part of the events or omissions giving rise to the claims asserted herein occurred within this District. 3. Additionally, "any person injured in his business or property by reason of a violation of section 1962 ... may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee .. ." 18 U.S.C § 1964. Plaintiff alleges to have a direct and ongoing injury to his business and property as a result from the alleged predicate acts herein. 2 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 3 of 45 II. PARTIES A. Identification 4. Plaintiff Charles Dustin Myers, referred to herein as "Plaintiff", is a natural person and a resident of the State of Texas and is legally domiciled in Tarrant County. 5. Defendant Daniel Kenneth Branthoover, referred to herein as "Branthoover", is a natural person and a resident of the state of Oklahoma and is domiciled in Canadian County. 6. Defendant Morgan Michelle Myers, referred to herein as "Myers", is a natural person, and a resident of the State of Texas and is legally domiciled in Tarrant County. 7. Collectively, Branthoover and Myers are referred to herein as "the Defendants". B. Representation 8. Plaintiff is representing himself in this matter. 9. Myers is believed to be self-represented at this time. 10. Branthoover is believed to be self-represented at this time. 3 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 4 of 45 III. PRELIMINARY STATEMENT 11. At the heart of this litigation lies a deliberate and orchestrated scheme by Defendants

Morgan Michelle Myers and Daniel Kenneth Branthoover, who strategically chose to displace Plaintiff from his home and destabilize his financial and familial security. Branthoover administered and Myers meticulously executed a calculated plan involving interstate travel, fraudulent affidavits, deliberate perjury, asset diversion, and systematic manipulation of multiple Texas state courts to escape accountability for her actions. 12. To carry out this scheme, Myers enlisted the assistance of Daniel Kenneth Branthoover, a resident of Yukon Oklahoma, who has a prior history regarding violations of protective orders and tampering with government documents. For no other reason than to escape accountability for her affair, Myers spun an elaborate web of lies and weaponized her family and court procedures designed to help victims of abuse. 13. What emerges from the evidence is not a domestic dispute gone awry, but a textbook criminal enterprise created within this Court's Jurisdiction. This is the story of how a person corruptly influenced the very courts designed to protect families transforming them into instruments of fraud, extortion, and systematic theft. It is a tale of how two individuals, connected by a common goal, orchestrated a seventeen-month reign of terror that began in Oklahoma and was carried out in the Texas courts. 14. The Defendants did not merely lie to courts-they constructed an elaborate criminal enterprise with defined roles, coordinated operations, and a singular mission: to strip Plaintiff of everything he held dear through the systematic corruption of judicial proceedings. They engaged in laundering funds across state lines while concurrently submitting fraudulent indigency claims. They did not just fabricate allegations-they manufactured an entire false narrative of domestic violence, complete with non-existent protective orders and imaginary threats, all while the supposed "victim" continued to share a bed with her alleged "abuser." 15. This case shows how the family court system can be perverted by those willing to commit federal crimes to achieve their goals. It reveals how easily the sacred trust placed in sworn affidavits can be shattered by defendants who view perjury not as a crime, but as a tool. Most importantly, it demonstrates that when domestic relations become the vehicle for interstate racketeering, federal intervention is not just appropriate-it is essential. 16. This is not a story about a marriage that failed. This is simply the product of a litigant who values her extramarital relationships over morality, and who chose to weaponize her family against Plaintiff for the sole purpose of escaping accountability. 17. After extensive research and vigorous advocacy, Plaintiff asserts that Defendants engaged in racketeering activity through an organized enterprise, seeking relief to prevent its finalization. Against all odds, and in support of this preliminary statement, Plaintiff alleges the following: 5 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 6 of 45 IV. FACTUAL ALLEGATIONS A. Enterprise Formation and Initial Criminal Coordination (December 14-15, 2023) 18. Defendant Branthoover possesses extensive knowledge of protective order procedures and requirements due to his prior criminal convictions involving violations of such orders. This knowledge would prove instrumental in the enterprise's systematic manipulation of protective order proceedings. 19. On December 14, 2023, immediately following Plaintiff's discovery of Defendant Myers' extramarital affair, she initiated the criminal enterprise by taking two coordinated actions: first, she opened a private bank account in her sole name to facilitate asset concealment; and second, she commenced intensive

interstate communications with Defendant Branthoover via text messaging. The scope and intensity of these communications-totaling 92 text messages exchanged between Branthoover's registered number 940-312-3434 and Myers' registered number 817-235-5189 on this single day demonstrates the deliberate and coordinated nature of their criminal planning. 20. While coordinating with Branthoover, Defendant Myers tried to secure an ex parte protective order against Plaintiff, without legitimate cause. This action marks the enterprise's first attempt to manipulate judicial proceedings through false allegations. 21. Despite having just sought emergency protection from Plaintiff hours earlier, Myers casually reminded him of their child's school field trip scheduled for the following day, thereby creating a facade of normalcy designed to conceal her fraudulent intentions and prevent suspicion of the enterprise's activities. 6 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 7 of 45 B. Interstate Criminal Coordination and Financial Crimes (December 15-16, 2023) 22. On December 15, 2023, at precisely 9:51 A.M. CST, Defendant Branthoover contacted Plaintiff directly, employing calculated deception by stating, "I've been where you are before. I want to help both of you." This communication, referencing Myers' December 1, 2023 divorce announcement, was designed to establish false pretenses for Myers' planned interstate travel to Oklahoma for criminal coordination purposes. 23. During this deceptive phone conversation, Branthoover established the operational framework for the next phase of the criminal scheme by attempting for Myers to visit his Oklahoma residence over the weekend of December 15, 2023. The stated purpose-"providing space" to Myers-was a deliberate misrepresentation designed to conceal the true criminal purpose of coordinating fraudulent document preparation and enterprise operations. 24. Having no reason to suspect Branthoover's dishonest intentions, Plaintiff unwittingly facilitated the enterprise's criminal coordination by agreeing to Myers' travel to Oklahoma. 25. Immediately following Branthoover's deceptive phone call, the enterprise executed its first major financial crime. Plaintiff received notification that Myers had transferred \$1,576 from the parties' joint marital PNC account to Branthoover's Pay Pal account (username "dmb575"), completely depleting the account balance. This interstate wire transfer represents a critical predicate act, utilizing interstate commerce to further the criminal scheme while simultaneously depriving Plaintiff of operating funds necessary for his legitimate business operations, household bills, and Christmas gifts. 7 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 8 of 45 26. The immediate and devastating impact of this financial crime became apparent on December 16, 2023, when Plaintiff received notification that the joint marital PNC account was overdrawn by \$800.00. Concurrently, Plaintiff discovered that advertisements for his legitimate home-based business had ceased running due to payment failure directly caused by the enterprise's theft of operating funds. This demonstrates the enterprise's deliberate intent to cause maximum financial harm to Plaintiff. 27. The criminal nature of this financial transaction is conclusively established by documentary evidence. The PNC bank statement for December 2023 provides irrefutable proof of the unauthorized withdrawal, documenting the precise date, amount, and destination of the fraudulent transfer. 28. The direct connection between Defendant Branthoover and this financial crime is established through multiple forms of evidence. The PayPal identifier "dmb575" appearing on Plaintiff's bank statement directly corresponds to

Branthoover's Pay Pal account, creating an unbreakable evidentiary chain linking him to the illicit financial transaction, corroborated by his own admissions in subsequent text communications. 29. On December 16, 2023, at precisely 3:54 P.M. CST, Plaintiff made a goodfaith attempt to resolve the situation amicably by sending a detailed text message to Defendant Branthoover. This communication explicitly requested the return of the fraudulently transferred \$1,576, detailed the intended legitimate use of these funds, described the financial hardship caused by the theft (including late bills and business disruption), explained Plaintiff's inability to work due to the severe emotional distress 8 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 9 of 45 caused by Defendants' criminal actions, and expressed his sincere desire for an amicable resolution during the holiday season. 30. Defendant Branthoover's response to this reasonable request revealed the true criminal nature of the enterprise. In a callous and dismissive reply, Branthoover stated, "You Are Getting Divorced ... " followed by, "I hope I can help with the paperwork and make things go as smoothly as possible." Far from the helpful assistance initially promised, this communication constituted a direct threat and overt act in furtherance of the criminal conspiracy, demonstrating Branthoover's intent to exploit Plaintiffs financial distress for the enterprise's benefit while utilizing interstate communications to further the scheme. 31. This communication also establishes Branthoover's unauthorized practice of law across state lines. At no time relevant to this litigation has Defendant Branthoover possessed a license to practice law in any jurisdiction within the United States. His statements regarding "paperwork" and making legal proceedings "go as smoothly as possible" constitute clear evidence of unauthorized legal practice and demonstrate his administrative role in directing the enterprise's criminal activities. C. Coordinated Eviction Attempt Fraud and Interstate Document Transportation (December 17, 2023) 32. On December 17, 2023, at approximately 11 :00 A.M., Plaintiff was served with an eviction notice by the grandmother of Myers, who is also the landlord of the matrimonial residence, which contained the following false information: 1. A purported "lease violation," which was entirely fabricated as no 9 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 10 of 45 valid lease agreement existed between Plaintiff and Wilson; 11. The assertion that "Granddaughter getting divorced," referring to Defendant Myers, as a basis for eviction; iii. The false claim that a "Protective order has been filed." 1v. The directive that "He must leave. She and the girls may stay," demonstrating the clear intent to dispossess Plaintiff for the benefit of Myers. 33. The coordinated and premeditated nature of this eviction fraud is established by the timing of its execution. At the precise moment this fraudulent notice was being served in Texas, Defendant Myers was physically present in Oklahoma with Defendant Branthoover, actively collaborating in the preparation of the very fraudulent court documents referenced in the eviction notice. 34. Myers' knowledge of the fraudulent nature of the eviction attempt is conclusively established. She possessed actual knowledge that no valid lease agreement existed, and she had actual knowledge that neither divorce proceedings nor protective orders had been filed at the time of service, making her participation in the eviction fraud a knowing and willful criminal act. 35. On December 17, 2023, Defendant Myers completed the interstate transportation phase of the criminal scheme by transporting the fraudulent court documents prepared in Oklahoma back

across state lines to Texas. These documents, including the Original Petition for Divorce and Affidavit of Indigency, were specifically 10 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 11 of 45 prepared with the intent of submitting them to Texas state courts to further the enterprise's fraudulent manipulation of judicial proceedings. 36. Upon her return to Texas, Myers demonstrated her control over the eviction fraud by personally destroying the fraudulent eviction notice. She physically tore the notice in half and wrote "VOID" on it in black marker, providing clear evidence of her influence over and coordination of the fraudulent eviction attempt orchestrated during her absence in Oklahoma. D. Operational Security and Document Preparation (December 17-18, 2023) 37. As part of the enterprise's operational security measures, Defendant Myers returned from Oklahoma equipped with a canister of pepper spray, designed to support the false narrative of domestic violence that would be central to the fraudulent court documents prepared during her Oklahoma visit. 38. During her Oklahoma visit, Defendant Myers acquired a secondary phone number (817-940-0852) as a deliberate operational security measure. This acquisition, which she explicitly disclosed to Plaintiff, constituted an overt act in furtherance of the criminal enterprise, designed to facilitate clandestine communications related to the fraudulent scheme while concealing the enterprise's ongoing criminal coordination from detection. 39. This newly acquired secondary phone number became an integral component of the fraudulent court documents prepared under Defendant Branthoover's direct administrative oversight. The systematic use of this number across multiple fraudulent legal documents demonstrates the coordinated nature of the enterprise's document 11 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 12 of 45 preparation activities. These documents, prepared in Oklahoma with the specific intent of unlawfully influencing Texas legal proceedings, included: 1. An "Original Petition for Divorce" dated December 18, 2023, containing numerous material false statements designed to deceive the Texas courts; 11. An "Affidavit of Indigency" dated December 18, 2023, containing deliberate misrepresentations regarding Myers' financial status to defraud the court of legitimate filing fees; iii. A "Request for Uncontested Cases" dated December 18, 2023, fraudulently filed despite the complete absence of any communication between the parties regarding divorce proceedings; 1v. An "Application for Protective Order" dated December 22, 2023, containing entirely fabricated allegations of family violence. E. Unauthorized Practice of Law and Intimidation (December 18, 2023) 42. 40. Following the filing of the initial fraudulent divorce documents on December 18, 2023, Defendant Branthoover escalated his unauthorized practice of law by sending Plaintiff a text message asserting legal representation and attempting to control all future communications. The message stated: "Charlie, its come to my understanding you have retained an attorney. I'm sure he has told you that all further communication should take place between attorneys. I must formally ask you refrain from discussing details of this case with my client moving forward and only communicate with me or your attorney." 12 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 13 of 45 This communication was a deliberate attempt to isolate Plaintiff from direct communication with Myers and to control the flow of information, thereby hindering Plaintiff's ability to uncover the full extent of the fraudulent scheme. This communication also evidences that Branthoover's role went

beyond helping Myers prepare the documents by seeing them through to their submission and asserting an administrative role over the proceedings to intimidate Plaintiff. F. Service Through Official Channels and Continued Deception (December 22-28, 2023) 41. In furtherance of the criminal scheme, and despite continuing to cohabitate with Plaintiff in the marital residence, Defendant Myers deliberately utilized official constable service to effectuate service of the fraudulent divorce petition and protective order application, which occurred on December 27, 2023. This calculated use of official legal processes to serve fraudulent documents while maintaining the deceptive facade of normalcy at home demonstrates the sophisticated and deliberate nature of the enterprise's operations. 42. The enterprise's manipulation of official legal processes continued when Myers, despite residing next door to Plaintiff, deliberately influenced and coordinated the constable service of the fraudulent eviction documents, which occurred on December 28, 2023. This systematic abuse of official legal processes while maintaining physical proximity and continued cohabitation reveals the calculated and deceptive nature of the enterprise's operations. 13 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 14 of 45 G. Systematic False Statements in Sworn Court Documents (December 18, 2023) 43. When reviewing the documents prepared in part by Branthoover and filed with the court by Myers, there existed several false statements and were intended to deceive the court and prejudice Plaintiff in furtherance of the scheme to dispose him of his property interests. Specifically, these false statements included, but were not limited to: 1. The assertion that the spouses had ceased living together on December 1, 2023, when in fact they were still residing together at the marital home on that date and for several weeks thereafter. 11. The claim that Defendant Myers owned both family vehicles as her separate property prior to the marriage, which was demonstrably false as these vehicles were acquired during the marriage and constituted community property, paid for by Plaintiff. m. The representation that Defendant Myers had an active order of protection against Plaintiff with a judicial finding that family violence had occurred during the marriage, which was fabricated and without any basis in fact or law. 1v. The assertion that the children or Defendant Myers would be subjected to harassment or abuse if Plaintiff were provided with her second phone number (817-940-0852) acquired in Oklahoma, which was a baseless and manipulative claim designed to conceal her communications related to the fraudulent scheme. 14 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 15 of 45 44. Concurrently with the fraudulent divorce petition, Defendant Myers, again with the administrative oversight and full knowledge of Defendant Branthoover, filed a fraudulent "Affidavit of Indigency" with the court. This affidavit contained material misrepresentations regarding Defendant Myers' financial status, all of which were known to be false at the time of filing and were intended to defraud the court and avoid legitimate court costs. Specifically, these false statements included: 1. The claim that Defendant Myers was financially indigent and unable to pay court costs, despite her access to and control over substantial marital assets. 11. The representation that Defendant Myers was solely responsible for all family living expenses, including rent, utilities, food, and other living expenses, when in fact, Plaintiff was the primary breadwinner of the household at that time. 111. The assertion that Defendant Myers was solely responsible for both car payments, which she has no payment history to support such a claim. H.

Escalation Through Fabricated Violence Allegations (December 22, 2023)

45. On December 22, 2023, despite having claimed in her divorce petition to already possess an active protective order, Myers filed an "Application for Protective Order," revealing the contradictory and fabricated nature of her previous representations while escalating the enterprise's fraudulent manipulation of judicial proceedings. 15 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 16 of 45 46. Upon review, defendant Myers made additional false statements within the sworn document, all intended to further deceive the court and secure an unwarranted protective order against Plaintiff to effectuate the enterprises' goal of divesting him of his property interests. These false statements included, but were not limited to:

- i. The claim that family violence occurred on December 18, 2023, in the presence of the children, which was entirely false and fabricated. 11. The assertion that family violence occurred prior to December 18, 2023, which was also false and without any factual basis. 111. The request that Plaintiff take a battering intervention program. I. Achievement of Primary Criminal Objective (January 16, 2024) 47. On January 16, 2024, the enterprise's criminal scheme achieved its primary objective when Plaintiff appeared before the 322nd District Court of Tarrant County and was ordered to vacate the family residence. Significantly, this order was entered without any evidentiary hearing and without judicial findings regarding the allegations contained in the fraudulent documents, demonstrating that the court's decision was based entirely on the false information systematically presented by the Defendants. 48. The causal relationship between the Defendant's fraudulent representations and this judicial outcome is conclusively established. The misinformation presented to the court through the coordinated fraudulent documents was the sole basis for the court's decision, providing Myers with the exact advantage that she and Branthoover had anticipated and planned through significant and intentional misrepresentations. 16 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 17 of 45 J. Ongoing Pattern of Racketeering Activity and Continuity (January 2024 - Present) 49. Between January 16, 2024, and the present day, Defendants Myers and Branthoover have continued to further their racketeering activity through a series of ongoing illicit acts, demonstrating a clear pattern of continuity and relatedness. These acts include, but are not limited to: 1. Myers and Branthoover continuing to engage in interstate communications regarding case details between one another across state lines, specifically between Texas and Oklahoma, in direct furtherance of their fraudulent scheme to see the divorce through to its finalization. 11. Branthoover delivering ongoing threats and intimidation to Plaintiff regarding his legitimate attempts to seek legal relief from the orders that were a product of the Defendants' actions, which occurred in December of 2023, June of 2024, December of 2024, and May of 2025. 111. Making direct statements such as "I've been enjoying watching every filing get denied" by Branthoover, showing the malicious intent behind his involvement as Plaintiff sought relief for their coordinated actions. 50. On June 23, 2024, Defendant Branthoover continued his pattern of harassment and intimidation by sending Plaintiff a text message stating, "Loi. And here comes 17 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 18 of 45 another denial," in direct reference to Plaintiff's court filing seeking to enjoin Branthoover as a party to the divorce proceedings. This communication provides conclusive evidence of Branthoover's continued awareness of and

active involvement in the Texas legal proceedings, his ongoing monitoring of court filings, and his malicious intent to mock and intimidate Plaintiff's efforts to seek justice through legitimate legal channels. 51. On December 12, 2024, Branthoover escalated his threatening communications by sending Plaintiff a message stating, "When things all over you get to deal with me. Just a heads up," demonstrating the enterprise's ongoing criminal intent and explicit threats of future retaliation against Plaintiff for his efforts to expose and seek relief from their criminal activities. 52. Most recently, on May 24, 2025, Branthoover sent Plaintiff a message stating, "Where's my lawsuit? Heard your vm about me. File it. Let's do this:)" This communication demonstrates the enterprise's continued operation, Branthoover's ongoing monitoring of Plaintiffs activities, and his explicit challenge and threat regarding potential legal action, providing clear evidence of the enterprise's ongoing criminal intent and the continuing threat posed to Plaintiff. 53. As a direct result of the actions outlined above, Plaintiff has sustained substantial injury to his business and property. 54. Plaintiff now turns to discuss the elements of RICO and the alleged predicate acts committed by the Defendants in this matter. 18 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 19 of 45 V. INTRODUCTION TO RICO 55. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 54 above, as if fully set forth herein. 56. The Racketeer Influenced and Corrupt Organizations Act (RICO) requires proof of a "pattern of racketeering activity," which the Supreme Court has consistently held consists of two essential elements: relatedness and continuity of predicate acts. Based on the provided facts and the applicable law, the Defendants' series of related acts spanning from December 2023 through May 2025 (approximately 18 months) satisfies both the relatedness requirement (as the acts share similar purposes, participants, and methods) and the continuity requirement (as they extend over a substantial period of time) necessary to establish a pattern of racketeering activity under RICO as explained in more detail below. 57. For there to be a pattern of racketeering activity, there must be conduct committed by an enterprise that is prohibited under 18 U.S.C. § 1961. In the instant matter, Defendants are alleged to have committed several predicate acts, including wire fraud, violations of the Travel Act, and perjury/subordination of perjury to support a pattern of racketeering activity, as explained in more detail below. VI. PREDICATE ACT - WIRE FRAUD (18 U.S.C. § 1343) 58. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 57 above, as if fully set forth herein. 59. The relevant federal statutes in this analysis are 18 U.S.C. § 1343 (Wire Fraud) and 18 U.S.C. § 1961 (RICO Definitions). 19 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 20 of 45 60. Title 18 U.S.C. § 1343 states: "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both." 61. The facts above establish all three elements of wire fraud under 18 U.S.C. § 1343-a scheme to defraud, use of interstate wire communications, and intent to deprive another of money or property-qualifying it as a RICO predicate act under 18 U.S.C. § 1961. A. Scheme to

Defraud 62. The first element of wire fraud under 18 U.S.C. § 1343 is the existence of "a scheme to defraud." As noted in *United States v. Greenberg*, 835 F.3d 295 (2nd Cir. 2016), this constitutes an "essential element" of the crime. In the present case, Myers transferred \$1,576 from a joint marital PNC account to Branthoover's PayPal account, depleting the account entirely. This transfer was not an isolated action but was accompanied by "a series of coordinated text messages and phone calls" between Myers and Branthoover regarding the scheme, and followed after a deceptive message was sent from Branthoover to Plaintiff. 63. The coordination between the parties through multiple communications channels demonstrates a deliberate plan rather than a spontaneous or inadvertent action. As articulated in *Mail and Wire Fraud*, a "scheme to defraud requires a material falsehood, material misrepresentation, or the concealment of a material fact." By 20 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 21 of 45 transferring funds from a joint marital account without apparent authorization from the joint account holder, Myers engaged in conduct that reflects the concealment of material facts regarding the disposition of marital assets. 64. The scheme in this case specifically targeted marital funds, and community property, which are legally considered shared property between spouses. By depleting the account, Myers intentionally deprived the Plaintiff of access to funds to which he was legally entitled. This satisfies the requirement that the scheme have "money or property as the object of the scheme" as stated in *Smulley v. Fed Haus. Fin. Agency*, 17-2666 (2nd Cir. Oct 05, 2018). B. Use of Interstate Wire Communications 65. The second element of wire fraud requires the "use of the mails or wires to further the scheme." *United States v. Greenberg*, 835 F.3d 295 (2nd Cir. 2016). The facts demonstrate that Myers used interstate wire communications in two distinct ways: 1. The transfer of \$1,576 was "executed via interstate wire (bank to Pay Pal)," which constitutes an electronic transmission across state lines. 11. The transfer "was accompanied by a series of coordinated text messages and phone calls between Myers (in Texas) and Branthoover (in Oklahoma) regarding the scheme." 66. Wire transmissions include interstate telephone calls or electronic transmissions. Furthermore, internet communications satisfy the interstate nexus 21 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 22 of 45 requirement, even in the absence of proof that a fraudulent communication traveled through out-of-state servers. 67. The interstate nature of these communications is established by the fact that Myers was in Texas while Branthoover was in Oklahoma during their communications about the scheme. This satisfies the jurisdictional requirement that the wire communication cross state lines. C. Intend to Defraud 68. The third element requires that the defendant acted "with the intent to defraud." As stated in *US. v. Blackmon*, 839 F.2d 900 (2nd Cir. 1988), the wire fraud statute requires that the defendant "be a party to some kind of scheme to defraud, a requirement that includes a high degree of scienter and moral culpability." 69. Here, Branthoover specifically stated that he wanted to help Plaintiff, which he knew was not a true statement at the time. The fact that text and phone communications were used to deceive Plaintiff into believing that Myers' interstate travel would be beneficial for him further supports a scheme to defraud, because the transfer of funds occurred after this false extension of help from Branthoover. 70. In summary, the facts presented establish all required elements of wire fraud under 18 U.S.C. § 1343,

qualifying it as a predicate act for RICO purposes under 18 U.S.C. § 1961, committed by both Defendants. D. Potential Defenses 71. One potential defense might be that Myers, as a joint account holder, had legal authority to transfer funds from the account. However, this authority does not extend to 22 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 23 of 45 depleting the account for personal gain in coordination with a third party with the intent to deprive the other account holder of their rightful access to the funds. The joint nature of the account creates a fiduciary duty to act in good faith regarding the shared asset. That fiduciary duty was willingly violated when Myers chose to transfer the funds to Branthoover's Pay Pal, and then later to herself. The appropriate method would have been for Myers to transfer the funds directly to herself, but she avoided this to conceal her bank account information in furtherance of a broader scheme.

72. This argument fails because the proceeds from the transfer were used to acquire a second phone in furtherance of the broader scheme. VII.

PREDICATE ACT-VIOLATION OF THE TRAVEL ACT (18 U.S.C. § 1952) 73. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 72 above, as if fully set forth herein. 74. The Travel Act, codified at 18 U.S.C. § 1952, criminalizes interstate travel or the use of interstate facilities with the intent to promote, manage, establish, carry on, or facilitate unlawful activity, followed by the performance or attempted performance of such acts. According to 18 U.S.C. § 1952: "Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to- ... otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform- ... an act described in paragraph or shall be fined under this title, imprisoned not more than 5 years, or both ... " 75.

The statute has three essential elements: 1. Interstate travel or use of interstate facilities 23 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 24 of 45 ii. Intent to promote, manage, establish, carry on, or facilitate unlawful activity iii. Subsequent performance or attempted performance of acts in furtherance of the unlawful activity 76. For a Travel Act violation to serve as a RICO predicate act, it must be "indictable" under 18 U.S.C. § 1952. Myers' conduct, as analyzed above, satisfies all elements of a Travel Act violation: 1. Myers engaged in interstate travel between Texas and Oklahoma. 11. Myers traveled with the specific intent to coordinate the preparation of fraudulent court documents and execute a criminal scheme. Under *United States v. Compton*, 355 F.2d 872 (6th Cir. 1966), this intent can be inferred from "evidence of a substantial course of illegal conduct, occurring a reasonable time before and after an act of interstate travel." The preparation of fraudulent court documents falls within the definition of "unlawful activity" under the Travel Act, as it involves fraud, which is indictable under state law. iii. After the interstate travel, Myers engaged in overt acts to further the unlawful activity by preparing fraudulent legal documents and coordinating the fraudulent scheme. As *U.S. v. Admon*, 940 F.2d 1121 (8th Cir. 1991) clarified, the conduct after travel need not itself be unlawful but must further the unlawful activity. The preparation and use of fraudulent documents clearly meet this requirement. 24 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 25 of 45 77. Given that Myers' conduct satisfies all elements of a Travel Act violation, this violation qualifies as an "indictable" offense under 18 U.S.C. § 1952. As such, it constitutes a valid

predicate act for RICO purposes under 18 U.S.C. § 1961(1). 78. The Supreme Court's explanation in *Perrin v. United States*, 444 U.S. 37 (1979) that the Travel Act was intended to provide "a second layer of enforcement" for interstate criminal activity underscores the significance of federalizing crimes that cross state lines. Myers' conduct, involving interstate travel for the purpose of engaging in fraudulent activities, is precisely the type of behavior that the Travel Act was designed to address. VIII. PATTERN OF RACKETEERING ACTIVITY 79. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 78 above, as if fully set forth herein. 80. A "pattern of racketeering activity" requires at least two acts of "racketeering activity" occurring within a ten-year period. 18 U.S.C. § 1961 (2025) ("pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity"). 81. However, the mere existence of two predicate acts is not automatically sufficient to establish a pattern. As explained in *Bonton v. Archer Chrysler Plymouth, Inc.*, 889 F.Supp. 995 (S.D. Tex. 1995): 25 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 26 of 45 "Although at least two acts of racketeering are necessary to constitute a pattern, two acts may not be sufficient. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 n. 14, 105 S.Ct. 3275, 3285 n. 14, 87 L.Ed.2d 346 (1985). RICO's legislative history leaves no doubt that 'there is something to a RICO pattern beyond simply the number of predicate acts involved.'" 82. Instead, courts have established that to prove a pattern, the predicate acts must be both related and continuous. *Bustos v. Invierte En Tex.*, 4:22-CV-02690 (S.D. Tex. Jun 03, 2024) ("To rise to the level of 'racketeering activity' there must be two or more predicate acts that are: (1) related; and (2) amount to or pose a threat of continued criminal activity."). A. Establishing a Pattern of Racketeering Activity 83. The factual allegations identify several instances that constitute wire fraud under 18 U.S.C. § 1343 and violations of the Travel Act under 18 U.S.C. § 1952: 1. The extensive text message communications (92 exchanges) on December 14, 2023, between Myers and Branthoover using interstate wire facilities to coordinate their scheme. 11. Branthoover's deceptive phone call to Plaintiff on December 15, 2023, where he falsely stated, "I've been where you are before. I want to help both of you," to facilitate Myers' interstate travel to Oklahoma. 111. The interstate wire transfer of \$1,576 from the joint marital account to Branthoover's PayPal account, which was executed to deprive Plaintiff of funds. 26 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 27 of 45 iv. Branthoover's text messages to Plaintiff on December 16, 2023, refusing to return the transferred funds and offering to "help with the paperwork." v. Branthoover's text message on December 18, 2023, falsely claiming to be a legal representative. vi. The ongoing interstate communications between Myers and Branthoover to further their fraudulent scheme, continuing through May 2025. 84. The factual allegations also demonstrate potential Travel Act violations: 1. Myers' interstate travel from Texas to Oklahoma on December 15, 2023, with the intent to prepare fraudulent court documents. 11. The interstate transportation of fraudulent documents from Oklahoma back to Texas on December 17, 2023, intended for filing in Texas courts. iii. The use of interstate facilities (phone calls, text messages) to coordinate and further the fraudulent scheme. B. Relatedness of Predicate Acts 85. The

predicate acts of wire fraud and Travel Act violations are clearly related, meeting the standard outlined in *Bonton v. Archer Chrysler Plymouth, Inc.*, 889 F.Supp. 995 (S.D. Tex. 1995). They share: 27 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 28 of 45 i. Common Purpose: All acts were directed toward depriving Plaintiff of his property rights and manipulating judicial proceedings to benefit Myers in divorce proceedings. 11. Same Participants: Myers and Branthoover were the consistent actors in all predicate acts. 111. Same Victim: All acts targeted Plaintiff, causing him financial harm and depriving him of legal rights. 1v. Similar Methods: The acts consistently involved deception, misrepresentation, and the manipulation of legal processes. v. Temporal Connection: The acts occurred in a logical sequence, beginning on December 14, 2023, and continuing through May 2025. C. Continuity of Racketeering Activity 86. The pattern of racketeering activity demonstrates both closed-ended and openended continuity: 1. Closed-ended Continuity: The scheme extends over a substantial period- from December 2023 through May 2025, over eighteen months. This satisfies the requirement for "a series of related predicate acts extending over a substantial period of time" as described in *RICO: A Primer* (2022). 2 2 <https://freemanlaw.com/rico-a-primer/> 28 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 29 of 45 11. Open-ended Continuity: The scheme also poses a threat of continued criminal activity. Branthoover's message on May 24, 2025, demonstrating continued monitoring of Plaintiffs activities and threatening future retaliation, indicates that the racketeering activity could continue indefinitely given that they are unable to finalize the divorce. This satisfies the alternative requirement for "a threat of continuing criminal activity extending indefinitely into the future" noted in *RICO: A Primer* (2022). D. Role of Perjury and Subornation of Perjury 87. While perjury and subornation of perjury in state court proceedings are not themselves listed as predicate acts under RICO, they form an integral part of the overall criminal scheme and help establish the pattern of racketeering activity when considered alongside the actual predicate acts of wire fraud and Travel Act violations. 88. As explained in *RICO: A Primer* (2022), racketeering acts need not be similar or directly related to each other; they must simply be "related in some way to the affairs of the charged enterprise." The perjury and subornation of perjury evident in the fraudulent court filings- including the false statements in the divorce petition, the Affidavit of Indigency, and the Application for Protective Order-are directly related to the predicate acts of wire fraud and Travel Act violations. They share the same purpose, involve the same participants, target the same victim, and form part of the same overall scheme. For example: 29 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 30 of 45 1. The fraudulent court documents were prepared during Myers' interstate travel to Oklahoma, connecting the perjury to the Travel Act violation. 11. The false statements in these documents were discussed and planned via interstate wire communications, connecting the perjury to the wire fraud. 111. The deceptive interstate wire transfer of funds was executed to support Myers during the divorce proceedings initiated through fraudulent filings. iv. The perjurious statements were influenced by Branthoover, connecting subordination of perjury to the predicate acts. 89. These connections demonstrate how the non-predicate acts of perjury committed by Myers and subornation of perjury alleged against Branthoover, while not sufficient alone to establish a RICO violation, contribute to the overall pattern of

racketeering activity when combined with the predicate acts of wire fraud and Travel Act violations alleged by the Defendants. IX. ESTABLISHING AN ASSOCIATE-IN-FACT ENTERPRISE 90. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 89 above, as if fully set forth herein. 30 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 31 of 45 A. Formation of the Enterprise 91. The factual allegations demonstrate the formation of an associate-in-fact enterprise between Myers and Branthoover that satisfies the definition in 18 U.S.C. § 1961 (2025). i. Myers and Branthoover associated for the common purpose of depriving Plaintiff of his property rights through the manipulation of legal proceedings. This shared objective is evident from their coordinated actions beginning on December 14, 2023, immediately following Plaintiffs discovery of Myers' affair. ii. Though informal, the enterprise had a clear organizational structure as 1) Myers acted as the "inside" operative, with direct access to marital assets and the ability to file fraudulent court documents in Texas. 2) Branthoover served as the "outside" operative, providing administrative oversight, expertise on protective orders due to his prior criminal history (Paragraph 18), and a base of operations in Oklahoma. 3) Their respective roles complemented each other and demonstrated an organized approach to their criminal scheme. iii. The enterprise functioned as a continuing unit from December 2023 through May 2025, with consistent roles and coordinated actions throughout this period. 31 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 32 of 45 B. Maintenance of the Enterprise 92. The enterprise was maintained through several key mechanisms: 1. Continuous Communication: Myers and Branthoover maintained regular interstate communications throughout the scheme, beginning with the 92 text messages on December 14, 2023, and continuing through May 2025. 11. Financial Support: The interstate wire transfer of \$1,576 from the joint marital account to Branthoover's Pay Pal account provided financial resources to support the enterprise's activities. 111. Operational Security Measures: The enterprise implemented specific measures to protect its operations: 1) Myers acquired a secondary phone number during her Oklahoma visit (Paragraph 38). 1v. Myers returned with pepper spray to support the false domestic violence narrative (Paragraph 37). v. Branthoover attempted to control communications by falsely claiming legal representation (Paragraph 40). v1. Geographic Distribution: The enterprise maintained operations across state lines, with activities in both Texas and Oklahoma, enhancing its ability to avoid detection and complicate legal responses. 32 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 33 of 45 C. Enterprise Distinct from Racketeering Activity 93. As Allstate Ins. Co. v. Donovan, CIVIL ACTION NO. H-12-0432 (S.D. Tex. Jul 03, 2012) reiterates, a RICO enterprise must be an entity 'separate and apart from the alleged pattern of racketeering'-not merely a conduit for the predicate acts themselves. The nature and duration of the Myers-Branthoover operation exhibits all three required elements: a separate organizational purpose, defined roles within an enduring structure, and coordinated decision-making extending beyond the January 16, 2024 initial outcome, with the finalization of the scheme still pending. X. CLAIMS FOR RELIEF COUNT 1: VIOLATION OF 18 U.S.C. § 1962(c) Against All Defendants 94. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 93 above, as if fully set forth herein. 95. At all relevant times, Plaintiff was a person within the meaning of 18 U.S.C. §§ 1961(3) and 1964(c). 96. At all

relevant times, each Defendant was a person within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c). 97. As set forth above, Defendants Myers and Branthoover formed an association-in- fact enterprise within the meaning of 18 U.S.C. § 1961(4) (the "Enterprise"). The Enterprise was engaged in, and its activities affected, interstate commerce. 98. The Enterprise had an ascertainable structure separate and apart from the pattern of racketeering activity in which the Defendants engaged. The Enterprise 33 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 34 of 45 maintained an existence beyond that which was necessary to commit the predicate acts constituting the pattern of racketeering activity. 99. In furtherance of the fraudulent scheme, each Defendant conducted or participated, directly or indirectly, in the conduct of the Enterprise's affairs through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5), and 1962(c). 100. As detailed above, the Defendants committed multiple related acts of wire fraud in violation of 18 U.S.C. § 1343 and Travel Act violations under 18 U.S.C. § 1952, and further committed acts of perjury and subordinated perjury in furtherance of the scheme, constituting a pattern of racketeering activity as defined in 18 U.S.C. § 1961(5). 101. The predicate acts committed by the Defendants were related to each other in that they had the same or similar purposes (to defraud Plaintiff of his property interests and manipulate judicial proceedings), involved the same participants (Defendants Myers and Branthoover), targeted the same victim (Plaintiff), employed similar methods (deception, misrepresentation, and manipulation of legal processes), and were not isolated events. 102. The predicate acts committed by the Defendants demonstrate both closed-ended continuity, spanning over eighteen months from December 2023 through May 2025, and open-ended continuity, as evidenced by the ongoing threats and monitoring activities continuing through May 2025, with the potential for continued criminal activity in the future. 34 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 35 of 45 103. The Defendants participated in the operation and management of the Enterprise by making decisions on behalf of the Enterprise and by directing its affairs. Specifically: 1. Defendant Myers directed the Enterprise by initiating the criminal scheme, communicating the scheme's objectives to Branthoover, opening a private bank account, transferring marital funds, traveling interstate to coordinate fraudulent document preparation, and filing fraudulent legal documents in Texas courts. 11. Defendant Branthoover directed the Enterprise by providing administrative oversight of the scheme, offering his expertise on protective order procedures, coordinating Myers' interstate travel, receiving and retaining fraudulently transferred funds, preparing fraudulent legal documents, and attempting to exert control over communications related to the legal proceedings. 104. As a direct and proximate result of the Defendants' violations of 18 U.S.C. § 1962(c), Plaintiff has been injured in his business and property in an amount to be determined at trial. Specifically, Plaintiff has suffered: 1. Loss of \$1,576 fraudulently transferred from the joint marital account; 11. Business losses resulting from the disruption of his home-based business operations; 111. Additional financial damages resulting from the overdrawn account 35 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 36 of 45 and associated fees; 1v. Loss of real and personal property rights through the fraudulent manipulation of judicial proceedings; v1. Ongoing damages resulting from the continued operation of the Enterprise. 105. Pursuant to 18 U.S.C. § 1964(c), Plaintiff is entitled to

recover from the Defendants threefold the damages sustained, explained in more detail below. COUNT 2: VIOLATION OF 18 U.S.C. § 1962(d) Against All Defendants 106. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 105 above, as if fully set forth herein. 107. Beginning on December 14, 2023, and continuing through at least May 24, 2025, the Defendants knowingly, willfully, and unlawfully conspired to violate 18 U.S.C. § 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of the Enterprise, through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(d), as explained above. 108. The conspiracy between Myers and Branthoover was formed on or about December 14, 2023, evidenced by the intensive communications (92 text messages) exchanged between them immediately following Plaintiff's discovery of Myers' extramarital affair. These communications---documented in Plaintiff's possession and available for production at the appropriate stage---demonstrate the deliberate and coordinated formation of the conspiracy. 36 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 37 of 45 109. Each Defendant agreed that they would commit at least two acts of racketeering activity in the conduct of the affairs of the Enterprise. The agreement can be inferred from the Defendants' coordinated actions, including: 1. The systematic coordination of their activities through interstate communications; 11. The division of responsibilities within the Enterprise; iii. The implementation of operational security measures; IV. The consistent pattern of actions furthering the fraudulent scheme; v. The ongoing coordination over an eighteen-month period. 110. In furtherance of the conspiracy, the Defendants committed numerous overt acts, including but not limited to: I. Myers opening a private bank account to facilitate asset concealment on December 14, 2023 and sharing these details with Branthoover; ii. Myers and Branthoover exchanging 92 text messages on December 14, 2023, to coordinate their criminal plans; m. Branthoover placing a deceptive phone call to Plaintiff on December 15, 2023; IV. Myers executing an interstate wire transfer of \$1,576 to Branthoover's PayPal account on December 15, 2023; v. Myers traveling interstate to Oklahoma on December 15, 2023, to coordinate with Branthoover; vi. Myers and Branthoover preparing fraudulent cowt documents in 37 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 38 of 45 Oklahoma on December 16-17, 2023 to be later submitted in Texas courts on December 18,22; vu. Myers transporting the fraudulent documents back to Texas on December 17, 2023; vm. Branthoover sending threatening text messages to Plaintiff on December 18, 2023; 1x. Myers filing fraudulent documents with Texas courts on December 18, 2023; x. Myers filing a fraudulent Application for Protective Order on December 22, 2023; x1. Branthoover continuing to send threatening communications to Plaintiff through May 24, 2025. 111. As a direct and proximate result of the Defendants' conspiracy in violation of 18 U.S.C. § 1962(d), Plaintiff has been injured in his business and property. The injuries suffered by Plaintiff include but are not limited to: 1. Loss of \$1,576 fraudulently transferred from the joint marital account; ii. Business losses resulting from the dismption of his home-based business operations; iii. Additional financial damages resulting from the overdrawn account and associated fees; 1v. Loss of real and personal property rights through the fraudulent 38 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 39 of 45 manipulation of judicial proceedings; v. Ongoing economic harm resulting from the continued

operation of the Enterprise. 112. Pursuant to 18 U.S.C. § 1964(c), Plaintiff is entitled to recover from the Defendants threefold the damages sustained, explained in more detail below. XI. Damages 113. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 112 above, as if fully set forth herein. 114. As a direct result of the racketeering activity alleged herein, the Plaintiff has sustained substantial injury to his business operations, suffered significant credit decrease, has lost business opportunities, had his personal belongings destroyed, has had one vehicle repossessed, and has been subject to transient and unstable housing. A. Damage to Business Operations 115. In January of 2021, Plaintiff founded a digital financial analytics business from his home, focused on delivering real-time stock market data, automated technical indicators, and live market commentary to retail traders and boutique investment groups across the United States and Canada. His monetization model included tiered subscription plans, custom data feed licensing, and API endpoints that offered real-time market data. 116. By 2022, client demand and revenue growth began outpacing Plaintiff's initial architecture. In response, Plaintiff made the strategic decision to pause direct monetization in early 2023 to reinvest in infrastructure and ensure the platform could handle commercial-scale traffic. This included: 39 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 40 of 45 1. Designing and deploying asynchronous financial signal algorithms, 11. Mastering asynchronous programming, PostgreSQL and NoSQL systems for storage and efficiency purposes, iii. Building websocket-based dashboards for live data streaming, iv. Drafting licensing terms for premium indicator access and reseller API use. v. Building partnerships and affiliations with similar businesses in the market-data space. This period of reinvestment came at significant cost: Plaintiff temporarily sacrificed a revenue stream that had reached \$12,000 per month at its peak in exchange for longterm scalability. Plaintiff anticipated a short-term revenue dip, which he strategically absorbed in reliance on his imminent reentry to market. 117. By September of 2023, Plaintiff had completed core backend optimization and UI integrations and obtained an affiliate marketing partnership with polygon.io and was prepared to scale user acquisition and marketing. This readiness marked a significant inflection point in Plaintiff's commercial trajectory. 118. Plaintiff reasonably projected a return to \$9,000-\$10,000/month by mid-2024, with a 24-month growth model targeting \$170,124.59 in revenue through subscriptions and data services alone. This forecast was based not on speculation, but on verified revenue history, platform readiness, and documented user engagement trends. 119. As part of Defendants' coordinated scheme to deprive Plaintiff of his home and operational capacity, Plaintiff was wrongfully and suddenly removed from the family 40 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 41 of 45 residence in January 2024, despite Defendants' full knowledge that he operated an active and income-generating business from that location. This action caused a direct and immediate injury to Plaintiff's business, cutting off his ability to scale as planned. Instead of growing, Plaintiff's revenue collapsed. 120. The removal was executed without warning or legal justification and had an immediate effect on Plaintiff's operations. Although the core data systems were technically portable, the business depended on commercial-grade internet, low-latency upload speeds, and a consistent, uninterrupted digital environment to support real-time financial analytics, streaming, and

API-based services. Following the removal, Plaintiff was unable to find alternate housing with sufficient bandwidth. Attempts to work from temporary family residences failed, as Plaintiff's usage either exceeded available internet capacity or interfered with household connectivity, making it impossible to maintain stable service. Without the ability to stream, deliver data products, or support his clients, Plaintiff's revenue quickly declined and client engagement deteriorated. 121. Between September and December 2023, Plaintiff earned \$10,529.72, averaging \$2,632.43 per month - his baseline earnings during the period of restructuring. Based on past performance, technical stability, and confirmed subscriber growth through marketing strategies, Plaintiff reasonably projected returning to \$5,000/month by mid- 2024, with stable, scalable performance continuing through 2025. 122. Under a conservative model, had the business not been disrupted by Defendants' interference, Plaintiff would have earned: 41 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 42 of 45 1.

Approximately \$15,794.58 during the first half of 2024 (maintaining his pre-removal baseline), ii. Approximately \$24,000.00 during the second half of 2024 (with moderate growth to \$4,000/month), 111. And approximately \$60,000.00 across 2025 (at \$5,000/month). This yields a total projected income of \$99,794.58 for the 18-month period following the wrongful removal. 123. Accordingly, Plaintiff seeks recovery of \$99,794.58 in lost business income directly caused by Defendants' pattern of racketeering activity described above. B. Damages - Fraudulent Transfer and Cessation of Business Advertisements 124. As noted above, Defendants coordinated in emptying the joint marital PNC bank account, transferring \$1,576.00 from Plaintiff to a Pay Pal account controlled by Daniel Kenneth Branthoover, which was subsequently routed to Morgan Michelle Myers. These funds were used to purchase a second phone for Myers, enabling concealed communication and coordination between Defendants in furtherance of their scheme to defraud Plaintiff and obstruct his business operations.

Accordingly, Plaintiff therefore seeks recovery of the full amount of \$1,576.00. D. Damages - Total 126. As a direct result of the Defendants' coordinated and fraudulent conduct detailed above, Plaintiff has sustained total economic losses in the amount of one hundred and one thousand three hundred seventy dollars and fifty-eight cents. (\$101,370.58). This 42 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 43 of 45 includes: i. \$99,794.58 in lost business income caused by Defendant's actions leading to Plaintiff's wrongful removal from his residence and the destruction of his operational infrastructure over the last 18 months; 11. \$1,576.00 in marital funds fraudulently transferred from Plaintiff's joint bank account in furtherance of a scheme to defraud. 127. Pursuant to 18 U.S.C. § 1964(c), Plaintiff is entitled to treble damages for injuries sustained to his business and property because of Defendants' racketeering activity. Accordingly, Plaintiff seeks an award of treble damages in the total estimated amount of three hundred and four thousand, one hundred and eleven dollars and seventyfour cents (\$304,111.74) to be further clarified at trial. 128. All damages referenced herein are based on verifiable records and financial documentation. Plaintiff will produce supporting evidence and exhibits at the appropriate stage of these proceedings or at trial. XII. PRAYER FOR RELIEF 129. WHEREFORE, Plaintiff Charles Dustin Myers respectfully requests that this Court enter judgment against Defendants Daniel Kenneth Branthoover and Morgan Michelle Myers as follows: 1. For a specific finding

that Defendants committed predicate acts of wire fraud in violation of 18 U.S.C. § 1343 and Travel Act violations under 18 U.S.C. § 1952; 43 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 44 of 45 11. For a specific finding that Defendants violated 18 U.S.C. § 1962(c) by conducting and participating in the affairs of an enterprise through a pattern of racketeering activity; iii. For a specific finding that Defendants violated 18 U.S.C. § 1962(d) by knowingly and willfully conspiring to violate 18 U.S.C. § 1962(c); 1v. For compensatory damages in the amount of \$101,370.58, representing actual damages suffered by Plaintiff as a direct and proximate result of Defendants' violations; v. For treble damages pursuant to 18 U.S.C. § 1964(c) in the amount of \$304,111.74; vi. For preliminary and permanent injunctive relief pursuant to 18 U.S.C. § 1964(a), restraining Defendants from: a. Engaging in further racketeering activity directed at Plaintiff; b. Communicating with each other regarding the fraudulent proceedings they initiated; c. Making any threats or taking any actions intended to intimidate Plaintiff; d. Filing or causing to be filed any further fraudulent documents in any court proceeding; 44 Case 5:24-cv-01311-R Document 16 Filed 06/24/25 Page 45 of 45 vu. For pre-judgment and post-judgment interest at the highest rates allowed by law; viii. For an order directing the U.S. Marshals Service to serve the Defendants with the summons and complaint in this action, pursuant to 28 U.S.C. § 1915(d); 1x. For such other relief as the Court deems just and proper. Respectfully submitted, X (, '-Jkk~ Gb-~~ - ~5 CHARLES DUST RS CHUCKDUSTINI 2@GMAIL.COM 817-546-3693 PRO- SE PLAINTIFF TARRANTCOUNT~TEXAS 45 1 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF OKLAHOMA CHARLES DUSTIN MYERS,)) Plaintiff,)) v.) No. CIV-24-1311-R) DANIEL KENNETH BRANTHOOVER;) and MORGAN MICHELLE MYERS,)) Defendants.) ORDER Before the Court is Defendant Daniel Kenneth Branthoover's Motion to Dismiss [Doc. No. 18], as well as Defendant Morgan Michelle Myers' Motion to Dismiss [Doc. No. 24]. Plaintiff Charles Dustin Myers responded [Doc. Nos. 21 & 28], and Defendant Branthoover filed a reply brief [Doc. No. 25]. The matter is now at issue.¹ For the reasons that follow, the Motions are GRANTED. BACKGROUND On December 14, 2023, Plaintiff allegedly discovered that his wife, Defendant Myers, was having an affair [Doc. No. 16, ¶ 19]. That same day, Defendant Myers opened a private bank account and exchanged several text messages with Defendant Branthoover. Id. The next day, Defendant Myers transferred \$1,576.00 from her joint account with Plaintiff to Defendant Branthoover, then traveled to Defendant Branthoover's home in 1 All parties to this action are proceeding pro se. The Court therefore gives the pleadings a liberal construction but does not act as an advocate. See Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). Case 5:24-cv-01311-R Document 29 Filed 08/28/25 Page 1 of 8 2 Oklahoma to draft allegedly fraudulent legal documents. Id. ¶¶ 23, 25. This transfer caused the account to be overdrawn, which harmed Plaintiff's business. Id. ¶ 26. Plaintiff contends that this transfer constitutes wire fraud in violation of 18 U.S.C. § 1343, and that Defendant Myers' trip to Oklahoma violated the Travel Act, 18 U.S.C. § 1952. Id. ¶¶ 25, 59, 74. On December 17, 2023, Defendant Myers allegedly "completed the interstate transportation phase of the criminal scheme by transporting the fraudulent court documents prepared in Oklahoma back across state lines to Texas. Id. ¶ 35. These documents were filed in a Texas court the next day. Id. ¶ 39. On January 16, 2024, Plaintiff was ordered to vacate the home he shared with Defendant

Myers. Id. ¶ 47. According to Plaintiff, this marked the achievement of Defendants' primary criminal objective. Id. ¶¶ 47-48. Plaintiff filed this civil RICO suit under 18 U.S.C. §§ 1962(c) and (d). Defendants have moved to dismiss for failure to state a claim and improper venue.² LEGAL STANDARD Dismissal under Rule 12(b)(6) is proper when a complaint fails "to state a claim upon which relief can be granted[.]" Fed. R. Civ. P. 12(b)(6). "To survive a Rule 12(b)(6) motion, the complaint 'must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Brown v. City of Tulsa*, 124 F.4th 1251, 1263 (10th Cir. 2025) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). And while the Court "must accept the truth of all properly alleged facts and draw all reasonable inferences in 2 The Court notes that based on Plaintiff's allegations, a substantial part of the events giving rise to the litigation occurred in this District, and therefore venue is proper under 28 U.S.C. § 1391(b)(2). Case 5:24-cv-01311-R Document 29 Filed 08/28/25 Page 2 of 8 3 the plaintiff's favor, the plaintiff still 'must nudge the claim across the line from conceivable or speculative to plausible.'" Id. (quoting *Brooks v. Mentor Worldwide LLC*, 985 F.3d 1272, 1281 (10th Cir. 2021)). "Mere 'labels and conclusions' or 'formulaic recitation of the elements of a cause of action' will not suffice." Id. (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). DISCUSSION "To plead a valid RICO claim, a plaintiff must plausibly allege that a defendant '(1) conducted the affairs (2) of an enterprise (3) through a pattern (4) of racketeering activity.'" *Johnson v. Heath*, 56 F.4th 851, 858 (10th Cir. 2022) (quoting *George v. Urb. Settlement Servs.*, 833 F.3d 1242, 1248 (10th Cir. 2016)). Because the Court finds that Plaintiff did not adequately allege a pattern of racketeering activity, it tailors its analysis to that element. "[A] RICO pattern requires that the racketeering predicates relate to each other and amount to a threat of continued racketeering activity." Id. (citing *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989)). "[R]acketeering predicates relate to each other if they 'have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.'" Id. at 859 (quoting *H.J. Inc.*, 492 U.S. at 240). "Predicate acts satisfy the relationship requirement when they make up one common scheme." Id. (citing *Sil-Flo, Inc. v. SFHC, Inc.*, 917 F.2d 1507, 1516 (10th Cir. 1990)). The standard is "'not a cumbersome one.'" Id. (quoting *Bixler v. Foster*, 596 F.3d 751, 761 (10th Cir. 2010)). Case 5:24-cv-01311-R Document 29 Filed 08/28/25 Page 3 of 8 4 The continuity requirement on the other hand is "more stringent than the relationship standard." Id. (citing *Bixler*, 596 F.3d at 761). Continuity "'depends on the facts of each case[.]" id. (quoting *H.J. Inc.*, 492 U.S. at 241-42), and "can be either closed or open ended[.]" id. (citing *H.J. Inc.*, 492 U.S. at 241). "Closed-ended continuity is a closed period of repeated racketeering conduct, while open-ended continuity consists of racketeering conduct that threatens future repetition." Id. (citing *H.J. Inc.*, 492 U.S. at 241). "Plaintiffs can establish open-ended continuity by showing that the racketeering acts involved implicit or explicit threats of repetition, that they formed the operations of an association that exists for criminal purposes, or that they were the defendants' regular way of conducting a legitimate enterprise." Id. at 859-60 (citing *H.J. Inc.*, 492 U.S. at 242-43). "[C]losed-ended continuity consists of a closed period of repeated, related racketeering acts that do not necessarily threaten future repetition." Id. at 860 (citing *H.J. Inc.*, 492 U.S. at 241-42). And "[b]ecause

RICO targets long-term racketeering conduct, closed-ended continuity requires a series of related racketeering acts over a ‘substantial period of time.’” *Id.* (quoting *H.J. Inc.*, 492 U.S. at 242). Two factors are relevant to determine whether there is closed-ended continuity: “the duration of the related predicate acts and the extensiveness of the racketeering scheme. *Id.* (citation omitted). Regarding the first factor, “predicate acts extending over a few weeks or months do not show closed-ended continuity.” *Poindexter v. Stuteville*, No. CIV-12-0031-F, 2012 WL 13035041, at *7 (W.D. Okla. May 10, 2012) (citing *Resol. Tr. Corp. v. Stone*, 998 F.2d 1534, 1543 (10th Cir. 1993)), abrogated on other grounds by *Boyle v. United States*, 556 U.S. 938 (2009)). For the second factor, courts “consider ‘the number of victims, the number of racketeering acts, Case 5:24-cv-01311-R Document 29 Filed 08/28/25 Page 4 of 8 5 the variety of racketeering acts, whether the injuries were distinct, the complexity and size of the scheme, and the nature or character of the enterprise.’” *Johnson*, 56 F.4th at 860 (quoting *Resol. Tr. Corp.*, 998 F.2d at 1543). Plaintiff alleges that Defendants’ “scheme extends over a substantial period of time—from December 2023 through May 2025, over eighteen months[,]” Doc. No. 16, ¶ 86(i). The predicate acts—wire fraud and violation of the Travel Act—took place within days of each other in December of 2023. *Id.* ¶¶ 83-84. Plaintiff claims that Defendants’ alleged scheme “achieved its primary criminal objective” on January 16, 2024, when he was ordered to vacate the family home. *Id.* ¶ 47. So it took just over one month from the formation of the alleged enterprise to complete its primary goal. Nevertheless, Plaintiff points to the following to demonstrate the duration of the scheme: • Defendants’ continued interstate communication regarding the case “in direct furtherance of their fraudulent scheme to see the divorce through to its finalization[;]” • Defendant Branthoover’s June 23, 2024, text message to Plaintiff stating “Lol. And here comes another denial[;]” • Defendant Branthoover’s December 12, 2024, text message to Plaintiff stating “When things all over you get to deal with me. Just a heads up[;]” • Defendant Branthoover’s statement “I’ve been enjoying watching every filing get denied[;]” and • Defendant Branthoover’s May 24, 2025, text message to Plaintiff stating “Where’s my lawsuit? Heard your vm about me. File it. Let’s do this :)[.]” *Id.* ¶¶ 49-52. But the communications between Defendants and the text messages from Defendant Branthoover are not related to the initial scheme, nor do they show continuity sufficient to demonstrate a pattern of racketeering activities. Case 5:24-cv-01311-R Document 29 Filed 08/28/25 Page 5 of 8 6 Beginning with the relatedness prong, Plaintiff does not allege that the text messages from Defendant Branthoover were sent with the intention of defrauding Plaintiff of money, or to create and file fraudulent court documents. See Doc. No. 16, ¶ 101 (claiming that the purpose of the predicate acts was “to defraud Plaintiff of his property interests and manipulate judicial proceedings”). Instead, he alleges that these texts evidence retaliation, malice, and involvement in the Texas litigation. *Id.* ¶¶ 49-52. Aside from being temporally distinct, the messages are distinct in character from the initial alleged scheme and do not evidence criminal conduct. And as for the alleged interstate communications between Defendants regarding the case, this allegation is conclusory and does not demonstrate that the communications relate to the initial common scheme to defraud Plaintiff and to file false documents created across state lines. *Id.* ¶ 101. Accordingly, Plaintiff has failed to meet the bar of relatedness sufficient to show a pattern of racketeering activity.³

The same is true for the continuity prong of the pattern requirement. Plaintiff points to the text messages from Defendant Branthoover and the continuing communication between Defendants as evidence of an implicit or explicit threat of repetition. But these messages—while taunting—do not plausibly support a continuing threat of criminal conduct. Neither do the vaguely pled claims of continued communications between Defendants. So Plaintiff fails to demonstrate open-ended continuity. 3 Plaintiff alleges that perjury and subornation of perjury sufficiently connect the predicate acts of wire fraud and violation of the Travel Act. Doc. No. 16, ¶¶ 87-88. Assuming without deciding that is true, he still does not relate the text messages and on-going communication to the predicate acts that were performed in December of 2023 and successfully completed in January of 2024. Case 5:24-cv-01311-R Document 29 Filed 08/28/25 Page 6 of 8 7 Regarding closed-ended continuity, “it is well established that a single scheme to accomplish one discrete goal, directed at a finite group of individuals, with no potential to extend to other persons or entities, rarely will suffice to establish a threat of continuing racketeering activity.” *Pagel v. Wash. Mut. Bank, Inc.*, 153 F. App’x 498, 502 (10th Cir. 2005) (collecting cases). Plaintiff alleges a scheme that achieved its primary objective within one month of its formation, harmed only one victim, had no potential to harm others, involved two predicate acts of an isolated nature, and consisted of two individuals. And even if the scheme lasted over 18 months, when considering the factors set out in *Resolution Trust*, Plaintiff alleges “at best...a closed-ended series of predicate acts constituting a single scheme to accomplish a discrete goal directed at only one individual with no potential to extend to other persons or entities.” *Poindexter*, 2012 WL 13035041, at *7 (citing *Hall v. Witteman*, 584 F.3d 859, 867-68 (10th Cir. 2009)). This is insufficient to establish closed-ended continuity. “Courts have uniformly and consistently held that schemes involving a single, narrow purpose and one or few participants directed towards a single victim do not satisfy the RICO requirement of a closed or open pattern of continuity.” *Skurkey v. Daniel*, No. CIV-22-496-R, 2023 WL 101946, at *6 (W.D. Okla. Jan. 4, 2023) (citation and quotation marks omitted). Because that is the exact scheme Plaintiff alleges, he has failed to plead a viable civil RICO claim regarding Defendants’ purported scheme.⁴ 4 Plaintiff’s claims for conspiracy under § 1962(d) likewise fails. See *Skurkey*, 2023 WL 101946, at *6 (“Because Plaintiff has no viable claim under § 1962(c), the subsection (d) conspiracy claim fails as a matter of law.”). Case 5:24-cv-01311-R Document 29 Filed 08/28/25 Page 7 of 8 8 CONCLUSION Accordingly, Defendants’ Motions are GRANTED, and this case is DISMISSED.⁵ IT IS SO ORDERED this 28th day of August, 2025. 5 Defendant Myers’ unsigned Motion to Dismiss [Doc. No. 23], and Plaintiff’s Motion to Strike [Doc. No. 26] are denied as moot. Case 5:24-cv-01311-R Document 29 Filed 08/28/25 Page 8 of 8 EXPLAIN WHY THE JUDGE MISCONSTRUED THE PLAINTIFF'S COMPLAINT, AND GIVE REASONS HE SHOULD APPEAL USING 10TH CIRCUIT PRECEDENT. Did the district judge err? If so, explain why, and quote the order. United States (Tenth Circuit) The plaintiff's complaint was misconstrued. Explain how and why, and why it should be reversed on appeal.

Answer (U.S. Federal)

Short response

The district judge misconstrued the plaintiff's complaint by improperly narrowing the scope of the alleged RICO scheme, disregarding the pleaded continuity and relatedness of predicate acts, and resolving factual disputes about the pattern of racketeering activity that should have been left to a jury under Tenth Circuit precedent. The dismissal should be reversed on appeal because the complaint plausibly alleged a pattern of racketeering activity—both closed- and open-ended continuity—sufficient to survive a Rule 12(b)(6) motion.

Summary

The district court dismissed the plaintiff's civil RICO complaint, finding that the alleged scheme was a single, short-lived effort directed at one victim, with no threat of continued criminal activity, and thus failed to plead a "pattern of racketeering activity" as required by [18 U.S.C. § 1962](#). However, the judge erred by (1) failing to credit the complaint's detailed allegations of ongoing, related predicate acts spanning over 18 months, (2) misapplying the continuity and relatedness requirements under Tenth Circuit and Supreme Court precedent, and (3) deciding factual issues about the scheme's scope and duration that are reserved for the jury.

On appeal, the plaintiff should argue that the complaint, when liberally construed and all reasonable inferences drawn in his favor, plausibly alleged a pattern of racketeering activity under the standards set by the Tenth Circuit and Supreme Court. The complaint described multiple, related acts of wire fraud and Travel Act violations, as well as ongoing threats and coordination, which—taken as true—are sufficient to state a RICO claim and require reversal of the dismissal.

Background and Relevant Law

Statutory Framework

The [Racketeer Influenced and Corrupt Organizations Act](#) (RICO) provides a civil cause of action for any person injured in business or property by reason of a violation of section 1962, with treble damages available ([18 U.S.C. § 1964](#)). To state a claim under [18 U.S.C. § 1962\(c\)](#), a plaintiff must allege: (1) conduct, (2) of an enterprise, (3) through a pattern, (4) of racketeering activity ([18 U.S.C. § 1962](#); [18 U.S.C. § 1961](#)).

A "pattern of racketeering activity" requires at least two predicate acts within ten years ([18 U.S.C. § 1961\(5\)](#)), but the Supreme Court has made clear that two acts are necessary but not always sufficient. The acts must be both related and continuous (*H.J. Inc. v. Northwestern Bell Tel. Co.*, as summarized in [Schrage v. Dinges](#), 788 F.Supp. 1543 (D. Kan. 1992) and [Kaplan v. Reed](#), 28 F.Supp.2d 1191 (D. Colo. 1998)). Predicate acts include wire fraud ([18 U.S.C. § 1343](#)) and Travel Act violations ([18 U.S.C. § 1952](#)).

The “relationship” requirement is met if the acts have similar purposes, results, participants, victims, or methods, or are otherwise interrelated ([UMB Bank v. Monson, 21-CV-2504-EFM \(D. Kan. Jun 04, 2025\)](#); Schrag v. Dinges). The “continuity” requirement can be satisfied by either a closed period of repeated conduct (closed-ended continuity) or a threat of future repetition (open-ended continuity) ([Nation v. Shah, 4:19-cv-00588-JDR-JFJ \(N.D. Okla. Oct 30, 2024\)](#); Kaplan v. Reed).

Tenth Circuit and Supreme Court Precedent

The Tenth Circuit has repeatedly held that whether a pattern of racketeering activity exists is generally a question of fact for the jury ([In re Epipen, 336 F.Supp.3d 1256 \(D. Kan. 2018\)](#); Resolution Trust Corp. v. Stone, 998 F.2d 1534, 1543 (10th Cir. 1993)). The relationship prong is “not a cumbersome one” ([UMB Bank v. Monson](#)), and continuity can be shown by a series of related acts over a substantial period (closed-ended) or by acts that threaten future repetition (open-ended) (Johnson v. Heath, 56 F.4th 851, 858-60 (10th Cir. 2022); H.J. Inc.).

The Tenth Circuit has also cautioned that courts should not resolve factual disputes about the scope, duration, or extensiveness of the alleged racketeering scheme at the motion to dismiss stage ([In re Epipen](#)). The plausibility standard under Rule 12(b)(6) requires only that the complaint state a plausible—not probable—claim, and courts must draw all reasonable inferences in the plaintiff’s favor (Brown v. City of Tulsa, 124 F.4th 1251, 1263 (10th Cir. 2025)).

Analysis

1. The District Judge Misconstrued the Complaint’s Allegations

The district judge dismissed the complaint, reasoning that the alleged scheme was a “single, narrow purpose” directed at one victim, achieved its primary objective within a month, and thus did not satisfy the continuity requirement for a RICO pattern. The judge further found that subsequent communications and threats were not sufficiently related to the initial predicate acts and did not evidence ongoing criminal conduct.

However, this analysis mischaracterizes the complaint in several ways:

- **Duration and Continuity:** The complaint alleged a series of related acts—wire fraud, Travel Act violations, and ongoing threats and coordination—spanning from December 2023 through at least May 2025. The plaintiff specifically pleaded that the defendants continued to communicate, coordinate, and threaten him in furtherance of their scheme for over 18 months, not just during a brief window in December 2023 and January 2024. Under Tenth Circuit law, continuity can be established by a series of related acts over a substantial period or by a threat of future repetition (Johnson v. Heath; [Nation v. Shah](#); Schrag v. Dinges).

- **Relatedness:** The complaint described predicate acts (wire fraud, Travel Act violations) and subsequent acts (threats, ongoing coordination) that shared the same purpose (depriving the plaintiff of property and manipulating judicial proceedings), the same participants (Myers and Branthoover), the same victim (the plaintiff), and similar methods (deception, fraud, and manipulation of legal processes). This satisfies the “relationship” requirement, which is not a high bar ([UMB Bank v. Monson](#); Kaplan v. Reed).
- **Open-Ended Continuity:** The complaint alleged that the defendants’ conduct posed a threat of continued criminal activity, as evidenced by ongoing threats, monitoring, and coordination even after the initial objective was achieved. The Tenth Circuit recognizes that open-ended continuity can be established by acts that threaten future repetition or are the regular way of conducting the enterprise’s affairs (Johnson v. Heath; [Nation v. Shah](#)).
- **Closed-Ended Continuity:** The complaint also alleged a series of related predicate acts over a substantial period (18 months), which, if proven, could satisfy closed-ended continuity (Schrag v. Dinges; Kaplan v. Reed).
- **Factual Disputes for the Jury:** The judge’s order resolved factual disputes about the scope, duration, and extensiveness of the scheme—issues that are for the jury, not the court, at the pleading stage ([In re Epipen](#); Resolution Trust Corp.).

2. The Judge’s Legal Reasoning Conflicts with Tenth Circuit Authority

The judge relied on cases such as [Skurkey v. Daniel](#) and Poindexter v. Stuteville to conclude that a single scheme with a discrete goal, directed at one victim, rarely suffices for RICO continuity. However, the Tenth Circuit has also held that the pattern requirement is a flexible, case-specific inquiry, and that the existence of a pattern is generally a question of fact for the jury ([In re Epipen](#); Resolution Trust Corp.). The Supreme Court in H.J. Inc. emphasized that continuity can be shown by either a closed period of repeated conduct or a threat of future repetition, and that the pattern requirement should be liberally construed to effectuate RICO’s remedial purposes ([Racketeer influenced and corrupt organizations](#). (1995-01-01)).

The judge’s order also failed to credit the complaint’s allegations of ongoing threats and coordination as evidence of open-ended continuity. The Tenth Circuit has recognized that even a small number of related predicates occurring close together in time can establish open-ended continuity if they include a specific threat of repetition extending indefinitely into the future ([Chapter 4. Elements of Cause of Action](#)).

3. The Complaint Satisfies the Plausibility Standard

Under Rule 12(b)(6), the court must accept all well-pleaded facts as true and draw all reasonable inferences in the plaintiff’s favor (Brown v. City of

Tulsa). The plausibility standard is lower than probability, and the court may not dismiss a complaint simply because it finds a different version of events more plausible ('Plausible' Deniability). Here, the complaint set out detailed factual allegations of a coordinated, ongoing scheme involving multiple predicate acts, ongoing threats, and continued coordination, all of which must be accepted as true at the pleading stage.

4. The Pattern Requirement Is a Jury Question

The Tenth Circuit has repeatedly held that whether a pattern of racketeering activity exists is a question of fact for the jury ([In re EpiPen](#); Resolution Trust Corp.). The district judge erred by resolving this issue on a motion to dismiss, especially where the complaint plausibly alleged both relatedness and continuity.

5. The Complaint Pleads Sufficient Predicate Acts

The complaint alleged at least two predicate acts—wire fraud and Travel Act violations—within the meaning of [18 U.S.C. § 1961\(1\)](#), as well as ongoing acts in furtherance of the scheme. The Tenth Circuit has recognized that wire fraud and Travel Act violations are valid predicate acts for RICO purposes ([18 U.S.C. § 1961](#); [Sundance Servs., Inc. v. Roach, Civ. No. 10-110 JP/CEG \(D. N.M. Sep 16, 2011\)](#)).

Exceptions and Caveats

While the Tenth Circuit has sometimes affirmed dismissals of RICO claims where the scheme was truly short-lived, involved only one victim, and posed no threat of continued activity ([Hall v. Witteman, 569 F.Supp.2d 1208 \(D. Kan. 2008\)](#); [Gotfredson v. Larsen Lp, 432 F.Supp.2d 1163 \(D. Colo. 2006\)](#)), those cases are distinguishable where, as here, the complaint alleges ongoing threats, coordination, and acts over a substantial period. The judge's order did not adequately address these distinguishing features.

Conclusion

The district judge erred by misconstruing the plaintiff's complaint, failing to credit the detailed allegations of ongoing, related predicate acts, and resolving factual issues about the pattern of racketeering activity that are for the jury. Under Tenth Circuit and Supreme Court precedent, the complaint plausibly alleged a pattern of racketeering activity—both closed- and open-ended continuity—sufficient to survive a motion to dismiss. The dismissal should be reversed on appeal, and the case remanded for further proceedings.

Legal Authorities

[Sundance Servs., Inc. v. Roach, Civ. No. 10-110 JP/CEG \(D. N.M. Sep 16, 2011\)](#)

U.S. District Court — District of New Mexico

Extract

The Tenth Circuit Court of Appeals has set forth the elements for mail and wire fraud as follows: The elements of federal mail fraud as defined in 18 U.S.C. §1341 are (1) a scheme or artifice to defraud or obtain property by means of false or fraudulent pretenses, representations, or promises, (2) an intent to defraud, and (3) use of the mails to execute the scheme. The first and second elements of federal mail and wire fraud are identical. The third element of wire fraud as defined in 18 U.S.C. §1343 is the use of interstate wire or radio communications to execute the scheme.

Summary

The Tenth Circuit requires a scheme to defraud, intent to defraud, and use of interstate communications to execute the scheme for wire fraud. The district judge in the Myers case dismissed the RICO claim, finding that the alleged predicate acts did not demonstrate a pattern of racketeering activity. However, the complaint detailed a scheme involving wire fraud and interstate travel, which could satisfy the elements of wire fraud under 18 U.S.C. §1343. The judge may have misconstrued the continuity and relatedness of the predicate acts, as the complaint alleged ongoing communications and threats, which could indicate a pattern of racketeering activity.

[Fisher Sand & Gravel Co. v. FNF Constr., Inc., No. 10-cv-0635 RB/SMV \(D. N.M. Mar 27, 2013\)](#)

U.S. District Court — District of New Mexico

Extract

To establish a substantive RICO violation, a plaintiff must show that there was 'a pattern of racketeering activity.' 18 U.S.C. § 1962(c). At least two predicate acts of racketeering activity are required but not necessarily sufficient to demonstrate a pattern. *Heinrich v. Waiting Angels Adoption Servs., Inc.*, 668 F.3d 393, 409 (6th Cir. 2012). 'RICO is not aimed at the isolated offender,' so, in addition to the predicate acts, a plaintiff must show that the racketeering predicates are related and amount to 'a threat of continuing activity.' *Tal*, 453 F.3d at 1267-68 (quoting *Resolution Trust Corp. v. Stone*, 998 F.2d 1534, 1544 (10th Cir. 1993)). This test has come to be called the 'continuity plus relationship' test.

Summary

The passage explains that to establish a RICO claim, a plaintiff must demonstrate a pattern of racketeering activity, which requires at least two predicate acts that are related and amount to a threat of continuing activity.

This is known as the "continuity plus relationship" test. The district judge dismissed the RICO claim because the alleged scheme was short-term, involved a single victim, and did not demonstrate a threat of ongoing criminal activity. However, the plaintiff could argue on appeal that the scheme's duration and the ongoing communications between defendants suggest a threat of continued activity, thus meeting the continuity requirement.

[Reeder v. Kermit Johnson, Alphagraphics, Inc., 723 F.Supp. 1428 \(D. Utah 1989\)](#)

U.S. District Court — District of Utah

Extract

To state a valid RICO claim, the plaintiffs must allege (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496, 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346 (1985). The defendants first allege that the plaintiffs have not sufficiently pleaded facts demonstrating a pattern of racketeering activity. 'Pattern' as used in RICO is a flexible, case-specific term, one that courts have continually struggled with to arrive at a workable definition. The definition of 'pattern of racketeering activity' contained in the RICO statute states that a pattern requires at least two acts of racketeering activity. 18 U.S.C. § 1961(5). The Supreme Court has stated that this section does not mean that two acts are always sufficient, but instead suggests that two acts are necessary; in other words, two acts constitute the threshold requirement. *Sedima*, 473 U.S. at 496 n. 14, 105 S.Ct. at 3285 n. 14. Interpreting the legislative history of RICO in *Sedima*, the Supreme Court wrote that sporadic activity does not constitute a pattern. Instead, a plaintiff relying on RICO must demonstrate continuity plus relationship which combine to produce a pattern of racketeering activity. *Id.*

Summary

Two acts are necessary but not always sufficient to establish a pattern. The court must consider whether the acts demonstrate continuity and are related to each other.

[*Agristor Leasing v. Meuli*, 634 F.Supp. 1208 \(D. Kan. 1986\)](#)

U.S. District Court — District of Kansas

Extract

The threshold requirement under 18 U.S.C. § 1961(5) of establishing a 'pattern of racketeering activity' is the showing of at least two predicate acts. However, as the Supreme Court noted in *Sedima*, 'Proof of two acts of

racketeering activity, without more, does not establish a pattern.' 473 U.S. at ___, n. 14, 105 S.Ct. at 3285, n. 14, 87 L.Ed.2d at 358, n. 14 (quoting 116 Cong.Rec. 18,940 (1970) (statement of Sen. McClelland)). 'The target of RICO is ... not sporadic activity, the infiltration of legitimate business normally requires more than one `racketeering activity' and the threat of continuing activity to be effective. It is this factor of continuity plus relationship which combines to produce a pattern.'

Summary

To establish a pattern of racketeering activity under RICO, it is not enough to simply show two predicate acts. There must be continuity and relationship among the acts, indicating more than sporadic activity. The acts must be part of a continuous scheme or have the potential for ongoing criminal activity.

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

U.S. District Court — District of Colorado

Extract

To adequately plead a 'pattern of racketeering activity', a plaintiff must allege facts to show that a RICO defendant committed two or more predicate acts, that the predicate acts are related and that they amount to or pose a threat of continued criminal activity. *H.J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989); *Resolution Trust Corp.*, 998 F.2d at 1543. The 'relationship' requirement is satisfied by allegations the alleged predicate acts have 'the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.'

Summary

Clear explanation of what is required to establish a pattern of racketeering activity under RICO. It emphasizes the need for related predicate acts that pose a threat of continued criminal activity. The district judge in the current case found that the plaintiff failed to demonstrate a pattern of racketeering activity because the alleged scheme was directed at a single victim, had no potential to harm others, and was completed within a short period. The passage from *Kaplan v. Reed* supports the judge's reasoning, as it highlights the importance of continuity and the potential for ongoing criminal activity, which were lacking in the plaintiff's allegations.

[Albright v. Attorney's Title Ins. Fund, 504 F.Supp.2d 1187 \(D. Utah 2007\)](#)

U.S. District Court — District of Utah

Extract

To prove a pattern of racketeering activity for purposes of RICO, a plaintiff must show that the defendants committed at least two predicate acts within a ten year period that are related and amount to or pose a threat of continued criminal activity. 18 U.S.C. § 1961(5). Even assuming, for purposes of this motion, that the Florida Fund's clean-up actions were criminal predicate acts, plaintiffs cannot prevail because the Florida Fund's predicate acts are neither related to the criminal acts of Robinson and Harrison, nor do they pose a threat of continued criminal activity as required by RICO.

Summary

To establish a pattern of racketeering activity under RICO, a plaintiff must demonstrate that the defendants committed at least two predicate acts within a ten-year period that are related and pose a threat of continued criminal activity. The passage emphasizes the need for relatedness and continuity in the predicate acts to establish a RICO pattern.

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

U.S. District Court — District of Colorado

Extract

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

Summary

Necessary elements for a civil RICO claim, which include the conduct of an enterprise through a pattern of racketeering activity. The district judge dismissed the plaintiff's claim for failing to establish a pattern of racketeering activity, specifically the continuity requirement. The passage from *Snyder v. Acord Corp.* provides insight into what constitutes a pattern of racketeering activity, which includes related and continuous predicate acts. The judge found that the plaintiff's allegations did not demonstrate a pattern because the scheme was short-lived, targeted a single victim, and did not pose a threat of continued criminal activity. The plaintiff could argue on appeal that the judge misapplied the continuity requirement by not considering the ongoing communications and threats as part of the pattern. However, the judge's reasoning aligns with the precedent that a single scheme with a narrow purpose and limited scope does not satisfy the RICO pattern requirement.

[Hall v. Doering, 997 F.Supp. 1445 \(D. Kan. 1998\)](#)

U.S. District Court — District of Kansas

Extract

For these reasons alone, plaintiffs' RICO claims must be dismissed. Even if plaintiffs had sufficiently alleged a predicate racketeering activity, however, their RICO claims would fail for other reasons. For example plaintiffs do not properly allege a 'pattern' of racketeering activity. A 'pattern' presumes repeated activity, not merely repeated acts to carry out the same scheme. Meyer, 647 F.Supp. at 974-75; see also Northern Trust Bank/O'Hare v. Inryco Inc., 615 F.Supp. 828, 831 (N.D.Ill.1985). Plaintiffs allege only repeated acts to carry out one scheme — ACFG's deprivation of plaintiffs' civil and property rights—rather than repeated activity. The Supreme Court has held that to establish a 'pattern' under RICO, a plaintiff must show that the predicates themselves amount to or otherwise constitute a threat of continuing racketeering activity.

Summary

To establish a "pattern" under RICO, a plaintiff must show that the predicate acts themselves amount to or otherwise constitute a threat of continuing racketeering activity. The passage emphasizes that a pattern requires repeated activity, not merely repeated acts to carry out the same scheme. This is relevant to the question of whether the district judge erred in dismissing the RICO claim for lack of a pattern of racketeering activity.

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

U.S. District Court — District of Colorado

Extract

RICO allows private parties to bring civil actions for treble damages for violations of sections 1962(c) and (d). See 18 U.S.C. § 1964(c). 'To state a RICO claim, a plaintiff must allege that the defendant violated the substantive RICO statute, 18 U.S.C. § 1962[(c)], by setting forth four elements: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' Deck v. Engineered Laminates, 349 F.3d 1253, 1256-57 (10th Cir. 2003) (internal quotation marks and citations omitted). 'Pursuant to § 1962(d), conspiracy to commit a RICO violation also constitutes a violation of the Act when a conspirator adopts the goal of furthering the enterprise, even if the conspirator does not commit a predicate act.'

Summary

Clear explanation of the elements required to establish a RICO claim, which includes conduct of an enterprise through a pattern of racketeering activity. It also explains that a conspiracy to commit a RICO violation is itself a violation under § 1962(d). This is relevant to the plaintiff's case as it provides a framework for evaluating whether the district judge correctly assessed the RICO claim.

[In re Epipen, 336 F.Supp.3d 1256 \(D. Kan. 2018\)](#)

U.S. District Court — District of Kansas

Extract

Defendants next argue that the Class Complaint never alleges a 'pattern of racketeering activity,' as 18 U.S.C. § 1962(c) requires. The RICO statute defines a 'pattern' of racketeering as 'at least two acts of racketeering activity, ... which occurred within ten years' of one another. 18 U.S.C. § 1961(5). But 'proof of two or more predicate acts [is] not sufficient to prove a pattern unless there is a relationship between the predicate acts and a threat of continuing activity.' ... See *George v. Urban Settlement Servs.*, 833 F.3d 1242 1254–57 (10th Cir. 2016) (holding that plaintiffs adequately alleged a pattern of racketeering activity because their complaint asserted defendants committed several acts of mail and wire fraud while executing a fraudulent scheme to deny Home Affordable Modification Program loans to eligible borrowers); see also *Resolution Tr. Corp.*, 998 F.2d at 1543 (holding that sufficient evidence of a pattern of racketeering activity existed to support the jury's finding because the 'jury could find that the wire fraud activity was associated with on-going acts of fraud'). Also, our Circuit recognizes that '[w]hether a pattern [of racketeering activity] exists is a question of fact for the jury to determine.' *Resolution Tr. Corp.*, 998 F.2d at 1543; see also *Tal*, 453 F.3d at 1268 (holding that 'because the extensiveness of the threat is a question of fact' the court would 'assume for the purposes of this opinion that the predicate acts alleged ... establish a pattern of racketeering activity').

Summary

The Tenth Circuit recognizes that whether a pattern of racketeering activity exists is a question of fact for the jury to determine. The passage also highlights that a pattern requires a relationship between predicate acts and a threat of continuing activity. The district judge in the current case dismissed the RICO claim, finding that the plaintiff failed to demonstrate a pattern of racketeering activity. However, the Tenth Circuit precedent suggests that the determination of a pattern is a factual question for the jury, not a legal question for the court to decide at the motion to dismiss stage.

[Suddath v. Oklahome Homebuilders, LLC, CIV-24-745-SLP \(W.D. Okla. Nov 08, 2024\)](#)

U.S. District Court — Western District of Oklahoma

Extract

RICO provides a civil cause of action for treble damages to anyone injured “by reason of” certain racketeering activity. 18 U.S.C. §§ 1964(c), 1962. “To plead a valid RICO claim, a plaintiff must plausibly allege that a defendant (1) conducted the affairs (2) of an enterprise (3) through a pattern (4) of racketeering activity.” *Johnson v. Heath*, 56 F.4th 851, 858 (10th Cir. 2022) (internal quotation marks and citation omitted). Defendants challenge, inter alia, the sufficiency of Plaintiffs’ allegations with respect to the third element - a “pattern” of racketeering activity. “A ‘pattern’ requires at least two predicate acts.” *Bixler v. Foster*, 596 F.3d 751, 761 (10th Cir. 2010) (citing 18 U.S.C. § 1961(5)). And those predicate acts themselves must amount to or otherwise constitute a threat of continuing racketeering activity. *Id.* This continuity requirement expresses congressional intent that “RICO reach activities that amount to or threaten long-term criminal activity.” *Id.* (citing *H.J., Inc. v. Northwestern Bell Tele. Co.*, 492 U.S. 229, 243 n. 4 (1989)).

Summary

To establish a RICO claim, a plaintiff must demonstrate a pattern of racketeering activity, which requires at least two predicate acts that amount to or threaten long-term criminal activity. The continuity requirement is crucial, and the acts must either show closed-ended continuity (a series of related predicates over a substantial period) or open-ended continuity (a threat of future criminal conduct). The district judge found that the plaintiff’s allegations did not meet these requirements, as the scheme was directed at a single victim with no potential to extend to others, and the alleged acts did not demonstrate a threat of continued criminal activity.

[Nation v. Shah, 4:19-cv-00588-JDR-JFJ \(N.D. Okla. Oct 30, 2024\)](#)

U.S. District Court — Northern District of Oklahoma

Extract

The Court, begins-and ends-by considering whether Plaintiffs have satisfied their burden of alleging facts that, if true, would establish a “pattern” of racketeering activity, which is an essential element of each of their RICO claims. See *Tal*, 453 F.3d at 1269 (recognizing that, to survive a motion to dismiss, a civil RICO claim must allege, among other things, a pattern of racketeering activity). While “[determining what constitutes a RICO pattern is no easy task,” it is clear that, at a minimum, a RICO pattern requires multiple “racketeering predicates” that “relate to each other and amount to a threat of continued racketeering activity.” ... More difficult to establish-and more problematic for Plaintiffs-is the requirement that the predicate acts

have sufficient “continuity” to constitute a RICO “pattern.” See *Bixler v. Foster*, 596 F.3d 751, 761 (10th Cir. 2010) (indicating that the continuity requirement “is more difficult to meet” (citation and quotation marks omitted)). For RICO purposes, continuity comes in one of two forms: Closed-ended continuity can be established by alleging a “closed period of repeated racketeering conduct.” *Johnson*, 56 F.4th at 859-60 (citing *H.J. Inc.*, 492 U.S. at 241-43). Open-ended continuity can be established by racketeering acts that “involved implicit or explicit threats of repetition,” “formed the operations of an association that exists for criminal purposes,” or were part of the defendants’ “regular way of conducting a legitimate enterprise.”

Summary

Requirements for establishing a pattern of racketeering activity under RICO, emphasizing the need for relatedness and continuity. It explains that continuity can be either closed-ended or open-ended, with closed-ended continuity requiring a closed period of repeated racketeering conduct, and open-ended continuity involving threats of repetition or being part of a regular way of conducting business. The passage highlights that establishing continuity is more challenging than establishing relatedness.

[Thompson v. Wyoming Alaska, Inc., 652 F.Supp. 1222 \(D. Utah 1987\)](#)

U.S. District Court — District of Utah

Extract

In *Torwest DBC, Inc. v. Dick*, 810 F.2d 925 (10th Cir.1986), the Tenth Circuit stressed in a single scheme case that the ‘continuity’ requirement of pattern requires demonstration of ‘facts from which at least a threat of ongoing illegal conduct may be inferred,’ and that the single scheme would have to involve ‘continuous behavior.’ In this case pattern fails because the acts complained of were not ongoing and could not be said to constitute the regular way in which defendants conduct business.

Summary

For a RICO claim to succeed, particularly in the Tenth Circuit, there must be a demonstration of continuity, which requires showing a threat of ongoing illegal conduct or continuous behavior. The district judge in the current case found that the alleged scheme achieved its primary objective within a short period and did not demonstrate a threat of ongoing illegal conduct or continuous behavior. This aligns with the Tenth Circuit’s requirement for continuity in RICO cases.

[Skurkey v. Daniel](#)

U.S. District Court — Western District of Oklahoma

Extract

Defendants next argue the Complaint fails to allege a “pattern of racketeering.” A “pattern” requires at least two predicate acts. 18 U.S.C. § 1961(5). Predicate acts must be violations of certain statutes, 18 U.S.C. § 1961(1), here alleged to be federal mail fraud and wire fraud statutes. Additionally, a Plaintiff must allege facts from which the Court can conclude the existence of a pattern, that is that the “predicates themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity.” *H.J., Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 240 (1989) (emphasis original). The Supreme Court has explained that there are two elements to finding a pattern for RICO purposes: “continuity plus relationship.”

Summary

To establish a pattern of racketeering activity under RICO, a plaintiff must demonstrate both continuity and relationship among predicate acts. The passage highlights that a single scheme directed at one individual with no potential to extend to others typically does not satisfy the RICO requirement of a pattern of continuity. This is relevant to the district judge's decision, as the judge found that the plaintiff's allegations did not meet the continuity requirement, given the single scheme and single victim involved.

[UMB Bank v. Monson, 21-CV-2504-EFM \(D. Kan. Jun 04, 2025\)](#)

U.S. District Court — District of Kansas

Extract

To state a 'pattern' of racketeering activity, the plaintiff must allege 'at least two acts of racketeering activity... which occurred within ten years.' Moreover, 'a RICO pattern requires that the racketeering predicates relate to each other and amount to a threat of continued racketeering activity. No pattern exists without this 'continuity plus relationship.'" As to the relationship requirement, predicate acts satisfy this element when they make up one common scheme. Racketeering predicates relate to each other if they 'have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.' 'The relationship test is not a cumbersome one for a RICO plaintiff.'

Summary

To establish a pattern of racketeering activity under RICO, a plaintiff must demonstrate that the predicate acts are related and amount to a threat of continued racketeering activity. The relationship requirement is not difficult to meet, as it only requires that the acts make up one common scheme and share similar purposes, results, participants, victims, or methods. The

continuity requirement, however, is more stringent and requires either a closed-ended or open-ended continuity, which involves repeated acts over a substantial period or a threat of future repetition.

[Purvis v. Hamwi, 828 F.Supp. 1479 \(D. Colo. 1993\)](#)

U.S. District Court — District of Colorado

Extract

In order to make out a pattern under RICO, the predicate acts must somehow be ordered or arranged, bearing some relationship to each other, and implicate the threat of continuing activity. *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 238-239, 109 S.Ct. 2893, 2900-2901, 106 L.Ed. 2d 195 (1989). 'Continuity' is both a closed- and openended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with the threat of repetition. *Id.* at 241, 109 S.Ct. at 2901. But predicate acts 'extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement: Congress was concerned in RICO with long-term criminal conduct.' *Id.* at 242, 109 S.Ct. at 2902.

Summary

Predicate acts extending over a short period without a threat of future criminal conduct do not satisfy the continuity requirement. This is relevant to the district judge's decision, as the judge found that the alleged scheme achieved its primary objective within a short period and did not demonstrate a threat of continued criminal activity.

[Schrag v. Dinges, 788 F.Supp. 1543 \(D. Kan. 1992\)](#)

U.S. District Court — District of Kansas

Extract

In *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989), the Supreme Court reiterated the well-established concept that racketeering acts form a 'pattern' in RICO where they exhibit 'continuity plus relationship.' *Id.* at 239, 109 S.Ct. at 2900. The 'relationship' requirement is satisfied when the racketeering acts have 'the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.' *Id.* at 240, 109 S.Ct. at 2901 (citing *Sedima*, 473 U.S. at 496 n. 14, 105 S.Ct. at 3285 n. 14). With respect to the 'continuity' requirement, the Supreme Court stated that the predicate acts must amount to, or pose a threat of, continuing racketeering activity. *Id.* According to the Supreme Court, continuity 'is both a closed- and open-ended concept, referring to a

closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition.' Id. A RICO plaintiff 'may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time.' Id. Predicates extending over merely a few weeks or months, on the other hand, may satisfy the continuity element if there is a threat of repetition in the future. This latter concept of continuity, which occurs over an 'open period,' is established by showing that the predicate acts are a 'regular way of conducting the enterprise's ongoing business.'

Summary

Continuity can be either closed-ended or open-ended, and it provides criteria for establishing each type. This is relevant to the question of whether the district judge erred in dismissing the RICO claim for lack of a pattern of racketeering activity.

[Gotfredson v. Larsen Lp, 432 F.Supp.2d 1163 \(D. Colo. 2006\)](#)

U.S. District Court — District of Colorado

Extract

Here, Plaintiffs vaguely contend that their complaint sufficiently alleges both a closed and open-ended scheme. (Pls.' Resp. to Def. M. Larsen's Br. at 8-9.) Thus, I evaluate both concepts. 'A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement.' H.J., 492 U.S. at 241-42, 109 S.Ct. 2893. The facts, as alleged by Plaintiffs, do not satisfy the continuity requirement. Plaintiffs have not sufficiently pled a threat of 'future criminal conduct.' See id. Plaintiffs essentially allege a closed-ended series of predicate acts. Specifically, viewing the complaint in a light most favorable to Plaintiffs, Plaintiffs' complaint asserts a closed-ended series of predicate acts constituting a single scheme—false or fraudulent claims and a sham arbitration—to accomplish a discrete goal—garner a large sum of money from Plaintiffs—directed at a finite group of individuals—Plaintiff Gotfredson and his company, Plaintiff Trim Work Specialty, Inc—' with no potential to extend to other persons or entities.'

Summary

To establish a pattern of racketeering activity under RICO, a plaintiff must demonstrate continuity, which can be either closed-ended or open-ended. Closed-ended continuity requires a series of related predicate acts extending over a substantial period of time, and acts extending over a few weeks or months without a threat of future criminal conduct do not satisfy this requirement. The passage also highlights that a single scheme directed at a

finite group of individuals with no potential to extend to others does not establish continuity.

[Tso v. Murray, Civil Action No. 16-cv-2480-WJM-CBS \(D. Colo. Feb 28, 2018\)](#)

U.S. District Court — District of Colorado

Extract

Alternatively, even if Plaintiff can demonstrate proximate cause, the Court concludes that Plaintiff has failed to establish the necessary pattern of racketeering activity. 'To prove a 'pattern of racketeering activity' a plaintiff or prosecutor must show both 'relationship' and 'continuity'—that the racketeering predicates are related, and that they either constitute or threaten long-term criminal activity.' H.J. Inc. v. Nw. Bell Tel. Co., 492 U.S. 229, 230 (1989). As the Supreme Court explained, Relationship and continuity are two distinct requirements, though their proof will often overlap. RICO's notion of relationship is [that] 'criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.' 18 U.S.C. § 3575(e)... Continuity is centrally a...

Summary

To establish a pattern of racketeering activity under RICO, a plaintiff must demonstrate both a relationship and continuity among the predicate acts. The relationship requirement involves showing that the acts have similar purposes, results, participants, victims, or methods, while continuity involves demonstrating that the acts either constitute or threaten long-term criminal activity. The passage suggests that the plaintiff in the Tso case failed to establish these elements, which is similar to the issue in the current case where the judge found that the plaintiff's allegations did not demonstrate a pattern of racketeering activity.

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

U.S. District Court — District of Colorado

Extract

Plaintiffs' description of a single fraud scheme affects claims' plausibility in another respect: whether the alleged fraudulent acts accomplished a discrete goal (which RICO would not cover) or whether they constitute a pattern of racketeering activity (which RICO does concern). Erikson v. Farmers Group, Inc., 151 F. App'x 672 (10th Cir. 2005). To establish the 'pattern' element, a plaintiff not only must show multiple predicate acts, 'but also that the predicates themselves amount to, or that they otherwise

constitute a threat of, continuing racketeering activity.' Bixler, 596 F.3d at 761 (internal citation omitted) (emphasis in the original). This element reflects Congress' concern over long-term criminal activity. Boone v. Carlsbad Bancorporation, Inc., 972 F.2d 1545, 1556 (10th Cir. 1992).

Summary

To establish a RICO claim, a plaintiff must demonstrate a pattern of racketeering activity, which requires showing both relatedness and continuity. The passage emphasizes that a single scheme with a discrete goal, directed at a finite group of individuals, does not satisfy the continuity requirement for a RICO pattern. This is relevant to the district judge's decision, as the judge found that the plaintiff's allegations did not demonstrate a pattern of racketeering activity due to the lack of continuity.

[Levey v. Wetherall, Civil Action No. 1:19-cv-02294-DDD-MEH \(D. Colo. Sep 29, 2020\)](#)

U.S. District Court — District of Colorado

Extract

"A person does not have to be formally convicted of any predicate act before [civil RICO] liability. .. may attach." Tal, 453 F.3d at 1261-62. But the predicate acts at issue must "extend over a substantial period of time; a few weeks or months is considered insubstantial." Midwest Grinding Co. v. Spitz, 976 F.2d 1016, 1025 (7th Cir. 1992) (alterations adopted, quoting H.J. Inc. v. Nw. Bell Tel. Co., 492 U.S. 229, 242 (1989)). The predicate acts must also affect more than a single victim and aim to accomplish more than one discrete goal.

Summary

For civil RICO liability, a person does not need to be formally convicted of a predicate act. However, the predicate acts must extend over a substantial period of time and affect more than a single victim, aiming to accomplish more than one discrete goal. This is relevant to the plaintiff's case because the district judge dismissed the case on the grounds that the alleged scheme was directed at a single victim and achieved its primary objective within a short period, which the judge found insufficient to establish a pattern of racketeering activity.

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

U.S. District Court — District of Utah

Extract

A private civil action under RICO is grounded upon the premise that a party has twice engaged in 'racketeering activity'. The Act defines 'racketeering activity' as behavior 'indictable' under specified provisions of the United States Code. Before a court can assess the merit of a plaintiff's treble damages claim it must determine whether there is probable cause to believe the named defendant committed the alleged predicate crimes. That determination is possible only if the factual basis of those 'acts of racketeering' is set out with particularity. Thus, a factual statement similar to a bill of particulars is needed in pleadings that allege a violation of the RICO treble damages provision.

Summary

The passage highlights the necessity for a plaintiff in a RICO case to set out the factual basis of alleged racketeering activities with particularity. This is crucial for the court to determine whether there is probable cause to believe the defendant committed the alleged predicate crimes. The district judge dismissed the plaintiff's RICO claim, likely due to a perceived lack of continuity and relatedness in the alleged racketeering activities. However, the plaintiff's complaint did allege a series of related acts over an extended period, which could potentially satisfy the continuity requirement if the factual basis is sufficiently particularized. The 10th Circuit precedent emphasizes the need for detailed factual allegations, which the plaintiff may argue were present or could be amended to meet this standard.

[Hall v. Witteman, 569 F.Supp.2d 1208 \(D. Kan. 2008\)](#)

U.S. District Court — District of Kansas

Extract

In a RICO case, the complaint must allege continuity. *Duran v. Carris*, 238 F.3d 1268, 1271 (10th Cir.2001). At best, what plaintiff alleges is a closed-ended series of predicate acts constituting a single scheme to accomplish a discrete goal [publication of the Responsive Advertisement in lieu of Plaintiff's Advertisement] directed at only one individual [the plaintiff] with no potential to extend to other persons or entities. See *Boone v. Carlsbad Bancorporation, Inc.*, 972 F.2d 1545, 1556 (10th Cir.1992). Therefore, the allegations of the Complaint do not show sufficient continuity to sustain plaintiff's RICO claim.

Summary

The passage from *Hall v. Witteman* emphasizes the necessity of demonstrating continuity in RICO claims, either through a closed-ended series of related acts over a substantial period or through open-ended continuity that suggests a threat of ongoing criminal activity. The district

judge in the current case found that the plaintiff's allegations did not demonstrate continuity, as the scheme was directed at a single individual, achieved its primary objective within a short period, and did not pose a threat of continued criminal activity. This aligns with the reasoning in *Hall v. Witteman*, where a single scheme directed at one individual with no potential to extend to others was insufficient to establish continuity.

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

Extract

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

Summary

Wire fraud involves a scheme to defraud using interstate wire communications. This is relevant to the plaintiff's claim that the defendants engaged in wire fraud as part of a RICO violation. The district judge dismissed the RICO claim for lack of a pattern of racketeering activity, which requires related and continuous predicate acts. The plaintiff alleged wire fraud and a violation of the Travel Act as predicate acts. The judge found that the alleged scheme was a single, short-lived effort with a discrete goal, which does not satisfy the continuity requirement for a RICO pattern. However, the plaintiff argues that the scheme extended over 18 months and involved ongoing communications and threats, which could suggest continuity.

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

Extract

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

Summary

The venue for a RICO action can be in any district where the defendant resides, is found, has an agent, or transacts affairs. This is relevant to the question of whether the district judge erred in dismissing the case for improper venue, as the passage suggests that the venue could be proper if any of these conditions are met.

[18 U.S.C. § 1962 18 U.S.C. § 1962 Prohibited Activities](#)

Extract

It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

Summary

The RICO Act prohibits individuals from engaging in a pattern of racketeering activity to acquire or maintain control over an enterprise affecting interstate commerce. This is relevant to the plaintiff's allegations that the defendants engaged in a pattern of racketeering activity through wire fraud and violations of the Travel Act. The district judge's dismissal of the case may have overlooked the broader implications of the alleged pattern of racketeering activity and its impact on interstate commerce.

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

Extract

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

Summary

The statute provides a private right of action for individuals injured in their business or property by a RICO violation. It allows for the recovery of treble damages and costs, which is relevant to the plaintiff's claim for damages due to the alleged RICO violations by the defendants. The district judge's dismissal of the case may have overlooked the potential for a valid RICO claim if the plaintiff's allegations of a pattern of racketeering activity were adequately supported.

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

Extract

Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to- distribute the

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

Summary

The Travel Act criminalizes interstate travel or the use of interstate facilities with the intent to promote or facilitate unlawful activity. This is relevant to the plaintiff's claim that Defendant Myers' trip to Oklahoma violated the Travel Act. The judge's order dismissing the case may have overlooked the applicability of the Travel Act to the alleged scheme, which involved interstate travel to prepare fraudulent documents.

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

Extract

As used in this chapter- 'racketeering activity' means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 932 (relating to straw purchasing), section 933 (relating to trafficking in firearms), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351 (relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or naturalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in

application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1592 (relating to peonage, slavery, and trafficking in persons),¹ sections 1831 and 1832 (relating to economic espionage and theft of trade secrets), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic),² sections 175-178 (relating to biological weapons), sections 229-229F (relating to chemical weapons), section 831 (relating to nuclear materials), (C) any act which is indictable under title 29, United States Code, section 29186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(B);

Summary

The passage provides a comprehensive list of activities that qualify as "racketeering activity" under RICO. This includes wire fraud and violations of the Travel Act, both of which are alleged by the plaintiff in the complaint.

The passage is relevant to understanding what constitutes a pattern of racketeering activity, which is a necessary element for a RICO claim.

[Could you use that in a sentence, please? The intersection of prosecutorial ethics, relevant conduct sentencing, and criminal RICO indictments.](#)

Notre Dame Law Review - University of Notre Dame Law School - McClintock, William S. - 2013-12-01

Extract

Although 'racketeering activity' is an easily defined concept, a 'pattern of racketeering activity' has proven more complicated. The statutory text states that a 'pattern of racketeering activity' requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.' The Supreme Court's biggest contribution to the 'pattern' element came in *H.J. Inc. v. Northwestern Bell Telephone Co.*, which involved a RICO class action by telephone customers alleging that their telephone company rigged rates by bribing utilities commissioners. In its holding, the Court determined that [section] 1961(5)'s 'pattern of racketeering activity' required more than simply the commission of two predicate acts; a pattern is not merely a checklist of racketeering acts that must be proved by the government. At the outset, the Court adopted an idea from past precedent that although 'two acts are necessary [for a pattern], they may not be sufficient.' The Court also noted that although something more than two predicate acts was required, the pattern requirement was a 'flexible' concept that could be proven in multiple ways. Looking at the legislative history, the Court held that 'to prove a pattern of racketeering activity a plaintiff or prosecutor must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity.' This introduced two new requirements for a pattern of racketeering activity: a relationship component and a continuity component.

Summary

The Supreme Court in *H.J. Inc. v. Northwestern Bell Telephone Co.* clarified that a "pattern of racketeering activity" under RICO requires more than just two predicate acts. The acts must be related and pose a threat of continued criminal activity, introducing the relationship and continuity components. This means that even if two predicate acts are present, they must be part of a broader scheme that shows continuity and relatedness.

[Racketeer influenced and corrupt organizations.](#)

American Criminal Law Review - Georgetown University Law Center - Bremer, Lance - 1997-01-01

Extract

"conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics."(53) ... The Supreme Court made a second attempt to clarify the "pattern" concept in *H.J. Inc. v. Northwestern Bell Telephone Co.*(54) In that case, the Supreme Court held that in order to prove a "pattern of racketeering activity," a prosecutor must show both relationship and continuity as separate elements.(55) However, the Court recognized that proof of these factors will often overlap.(56) ... "Continuity" is successfully proved if a prosecutor can show actual continuity during a past, closed period of repeated conduct or the threat of continued racketeering activity in the future.(57)

Summary

To establish a "pattern of racketeering activity" under RICO, both relationship and continuity must be demonstrated. The relationship prong requires that the acts have similar purposes, results, participants, victims, or methods. Continuity can be shown through repeated conduct over a closed period or a threat of continued activity. The district judge found that the plaintiff failed to demonstrate a pattern of racketeering activity because the alleged scheme was completed within a short period, involved a single victim, and did not pose a threat of continued criminal activity. However, the judge may have erred by not fully considering whether the alleged acts were sufficiently related and whether the continuity requirement could be met through the ongoing communications and threats, which could suggest a threat of continued activity.

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

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

Extract

The Court rejected a narrow reading of the phrase 'pattern of racketeering activity,' holding that it does not require proof of 'multiple illegal schemes' or that the predicate acts be 'indicative of an organized crime perpetrator.' Instead, the Court settled on a broad meaning for 'pattern of racketeering' that requires a 'plaintiff or prosecutor [merely to] prove [a] continuity of racketeering activity, or its threat, simpliciter.'

Summary

The passage suggests that the district judge may have erred by requiring a more stringent standard for establishing a pattern of racketeering activity than what is necessary under RICO. The Supreme Court's interpretation

allows for a broader understanding of what constitutes a pattern, focusing on continuity or its threat rather than multiple schemes or organized crime.

[Racketeer influenced and corrupt organizations.](#)

American Criminal Law Review - Georgetown University Law Center - Beard, Glen - 1996-03-22

Extract

The relationship prong is defined by the connection of the defendant's criminal acts to one another. As the Court wrote: '[c]riminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.' 'Continuity' is successfully proved if a prosecutor can show actual continuity during a past, closed period of repeated conduct or the threat of continuity of racketeering activity in the future.

Summary

To establish a pattern of racketeering activity under RICO, the acts must be related and show continuity. The relationship prong requires that the acts have similar purposes, results, participants, victims, or methods, or are otherwise interrelated. Continuity can be shown through repeated conduct over a closed period or a threat of future racketeering activity.

[Racketeer influenced and corrupt organizations.](#)

American Criminal Law Review - Georgetown University Law Center - Allison, Bridget - 1998-03-22

Extract

The Supreme Court made a second attempt to clarify the 'pattern' concept in *H.J., Inc. v. Northwestern Bell Telephone Co.*(50) In that case, the Court held that when proving a 'pattern of racketeering activity,' RICO requires both relationship and continuity of predicate acts as separate elements.(51) However, the Court recognized that proof of these factors will often overlap.(52) The relationship prong is defined by the connection of the defendant's criminal acts to one another: 'continuity' is successfully proved if a prosecutor can show actual continuity during a past, closed period of repeated conduct or an open-ended threat of continued racketeering activity in the future.(53)

Summary

To establish a pattern of racketeering activity under RICO, both the relationship and continuity of predicate acts must be demonstrated. The relationship prong requires a connection between the defendant's criminal acts, while continuity can be shown through repeated conduct over a closed period or an open-ended threat of continued activity. The district judge in the case at hand found that the plaintiff failed to demonstrate a pattern of racketeering activity, particularly the continuity aspect, as the alleged scheme was short-lived and directed at a single victim. The judge's decision aligns with the requirement that a RICO pattern must involve more than isolated or short-term conduct.

[Racketeer influenced and corrupt organizations.](#)

American Criminal Law Review - Georgetown University Law Center - Donovan, Emily R. - 1995-01-01

Extract

Congress has mandated that RICO 'be liberally construed to effectuate its remedial purposes.'(23) In the past, some courts have read the statute as narrowly limited to 'organized criminals.' These courts discouraged RICO actions arising out of 'garden variety' commercial disputes or fraud.(24) However, in *Sedima, S.P.R.L. v. Imrex Co.*(25) the Supreme Court attempted to halt this trend by concluding that RICO applies to legitimate businesses.(26)... The Supreme Court made a second attempt to clarify the 'pattern' concept. In *H.J. Inc. v. Northwestern Bell Telephone Co.*,(56) the Court confronted a civil RICO action brought against Northwestern Bell for allegedly bribing public utility commission officials.(57)... The Supreme Court reversed the Eighth Circuit's decision, holding that in order to prove a 'pattern of racketeering activity,' a plaintiff or prosecutor must show both 'relationship' and 'continuity' as separate elements.(59) However, the Court recognized that these factors will often overlap.(60)

Summary

RICO should be liberally construed to effectuate its remedial purposes, and the Supreme Court has clarified that RICO applies to legitimate businesses, not just organized criminals. The Supreme Court has also clarified the "pattern" requirement, emphasizing the need for both "relationship" and "continuity" as separate elements, but recognizing that these factors often overlap.

[Chapter 4. Elements of Cause of Action](#)

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

Extract

Closed-ended continuity may be demonstrated with proof of 'a series of related predicates extending over a substantial period of time.' Id. at 242 ('Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement: Congress was concerned in RICO with long-term criminal conduct.'). Open-ended continuity, in contrast, requires proof of 'a threat of continued racketeering activity.' Id. at 242. Under H.J. Inc., open-ended continuity may be established in various ways. The Court furnished some examples. First, a small number of related predicates occurring close together in time will establish open-ended continuity if 'the racketeering acts themselves include a specific threat of repetition extending indefinitely into the future, and thus...

Summary

For a RICO claim to demonstrate a pattern of racketeering activity, there must be either closed-ended continuity (a series of related predicates over a substantial period) or open-ended continuity (a threat of continued racketeering activity). The district judge found that the plaintiff's allegations did not meet these requirements, as the scheme was completed within a short period and did not threaten future criminal conduct. However, the passage suggests that even a small number of related predicates occurring close together in time can establish open-ended continuity if they include a specific threat of repetition extending indefinitely into the future.

[Racketeer influenced and corrupt organizations.](#)

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

Extract

an interest in an enterprise affecting interstate commerce;(10) (b) acquiring or maintaining through a pattern of racketeering activity or through collection of an unlawful debt an interest in an enterprise affecting interstate commerce;(11) (c) conducting or participating in the conduct of the affairs of an enterprise affecting interstate commerce through a pattern of racketeering activity or through collection of an unlawful debt;(12) or (d) conspiring to participate in any of these activities.(13) RICO's purpose is to remove organized crime from the legitimate business community.(14)

Summary

Types of activities that RICO targets, including conducting or participating in an enterprise's affairs through racketeering. This is relevant to the plaintiff's claim that the defendants engaged in a pattern of racketeering activity affecting interstate commerce.

[Racketeer Influenced and Corrupt Organizations Act.](#)

**American Criminal Law Review - Georgetown University Law Center -
Bailey, Lisa Pritchard - 1999-06-22**

Extract

RICO's purpose is to remove organized crime from the legitimate business community... In addition to criminal actions, RICO permits private plaintiffs and the government to seek redress in a civil action... Under section 1964, the Attorney General or '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... The two most controversial elements of RICO continue to be the 'pattern' and 'enterprise' requirements... A 'pattern of racketeering activity' requires two or more predicate acts of 'racketeering activity.'

Summary

The RICO statute is designed to combat organized crime by allowing both criminal and civil actions against those engaged in a pattern of racketeering activity. The statute requires at least two predicate acts to establish a pattern, and these acts must be related and continuous. The passage highlights the importance of the "pattern" and "enterprise" requirements, which are often the most challenging elements to prove in a RICO case.

['Plausible' Deniability](#)

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

Extract

The Second Circuit vacated the judgment, holding that even if the initial complaint did not afford a plausible inference of conspiracy, the proposed amended complaint did. In so ruling, the court of appeals articulated important principles guiding the plausibility analysis. The Second Circuit instructed that '[b]ecause plausibility is a standard lower than probability, a given set of actions may well be subject to diverging interpretations, each of which is plausible.' 680 F.3d 162, 184 (2d Cir. 2012). Further, '[t]he choice between two plausible inferences that may be drawn from factual allegations is not a choice to be made by the court on a Rule 12(b)(6) motion,' and a court 'may not properly dismiss a complaint that states a plausible version of the events merely because the court finds a different version more plausible.' Id. at 185.

Summary

The plausibility standard is lower than probability, and courts should not dismiss a complaint simply because they find a different version of events more plausible. The choice between plausible inferences is not for the court to make at the motion to dismiss stage. This principle suggests that the district judge may have erred by dismissing the complaint based on a preference for a more plausible version of events rather than considering whether the plaintiff's version was plausible.

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

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

Extract

A scheme to achieve a single discrete objective does not in and of itself create a threat of ongoing activity, even when that goal is pursued by multiple illegal acts, because the scheme ends when the purpose is accomplished.

Summary

The Tenth Circuit has held that a single scheme aimed at achieving a discrete objective does not satisfy the continuity requirement for a RICO pattern. The district judge in the case at hand found that the plaintiff's allegations did not demonstrate a pattern of racketeering activity because the scheme was directed at a single victim, had a single objective, and was completed within a short time frame. This aligns with the Tenth Circuit's interpretation that such a scheme does not pose a threat of ongoing activity, which is necessary to establish a RICO pattern.

[THE HAVES OF PROCEDURE.](#)

William and Mary Law Review - College of William and Mary, Marshall Wythe School of Law - Meyn, Ion - 2019-04-01

Extract

In contrast, Twombly required plaintiffs to provide specific factual allegations of any civil conspiracy that, in addition, made out a plausible claim. (269) Civil complaints alleging conspiracy have been routinely dismissed for being too conclusory. For example, in *Xtreme Power Plan Trust v. Schindler*, (270) the court stated, 'circumstances of conspiracy [must] be plead[ed] with specificity.' (271) Similarly, the court in *Atlantic International Movers, LLC v. Ocean World Lines, Inc.*, (272) stated that '[p]laintiff's complaint largely fails to attribute specific actions to any of the parties and

makes no specific allegations supporting the existence of an agreement between them.' (273)

Summary

The Twombly and Iqbal decisions require plaintiffs in civil cases to provide specific factual allegations to make out a plausible claim. This heightened pleading standard means that complaints that are too conclusory or fail to attribute specific actions to parties are likely to be dismissed. The district judge's decision to dismiss the plaintiff's complaint may have been influenced by these standards, as the judge found that the plaintiff failed to adequately allege a pattern of racketeering activity.

[RICO: A Primer](#)

Extract

Mail and wire fraud are the most common predicate acts... The racketeering acts need not be similar or directly related to each other; rather, it is sufficient that the racketeering acts are related in some way to the affairs of the charged enterprise, including, for example, that: the racketeering acts furthered the goals of or benefitted the enterprise, the enterprise or the defendant's role in the enterprise enabled the defendant to commit, or facilitated the commission of, the racketeering acts, the racketeering acts were committed at the behest of, or on behalf of, the enterprise, or the racketeering acts had the same or similar purposes, results, participants, victims or methods of commission.

Summary

For a RICO claim, the racketeering acts do not need to be directly related to each other but must be related to the affairs of the enterprise. The passage suggests that the acts should further the goals of the enterprise or be committed on behalf of the enterprise. This is relevant to the plaintiff's claim that the acts of wire fraud and violation of the Travel Act were part of a scheme to defraud him and manipulate judicial proceedings, which could be seen as related to the affairs of the alleged enterprise.

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

Extract

Second, to prove most types of RICO claims, the plaintiff must plead that the defendant committed some qualifying criminal action, the most common of which is mail, wire or securities fraud. Business deals gone sour do not count. Rather, the plaintiff must be able to prove the elements of the asserted crime, and often an intent to defraud. If there is nothing criminal in

nature about the complained-of conduct, RICO should not apply. It is an abuse of the RICO statute to attempt to shoehorn ordinary business or contractual disputes into a civil RICO claim. Third, the plaintiff must plead a pattern of racketeering activity for most RICO claims. If the alleged conduct occurred once or twice, or was not continuous, it cannot form a pattern of conduct sufficient to support a RICO claim. And oftentimes, because there is a fraud component, those instances must be particularly identified in the plaintiff's pleading—a barrier that can prove difficult to accomplish.

Summary

For a RICO claim to be valid, the plaintiff must demonstrate a pattern of racketeering activity, which requires more than isolated or sporadic acts. The conduct must be criminal in nature, and the plaintiff must prove the elements of the asserted crime, such as wire fraud. The passage emphasizes the difficulty of meeting these requirements and warns against using RICO for ordinary business disputes.

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

Extract

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

Summary

Requirements for a civil RICO claim, emphasizing the need for a concrete financial loss, a qualifying criminal action, and a pattern of racketeering activity. The district judge dismissed the case because the plaintiff failed to

demonstrate a pattern of racketeering activity, which is consistent with the requirements outlined in the passage. The judge found that the alleged scheme was a single, narrow purpose directed at one individual, which does not satisfy the continuity requirement for a RICO claim.

[RICO: A Primer](#)

Extract

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

Summary

The passage provides insight into the requirements for establishing a pattern of racketeering activity under RICO. It clarifies that the racketeering acts do not need to be similar or directly related but must be related to the affairs of the charged enterprise. The passage also explains the continuity requirement, which can be satisfied by either closed-ended continuity (a series of related predicate acts over a substantial period) or open-ended continuity (a threat of continuing criminal activity). This information is relevant to the question of whether the district judge misconstrued the plaintiff's complaint regarding the pattern of racketeering activity.

[SCOTUS Resolves Circuit Split On How To Assess Domestic Injury Under RICO](#)

Extract

The Supreme Court rejected the Seventh Circuit's approach and sided with the Ninth Circuit. Yegiazaryan, slip op. at 7-8. The Court held that

'determining whether a plaintiff has alleged a domestic injury [for purposes of RICO] is a context-specific inquiry that turns largely on the particular facts alleged in a complaint.' Id. at 8. This means that district courts must consider the 'circumstances surrounding the alleged injury to assess whether it arose in the United States.' Id. 'If those circumstances sufficiently ground the injury in the United States, such that it is clear the injury arose domestically, then the plaintiff has alleged a domestic injury.' Id. at 9-10. Notably, because the analysis is contextual and 'the range of predicate acts' for RICO is quite expansive, 'no set of factors can capture the relevant considerations for all cases.' Id. at 10.

Summary

The Supreme Court emphasizes a context-specific inquiry to determine whether a plaintiff has alleged a domestic injury under RICO. This requires district courts to consider the specific circumstances surrounding the alleged injury to assess whether it arose in the United States. The analysis is contextual, and no set of factors can capture the relevant considerations for all cases, indicating that each case must be evaluated on its own merits.

[Complex AKS/Stark Complaint Survives Rule 9\(b\) Particularity Challenge ' A Guide For FCA Complaints](#)

Extract

Generally, a complaint will survive a motion to dismiss if it states a plausible claim and allows a court to reasonably infer the defendant's liability for the allegations made therein. Merely reciting the elements of a cause of action followed by a general statement of liability is insufficient. Further, where a complaint alleges claims under the FCA, Rule 9(b) of the Federal Rules of Civil Procedure ('Rule 9(b)') applies and requires that the complaining party 'state with particularity the circumstances constituting fraud or mistake.' Fed. R. Civ. P. 9(b). As noted by the court, Rule 9(b) imposes a more exacting pleading standard and requires the complaint to allege facts as to time, place, and substance of the defendant's alleged fraud, specifically the details of the defendant's allegedly fraudulent acts, when they occurred, and who engaged in them.

Summary

For a complaint to survive a motion to dismiss, it must state a plausible claim and allow the court to reasonably infer the defendant's liability. In cases involving fraud, Rule 9(b) requires that the complaint state with particularity the circumstances constituting fraud, including the time, place, and substance of the alleged fraudulent acts. This standard is more exacting than the general pleading standard and requires specific details about the alleged fraud.

This memo was compiled by Vincent AI based on vLex materials available as of August 30, 2025. [View full answer on vLex](#)